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# Piers Plowman, Legal Authority and the Law of Subject Status.

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*Piers Plowman,* Legal Authority and the Law of Subject Status

By

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ABSTRACT OF THE DISSERTATION

*PIERS PLOWMAN,* Legal Authority and the Law of Subject Status

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This project examines the legal discourses surrounding Langland's *Piers Plowman* to show that the language of the law courts, and the dilemmas faced there on a daily basis about the authority of the law, are mirrored in the way in which Langland presents Christ's harrowing of hell at one of the narrative climaxes of the poem. The state of English law inflects the literature, even when the issue presented appears to be covenantal theology, because the questions over the basis of legal authority being asked in the courtroom were so enmeshed in the language of the courtroom being used in the poem. Although it is impossible to say which of the law or literature influenced the other more, this project demonstrates how Langland, when speaking of the nature of legal authority, carves out a place for his poem as an authoritative alternative discourse that might bridge the gaps between theology and the common law.

To show how Langland achieves this, chapter one of the project focuses on his engagement with the four main institutional sources of contemporary

authority: the church, the law, the political community, and the schools. I argue that Langland creates authority for his poem by reframing their main ideas through his poem's creative manipulation of their discourses. Specifically, chapter two illustrates how he enters the debate over the basis of the authority of the law through his framing of Christ's harrowing of hell in an unequivocably legal understanding of the terms 'riht' and 'reson' in order to emphasize the importance of Christian ideas of Mercy in the administration of justice. Chapter three focuses on Langland's understanding of reason as the conduit to legal authority to show his belief that justice demands 'riht' and 'reson' must act together.

The second part of the project examines the legal, historical and literary circumstances surrounding Edward III's passing of the 1351 statute, *De natis ultra mare,* and its later interpretation to illustrate how Langland's views on the nature of kingship examined in chapter four promoted ideas that played an integral part in the legal development of the idea of citizenship and the role of the king. Chapter fives details the shift from the legal definitions of personal status in terms of slave and master to those of citizen and king – a process which led eventually to the divisions by nation and nationality that still define the contemporary world – to demonstrate how it was the acceptance of the ideas of kingship reflected in *Piers Plowman* that led the statute to be interpreted by judges as it was, so enshrining Langland's ideas on kingship into law.

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This project has accompanied me through major changes in my life, both as mountain and refuge. Its completion would not have been possible without the support and encouragement of friends and colleagues in the Washington University English department and their constant humor and good will. On this front, I owe an enormous debt especially to Dorothy Negri and Kathy Schneider for their unfailing good cheer and encouragement. Likewise, I have been fortunate to have as fellow medievalists Jessica Lawrence, Rick Godden, Elon Lang, Susan Lowther, Rob Patterson, and Sarah Noonan for understanding, conviviality and the occasional pint.

My professional debt is to David Lawton. I know myself fortunate to have had as my advisor such an engaged and inspiring scholar as David. I could not hope for a better example of rigorous scholarship infused with an infectious enthusiasm for the field, for which I will be forever grateful. I owe thanks also to Jessica Rosenfeld, for the time she took to offer constructive criticism to get this project completed by giving pertinent and helpful directions around the roadblocks. The faults of this project are entirely my own but there would have been many more of them without their guidance.

Others know how I feel about them: for great friendships, and endless cups of tea, my thanks to Theresa Biggs, Erin Finneran, Anita Hagerman and Gail Venable; for the warm, patient, considerate and supportive embrace of a resident alien, thanks to my parents-in-law, Ted and Sissy; and, for a lifetime of understanding and sharing, thanks to my siblings, Miles, Suzanna, Alex, and Sophie.

My parents have always been a source of inspiration and wisdom, and I hope that this in some way counts towards the debt I owe them for their gifts of the love of literature and the spirit of inquiry, and their example to live passionately and positively. I only hope that I shall be able to burden my own children similarly.

Elena, Olivia and Max Thomas inspire me daily to find a way to Dowel, Dobet and Dobest, and give the attempt purpose and laughter. They are the true gift of my life, shared with my dearest love, my husband Scott. He has been a model of encouragement and faith, brings joy and comedy gold to my every day, and makes each of those days worthwhile. My completion of this work is his triumph. Thank you, my love.

For

Sir James and Lady Sue Hunt,

*"Wel may the barn blesse that hym to book sette"* (B.XII.187)

&

Scott Thomas,

*"And thow love lelly, lakke shal thee nevere"* (B.XX.210)

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# INTRODUCTION:

In 1345, the Chief Justice of the Common Pleas, Sir John Stonor, responded to an assertion by a fellow Justice, Sir Roger Hillary, that law is the will of the justices by countering, 'Nanyl, ley est resoun.' At stake in that debate was no less than the authority of the law, and the philosophy of law that developed around its outcome would affect the development of the common law as it stands today. In his translation of that 1345 year book, Pike translates 'resoun' as 'right' in this instance, but in his introductions to the Yearbooks 18 & 19 Edward III, p.xxvi, n.I and 20 Edward III, pt.ii, p.lxxiv., he translates the same word as 'reason'. A study of the judgments and comments of Sir William Shareshull, Chief Justice of the King's Bench from 26 October 1350 to 5 July 1361, reveals that he too was trying to understand the relationship between 'ley' and 'resoun,' as he repeatedly uses phrases such as 'contrary to reason' and 'against law and reason.'[1] It appears from their context that, despite his use of the conjunction, he views the terms as linked entities. However, that he considers they might also be separated is clear from pleadings (many years before he became a judge) when he argued that it would be 'against reason'[2] were a writ of trespass to be set aside against all but one of the defendants due to an error in form, and for that one defendant then to be held liable for all of the damages. In that case, Shareshull's pleadings request a judgment contrary to a strict interpretation of the law. His opponent, Shardelow, simply asserted that the law by its nature could not be unreasonable and pled in rebuttal: 'It will not be against reason,

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[1] See for example, *inter alia*, R.S.Y.B. 13 Edw III, Hil. Pl. 19 (p114); 16, Mich. Pl. 22 (342). All of these exhibit the spelling of 'resoun' for reason.

[2] Y.B. 6 Edw III, Mich. Pl. 7.

for it is law.'[3]  Time and again the Sergeants and Justices are trying to do 'riht' by upholding the law, but finding that 'resoun' suggests a different course that will itself also do 'riht.'

This project began when I started reading the yearbooks and realized that the fourteenth-century lawyers were having the same trouble pinning down the meanings of 'reso(u)n' and 'riht' that I encountered on reading *Piers Plowman*.  Their efforts to create a philosophy of law consistent with both their Christian belief system and the practical reality of a codified and document-based legal system mirrored the attempts of literary critics trying to find a unified legal and religious philosophy that might make sense of the sprawling poem.  Certainly, the vocabulary tools are the same, as are the philosophical heritage and social considerations.  Reading the yearbooks and poem together, and seeing the clear parallels which can be drawn between the two when considering spiritual and earthly authority, led me to believe that these parallels represent Langland entering the courtroom debate himself, and creating within his work a poetic space in which to work towards possible answers.

Green suggests that readers of medieval English literature need to understand medieval law and medieval literature as "parallel forms of discourse."[4] In fact, so much has now been written about the importance of interdisciplinary scholarship that this seems rather a statement of the obvious.  However, it is only in the last decades that medievalist literary criticism has moved from an examination of use of legal terminology and imagery as another tool in the author's bag to analysis of the cultural implications of

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[3] *Ibid.*

[4] Richard Firth Green.  "Medieval Law and Literature."  *The Cambridge History of Medieval English Literature*. ed. David Wallace. (Cambridge:  Cambridge UP, 1999): 407 – 431.

this profusion of legal references for the English vernacular literary tradition. There is a good historical reason for this critical pattern; as Alford notes, law is a regular feature of the literature of this period because medieval man had a "profound faith in law as the tie that binds all things in heaven and in earth,"[5] and he would simply not have recognized any distinctions a contemporary critic might choose to make between secular or canonical law. Green makes the same point when he notes that, in the *Mirror of Justices*, no distinction is made by the author between actions that a modern reader would consider immoral but not illegal or vice versa, and gives the example of the law being described as 'nothing else but the rules laid down by our holy predecessors in Holy Writ for the salvation of souls from everlasting damnation.'[6] Green then points out that at the word level, 'in [the author's] subsequent discussion of the minutiae of common-law procedure he repeatedly used the word 'sin' where we would expect terms like 'crime' or 'offence.'[7] Such an attitude is not so far removed from contemporary culture if we consider lawmakers such as Roy Moore, the Alabama Chief Justice embroiled just a few years ago in a dispute over his erection of a monument of the Ten Commandments in the rotunda of the state judicial building. Moore argued in his defense: "I have no intention of removing the monument of the Ten Commandments, the moral foundation of our law."[8] Probably unwittingly, he is echoing Eike von Repgow's early thirteenth-century

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[5] John Alford and Dennis Seniff, *Literature and Law in the Middle Ages*. (New York, 1984): 942.

[6] Green, 411.

[7] Green gives the example of 'it is an abuse to amerce a man on the warrant of a presentment of a personal trespass, since no one is amerceable save for sin [pecchie] in a real or mixed action ' from Andrew Horne. *The Mirror of Justices.* Ed. William J. Whittaker. (Selden Society 7. London: B. Quaritch, 1895): 159.

[8] Statement released by Alabama Chief Justice Roy Moore dated August 14th 2003. "Defiant chief justice vows to keep Ten Commandments monument." www.cnn.com/2003/LAW/08/14/alabama.tencommandments

legal treatise, known as *Sachsenspiegel*, which emphasizes that "God is himself Law,"
and opens with a verse prologue in which divine law is said to subsume secular law.
Even at that time, this was not a new or controversial claim, but rather reflected the
popular contemporary view of the law as existing to enforce the divine will in human
affairs.

However, by the second half of the fourteenth century, this relationship was being
described in more complex terms in William Langland's *Piers Plowman*:  his Prologue
has "an aungel of hevene" differentiating between the human institution of law subject to
the will of earthly rulers and law as a reflex of divine justice.  The angel warns:

> *"Sum Rex, sum Princeps"; neutrum fortasse deinceps!*
> *O qui iura regis Christi specialia regis,*
> *Hoc quod agas melius – iustus es, esto pius!*
> *Nudum ius a te vestiri vult pietate.*
> *Qualia vis metere, tali grana sere:*
> *Si ius nudatur, nudo de iure metatur;*
> *Si seritur pietas, de pietate metas.*[9] (Prologue: B.132-138)

[(You say) 'I am King, I am Ruler'; you may perhaps be neither in future.  O you who
administer the sublime laws of Christ the King, in order to do better what you do, as you
are just, be godly!  Naked law requires to be clothed by you with a sense of your duty to
God.  Sow such grain as you wish to reap.  If the law is nakedly administered by you,
then let [judgment] be measured out [to you] according to the letter.  If goodness is sown
[by you], may you reap goodness.][10]

Langland contrasts the duty to God emphasized by the angel with the absolutist Roman
law advocated by " the commune" in line 143:  "Precepta Regis sunt nobis vincula legis!"
[The King's bidding has for us the binding force of law].  The ensuing fable of the rats

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[9] This quote and all others from the text are from William Langland,  *Piers Plowman: The B Version.*  Eds.
George Kane and E. Talbot Donaldson. (London: Athlone Press, 1975; 2nd impression 1988).

[10] This translation – along with all others in the paper - is from Schmidt's footnotes to the text in William
Langland, *The Vision of Piers Plowman: a complete edition of the B-text..* Ed. A.V. C. Schmidt.  (London:
Everyman, 1978): 8.

and mice and the cat illustrates the conflict of these two statements, showing in topical practical terms (through the analogy of the influence of John of Gaunt over the boy King Richard II) how the reality of the rule of law under a monarchy contrasts with the angel's ideal expression of the law.[11]  In this way, Langland is able to offer both a sociopolitical commentary for his time and a more general discussion of the legal structures of power and social order which questions the balance of power between common and canon law.

Alford and Seniff have noted that bearing in mind literary production at the time of *Piers Plowman* was mostly by authors trained for a life in the Church or in the law - or in a mixture of both – "it is hardly surprising that the writings of the period, both secular and religious, should be pervaded by legal influence in one form or another."[12]  In examining the legal diction of *Piers Plowman*, Alford points out that the distinctions between legal and theological disciplines may not be so clear simply because

> so intertwined historically are the vocabularies of law and theology that medieval writers found it impossible to explain certain doctrines of Christianity without recourse to legal terminology.  The Bible is largely responsible for this intermingling.  Not only does it describe the history of mankind as a judicial process – crime, punishment, pardon – but quite naturally it also employs the words of the law itself….. Thus in his choice of vocabulary (if indeed he really had a choice), Langland was simply using the words best suited by tradition to his subject matter.[13]

There is, of course, the further point that, since clerical skills such as reading and writing were learned and practiced at centers requiring minor holy orders, the readers and writers of literary texts and legal documents were one and the same, so well-versed in the

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[11] See pages 144-6 for further discussion of this example in chapter two.

[12] Alford and Seniff, ix.

[13] John Alford, *Piers Plowman:  A Glossary of Legal Diction.* (Cambridge:  St. Edmundsbury Press, 1988):  pxiv

vocabulary of all three disciplines.  This was true not only on the word level, but also on the practical level:  we need only to consider Chaucer's position as Comptroller of Customs for the port of London, and the literary use he made of his military and diplomatic trips to Europe to see the crossover in action.  It is not unreasonable to believe that the debates in the literature of the period were also being held in the legal and executive halls of government and mulled over by the same, relatively small, group of people.  As Binder observes, "to say that law is literary is also to admit that literature is like law, an arena of strategic conflict."[14]

In *The Letter of the Law:  Legal Practice and Literary Production in Medieval England,*[15] editors Emily Steiner and Candace Barrington provide illuminating examples of ways in which the intersection of literary and legal scholarship can benefit both disciplines.  As the editors note, Mathews' essay[16] in that volume shows how "literary texts devise formal and ideological alternatives to exclusive legal practices"[17] but then develops away from the more obvious discourse of resistance to show how the text formulates ideas of character along the lines of legal practice.  Here literary text is not simply exposing the weakness of the law but offering alternatives, something I believe is also taking place in Langland's work.  Of particular interest to this project,  Green's essay in the collection, "Palamon's appeal of treason in the *Knight's Tale"* shows how Chaucer's use of legal vocabulary on the micro level expresses the macro level concern

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[14] Guyora Binder, "The Law and Literature Trope" in *Law & Literature*. Eds. Michael Freeman and Andrew D.E. Lewis.  (Oxford; New York : Oxford UP, 1999):  xx.

[15]  (Ithaca, Cornell UP, 2002).

[16]  Jana Mathews,  "Land, Lepers and the Law in *The Testament of Cresseid*." *Ibid*., 40 – 66.

[17] *Ibid*., 5.

for the future of the rule of law under an autocratic young King.  Green shows how sharp literary comment can have pointed legal implications.

Given this interrelation between literature and law, critics have been faced with a question of approach, and tended to shape their answer according to the scholarly preoccupations of their time.  For example, one of the first influential studies of the relationship between literature and law, 'Von der Poesie im Recht'[18] by Grimm in 1818, uses linguistic proof to emphasize the fact that both subjects go back to a common origin and thus share certain characteristics.  As one of the founders of historical linguistics, Grimm naturally starts with language as his basic evidence for a close connection between law and literature.  Those scholars following his lead emphasize either the "poetic" features of early legal treatises or the assistance the study of literary language can provide in the understanding of legal terminology.  In their bibliography of the scholarship of the literature and law of the early Middle Ages, Alford and Seniff find the "clearest evidence of Grimm's influence" in Schwartz 1970's proposal[19] for using "comparative linguistics as the means for reconstructing Germanic law."[20]  Had they been compiling their bibliography today, it would have been a much larger undertaking and there would have been many more examples.  For example, In '*"Acquiteth yow now": Textual contradiction and Legal Discourse in the Man of Law's Introduction*,'[21] Nolan examines the contradictions and textual difficulties associated with *The Man of*

[18] Jacob Grimm, "Von der Poesie im Recht."  *Zeitschrift fur geschichtliche Rechtswissenschaft*, 2 (1816), 25-99;  rpt.  *Kleinere Schriften*.  (Hildesheim:  Olms, 1965, 6):152-191.

[19] Stephen Schwartz, "Comparative Legal Reconstruction in Germanic."  *Myth and Law Among the Indo-Europeans*. Ed. Jaan Puhvel.  (Berkeley:  University of California Press, 1970): 39-53.

[20] Alford and Seniff, ix.

[21] *The Letter of the Law,* 136.

*Law's Tale* and its Introduction and Epilogue in Chaucer's *Canterbury Tales* to show how the Host's invitation to the Man of Law to "acquiteth yow now of youre biheeste"[22] "simultaneously  puts into play two discursive systems, a poetic signification produced by the fictional world of pilgrimage and a legal lexicon rendered comprehensible only by reference to some external semiotic structure."  It is the tension between the two discourses that she finds provides insight about them both, a tension that is reflected in the real world maneuvering for authority of the canon and common law.

The historical approach to literature looks at literary works as evidence in the search for historical truth - a particular interest of the nineteenth century.  This is "literature as document" with literary works providing evidence of a social and political culture not documented or evidenced elsewhere.  Alford and Seniff's bibliography therefore includes several important late nineteenth- and early twentieth-century articles on medieval poems that have been extracted from legal journals such as *Zeitschrift der Savigny-Stiftung fur Rechtsgeschichte* and *The Law Magazine and Review*.  These articles are written by legal scholars examining medieval works both for evidence of legal custom and as the evidence itself.  The dangers of such an approach are illustrated by Giancarlo when he details the critical understanding of the official account of Richard II's deposition at the assembly of 30 September 1399, the "Record and Process" contained in the *Rotuli Parliamentorum.*[23] Giancarlo notes that the parliamentary roll was for some time the accepted foundation for William Stubbs's thesis of Lancastrian

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[22] Nolan notes that "The Middle English Dictionary's definitions of "acquit" and "quite" both include the meaning "to clear oneself of a charge " ("acquit" 4b; "quite" 4a and b); in both cases, the first recorded use of the terms in this way appears in the late fourteenth century (1390 – 1400)."" (p147).

[23] Matthew Giancarlo, "Murder, Lies and Storytelling:  the Manipulation of Justice(s) in the Parliaments of 1397 and 1399."  *Speculum*, 77, No.1 (Jan., 2002): 76-112.

constitutionalism, until Clarke and Galbraith exposed its omissions and misrepresentations as fabrications intended to legitimate the claims of Henry Bolingbroke.[24] He quotes Given-Wilson's comment that in fact the roll should be considered "a case study in the detection of partisanship, credulity and deliberate misinformation in medieval historical writing" and shows that it "is clear from even a bare summary of the events in question, the parliamentary proceedings of these years and their documentary records were quite consciously cultivated to rewrite the past."[25] Giancarlo's example provides a salutary lesson against any approach that uses for its evidence the language of an historic document without consideration of its provenance, audience and intended purpose(s). Even if the document is written as a sincere attempt to reflect a historical truth, its terms must be carefully examined in a greater historical context: consider, for example, the U.S. Declaration of Independence which holds "these truths to be self evident … that all men are created equal" at a time when its framers were quite comfortable with the oppositional idea of slavery. Giancarlo is not seeking to reveal a historical truth or untruth, though this is naturally a part of the effect of his work, but rather to expose the ways in which the commissioned justices of the Crown who wrote the documentary record "understood the relationships between the institutions and persons, between narratives and law, and between documentary evidence and the storytellers who present it."[26]

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[24] M.V. Clarke and V. H. Galbraith, "The Deposition of Richard II," *Bulletin of the John Rylands Library* 14 (1930): 125-81.

[25] Giancarlo, 78.

[26] *Ibid.*, 79.

Steiner points us to a fourteenth century example of a lawmaker concerned with a further dilemma in *Documentary Culture and the Making of Medieval English Literature*,[27] when she examines Henry de Bracton's[28] *De legibus et consuetidinibus Angliae.*[29] Steiner highlights Bracton's discomfort that the physical documents he describes are being given too much agency, that "they are wrongly thought to establish instead of proving the juridical act, and he repeats several times that a gift is not made valid simply by the drawing up of charters and instruments." However, as Steiner notes, the ironic effect of Bracton's efforts to theorize the relationship between charters and the human will which he believes is the nexus of any transaction is to show that the charter serves as a written transcript of that will. By logical extension, the charter is therefore probative of that will, regardless of the presence of the creator of the charter. In his absence, the charter becomes his proxy, not only the only substantive proof of the fact of his will but also the means by which it is enacted. Bracton's attempts at theory thus provide the evidence to undermine his own argument, but modern scholars would congratulate him on his distrust of the document as the perfect vessel in which to find "the whole truth."

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[27] Emily Steiner, *Documentary Culture and the Making of Medieval English Literature*. (Cambridge UP, 2003): 21.

[28] For discussion as to how much of Bracton's *De Legibus et consuetidinibus Angliae* was compiled by him and whether it is a true reflection of the practice of the royal courts in the 1230s -1250s Steiner directs her reader to J.L. Barton, "The Mystery of Bracton." *Journal of Legal History* 14 (1993): 1-142 and Paul Brand, "'The Age of Bracton'" in *The History of English Law: Centenary Essays on "Pollock and Maitland."* Ed. John Hudson. (Oxford, Oxford UP for the British Academy, 1996): 65-90. See also Samuel Thorne's introduction to volume III of his translation which details the difficulties in producing a text that can be considered anything like that envisaged by Bracton: Bracton, Henry de. *De legibus et consuetidinibus Angliae.* Trans. Samuel E. Thorne. (Cambridge: Belknap Press of Harvard U.P., in association with the Seldon Society,1968).

[29] Henry de Bracton, *De legibus et consuetidinibus Angliae.* Trans. Samuel E. Thorne. (Cambridge: Belknap Press of Harvard U.P., in association with the Seldon Society,1968).

Whilst critical work on the Icelandic sagas has questioned for a long time how accurately the literature reflects contemporary legal practice,[30] this has only been a more recent development in the study of literature in Latin, French, German and English. The historical and linguistic approach to literary works in the nineteenth century moved on instead to an early twentieth century preoccupation with the "art" of the text itself. In this approach, an understanding of the legal concerns of the text is used as a tool through which critics might understand the text more fully; for example, by illustrating how the use of legal terminology/process adds to the richness of the language and the depth of the metaphors. Alford describes this shift as the move "from "literature in the service of law" .. to "law in the service of literature.""[31]

The later twentieth century preoccupations with more abstract literary theoretical techniques self-referentially place the approach of the critic at the focus of the criticism. Approaches such as semiology and hermeneutic theory resulted in the content of the text or the application of the law fading into the background while more abstract questions of rhetoric and interpretation applicable to all texts and all critical approaches took center stage. What are the similarities between interpreting the law and interpreting a text? What are the similarities in constructing a case and writing a poem? What is truth in cultural history? Often the interest is in the law as literature – for example the narrative to be found in historical depositions.[32]

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[30] See, for example, Andreas Heusler, *Die altgermanische Dichtung.* (Berlin: Athenaion, 1924; rpt. Darmstadt: Gentner, 1957): Chapter 1.

[31] Alford and Seniff, x.

[32] An example of this at Washington University in St. Louis is the recent interest in the depositions taken during the Dredd Scott case and the other "freedom" cases. David Konig, the professor of history and law most involved in the project is quoted in the Summer edition of Washington University's *Arts & Sciences*

Criticism of medieval literature has now moved from a mostly philological emphasis at the beginning of the twentieth century to a more historicist approach, with scholars working to show the interdependence of literary and non-literary texts of the period. The benefits of examining the political and social contexts of the texts has been well illustrated in recent work.[33] In *Hochon's Arrow*, Strohm argues that:

> Composed within history, fictions offer irreplaceable historical evidence in their own right … they offer crucial testimony on other, though no less historical, matter: on contemporary perception, ideology, belief, and – above all – on the imaginative structures within which fourteenth-century participants acted and assumed that their actions would be understood.[34]

The interdisciplinary studies and globalization of the early twenty-first century lead now to questions of whether or not there is any boundary at all between disciplines or whether the deeper understanding of the texts and the laws of the period lies in an amalgam of the rigors of both, perhaps taking Alford's description one step further to "literature and law in partnership" while getting closer to Green's "parallel discourses." It is his enormous undertaking in *A Crisis of Truth*[35] that seems the most obvious example of the recent scholarship that has certainly taken this line. Following on the

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magazine saying "a first rate civics lesson is taking shape from the amazing array of information being assembled." The depositions were examined for the evidence of cultural and societal norms they provide rather than their legal importance to the Dredd Scott case.

[33] See for example, Paul Strohm's, *Hochon's Arrow* (Princeton, 1992) and *Social Chaucer* (Cambridge, MA, 1989); Lee Patterson's *Chaucer and the Subject of History* (Madison, 1991) and *Negotiating the Past: The Historical understanding of Medieval Literature* (Madison, 1987); and *The Cambridge History of Medieval England Literature* (Cambridge, 1999) edited by David Wallace.

[34] Paul Strohm. *Hochon's Arrow.* (Princeton, 1992): 4.

[35] Richard Firth Green. *A Crisis of Truth: Literature and Law in Ricardian England.* (Philadelphia: Pennsylvania UP: 1999).

interesting work of Michael Clanchy in *From Memory to Written Record*[36], Green carefully considers the development and use of the Middle English word *trouthe* in legal, religious and literary sources, and examines its use in four senses – legal, ethical, theological and intellectual.  He then uses his understanding of the shift "from the communally authenticated trothplight to the judicially enforced written contract, from a truth that resides in people to one located in documents"[37] to re-examine texts of the Ricardian period and, *inter alia, Piers Plowman.*  In a critique looking the other way, from law to literature,[38] Middleton looks at the terms of the vagrancy legislation of 1388 and examines how Langland's narrator defends himself in the C-text of *Piers Plowman* using those same terms to claim a poetic authority for his vernacular poem.

The response to these projects has been resoundingly positive and it seems that the one thing upon which all modern literary critics are agreed is that there is much rich work to be done in this vein.  Andrew Galloway puts it most succinctly when he says: "The context and cultural implications of medieval law are themselves as complex, vast, obscure, and crucial to *Piers* as the poem's contact with the context is pervasive, complex, and potentially illuminating of medieval law."[39]  The editors of "*The Letter of the Law: legal practice and literary production in medieval England,*"[40] collected nine essays covering a mixed spread of literary texts (ranging from Robin Hood ballads, to

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[36] Michael Clanchy, *From Memory to Written Record: England 1066-1307.* (Oxford: Blackwell, 1993).

[37] *Ibid.,* xiv.

[38] Anne Middleton, "Acts of Vagrancy:  The C version "Autobiography" and the Statute of 1388" in *Written Work:  Langland, labor and authorship.*  Eds. Steven Justice and Kathryn Kerby-Fulton. (Philadelphia, PA, U Penn Press, 1997): 208-318.

[39] Andrew Galloway, "Piers Plowman and the Subject of the Law."  *YLS* 15 (2001):117.

[40] (Ithaca: Cornell UP, 2002).

Chaucer's *Knight's Tale* and *The Man of Law's Introduction,* to lollard preaching) which collectively provide persuasive evidence "that Middle English literature … developed in dialogue with legal discourse, practices, and material culture, and further that insular law and English literature were bound up together in larger processes of institutional, linguistic and social change."

This project aims to look at the legal discourses surrounding Langland's *Piers Plowman.* I shall show that the language of the law courts and the dilemmas faced there on a daily basis as to the authority of the law are reflected in the way in which Langland presents Christ's harrowing of hell at one of the narrative peaks of the poem in Passus XVIII. The state of English law inflects the literature even when the issue presented appears to be covenantal theology because the questions over the basis of legal authority being asked in the courtroom were so enmeshed in the language of the courtroom being used in the poem. I shall show that although it is impossible to say which of the law or literature influenced the other more when speaking of the nature of legal authority, we can see that Langland is carving out a place for his poem as an authoritative alternative discourse that might bridge the gaps between theology and the common law. Chapter one will develop this idea of Langland's attempt to claim authority for his poem through his manipulation of easily recognized contemporary literary practices in the choices he makes in his construction of the poem, whilst chapters two and three will show him entering the debate on the basis of legal authority as he portrays Christ's harrowing of hell.

In the final part of the project, chapters four and five, I will show that Langland's views on the nature of kingship promoted ideas that played an integral part in the legal

development of the idea of citizenship and the role of the king, in the move from slave and master to citizen and king that led eventually to the international divisions that define the contemporary world. By examining the legal, historical and literary circumstances surrounding Edward III's passing of the 1351 statute *De natis ultra mare* (*'De Natis'*) and its later interpretation, I shall show that it was the acceptance of the ideas of kingship reflected in *Piers Plowman* that led the statute to be interpreted in the fashion that it was. There is no doubt that this was a crucial period in the development of the idea of kingship because of the instability of the time. As Lynn Staley explains:

> During the reign of Richard II, the prestige of the English crown and the terms used to define that crown were in flux. The Rising of 1381, the challenge to the church voiced by John Wyclif that escalated from the early 1370s on, the tensions of war with France, and the personal and political difficulties Richard had in assuming a position of true sovereignty after his accession to the throne as a child in 1377 were all factors in what has been described as a long crisis of authority.[41]

Yet, whilst the events of Richard's life may have entrenched his views on the idea of the royal prerogative, it is notable that neither he nor successive kings were able to establish that absolute authority for themselves. The conflict over the royal prerogative in fact came to a head two and a half centuries later when the judges of the English courts asserted that they had the right to determine the limits of the royal prerogative in the <u>Case of Proclamations</u> (1611), a precedent that was never challenged by the Crown after the reign of William and Mary. It is my contention that Langland's poem played a key role in that outcome.

Since it was the same group of people who were reading, writing and discussing the issues of the day that made up the reading public, it was inevitable that contemporary

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[41] Lynn Staley, *Languages of Power in the Age of Richard II.* (University Park, PA, 2005): ix.

literature would influence those in government.  As Scanlon notes[42], scholarship on the

reading public in later medieval England falls into two camps, one regarding that public

as courtly, the other as 'middle class;'  Green proposes the 'courtly' thesis*,[43]*  Coleman

the 'middle class' theory.*[44]*  Scanlon counters that the answer is both, that 'the expanding

social opportunities for the educated and literate members of the lesser gentry and urban

patriciate provided a public wide enough to support a vernacular literary tradition.  But

those opportunities were produced mainly at court by the nobility.  The 'middle class'

this social shift produced assumed its role precisely by entering courtly culture and

making common political cause with the nobility.'[45]  Scanlon suggests a view of the

literature of the period as 'a site of accommodation between the court, and the sub-noble

groups that were coming to share its power.'  The effect was to make the vernacular poet

'a new, specifically lay, source of textual *auctoritas*.'[46]  Langland's poem provided him

with a vehicle with which to assert his authority as surely as if he had been standing at the

pulpit or marketplace - though with less of the risks since his identity is concealed.

Furthermore, the ambiguity and conflicting layers of meaning that can be successfully

accommodated by a work of literature, gave him an opportunity to make a bridge of a

wide variety of dialogues between the rigid dogmas of theology and law.

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[42] Larry Scanlon, *Narative, Authority, and Power.* (Cambridge UP, 1994):  143.

[43] Richard Firth Green.  *Poets and Princepleasers:  Literature and the English Court in the Late Middle Ages.*  (Toronto, Buffalo, London:  University of Toronto Press, 1980).

[44] Janet Coleman,  *Medieval Readers and Writers 1350-1400.*  (New York:  Columbia University Press, 1981).  See also, Paul Strohm, *Social Chaucer*, 182.

[45] Scanlon, 144.

[46] *Ibid.*

The fact that over fifty versions of at least three versions of the poem survive today attests to its wide circulation. Given the well-known letter of John Ball, one of the leaders of the 1381 Peasants' Revolt, to the peasants of Essex urging them to 'stondeth togidre in Godes name, and biddeth Peres Ploughman go to his werk … and do wel and bettre, and fleth synne,'[47] it is clear that the poem – or at least the B text – was commonly known and had had a powerful impact by then. Its influence is clear on other poets too. Whilst it has been shown that Langland has not been greatly influenced by those earlier alliterative poems that he can be shown to have known[48] – most clearly *Wynnere and Wastour* and possibly *The Parlement of the Thre Ages* – it is clear that there are many poems of the late fourteenth and early fifteenth century that were profoundly influenced by his work: in fact, so much so that *The Crowned King, Pierce the Ploughmans Crede, Mum the Sothsegger* and *Death and Liffe* have all been categorized as poems of the "Langland tradition."[49]

Twentieth century criticism in the work of, inter alia, Fish[50], Iser[51] and the reception-theory of Jauss[52] emphasizes the importance of the reader in the author – work

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[47] Kenneth Sisam, *Fourteenth Century Verse and Prose*. (Oxford, Clarendon Press 1921): 160-1.

[48] Schmidt recommends the work of Thorlac Turville-Petre, The Alliterative Revival (Brewer, Cambridge, 1977); S.S Hussey, 'Langland's Reading of Alliterative Poetry' *MLR* 60 (1965): 163-70; Elizabeth Salter, 'Piers Plowman and "The Simonie"' *Archiv fur das Studium der neueren Sprachen und Literaturen* 203 (1967): 241-54. See also Derek Pearsall, *Old and Middle English Poetry*. (London, 1977): 150-188; David Lawton, 'Lollardy and the Piers Plowman tradition' *MLR* 76 (1981): 780-793; and Ralph Hanna, ''Alliterative Poetry,'' in *The Cambridge History of Medieval English Literature*, Ed. David Wallace. (Cambridge, 1999): 488-512.

[49] For more on the influence of Langland's literary method see Kathryn Kerby-Fulton, *"Piers Plowman"*. *The Cambridge History of Medieval English Literatur.,* Ed. David Wallace. (Cambridge, Cambridge UP, 1999): 534-538; David Lawton. "Medieval English Alliterative Poetry" in *Middle English Alliterative Poetry and its Literary Background*. Ed. David Lawton. (Woodbridge, Suffolk: D.S. Brewer ; Totowa, NJ): 1982.

[50] Stanley Fish, *Is There a Text in This Class? The Authority of Interpretive Communities.* (Cambridge, Mass, and London, 1980).

– public triangle to show how the new reader's own history plays an important role in the development of new structures of meaning within the text. Following the work of Bakhtin, Jauss emphasizes the literary work's 'dialogic character'[53] proposing that

> 'a literary work is not an object that stands by itself and that offers the same view to each reader in each period. It is not a monument that monologically reveals its timeless essence. It is much more alike an orchestration that strikes ever new resonances among its readers and that frees the text from the material of the words and brings it to a contemporary existence.'[54]

Mann points to the constant interaction that this produces between literature and life creating a 'network of allusion.'[55] Although she is aware that this 'remains a purely literary phenomenon,' her argument is that 'to find something repeated in another book carries something of the same evidential power as finding it confirmed in experience.'[56] She focuses on Chaucer's reference at the end of Book I of the *House of Fame* to Virgil or Claudian or Dante as sources for a detailed description of hell as evidence that

> Chaucer focuses the question of literary truth on these 'non-existent' experiences not only, I think, because of his concern with the kind of belief that literature can

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[51] Wolfgang Iser, *The Implied Reader:  Patterns of Communication in Prose Fiction from Bunyan to Beckett.* (Baltimore and London, 1974) and *The Act of Reading:  A Theory of Aesthetic Response.* (Baltimore and London, 1978).

[52] Hans Robert Jauss,  *Toward an Aesthetic of Reception.* trans. Timothy Bahti. (Brighton, 1982).

[53] *Ibid*., 19. For Bakhtin see Tzvetan Todorov, *Mikhail Bakhtin:  The Dialogical Principle.* trans. Wlad Godzich.  (Manchester, 1984).

[54] Jauss, 21 quoted by Jill Mann in "The Authority of the audience in Chaucer" in *Poetics:  Theory and Practice in medieval English literature.* Eds. Piero Boitani and Anna Torti. (D.S Brewer, Cambridge, 1991): 3.

[55] Mann, 4.

[56] *Ibid.*

command, but also because of his awareness of the *priority* [sic.] of books over experience – his interest in the way that they prepare us to recognize experiences when we have them, to give them a predetermined shape and name.

The logical extension of her argument is that 'to see literature performing this preparatory role with experiences that people have never had, makes it easier to see it performing the same role with the ones that they do have.'[57] I suggest that for the audience of *Piers Plowman*, Langland's use of the same terms and ideas being discussed in the law courts prepares the expectations of that audience as to the ways in which justice should be administered, and self-referentially provides itself as example.

That same public considering his understanding of the role of the king in relation to the 'commune' and to justice in the poem was also responsible for the writing of the laws and administration of government in society. It should not be forgotten that one of parliament's particular roles was its function as a High Court, and that the Chancellor, Treasurer, Judges, King's Serjeants and Barons of the Exchequer would all receive personal summonses to attend parliament to provide the body of legal expertise needed to deal with high court cases and draft agreed legislation. Since the personnel of the various central courts were all trained together, accommodated together and then moved between the administrative posts as needed, it was natural that ideas from one branch of a clerk's education and experience would influence his approach to his next position. For example, in discussing the fact that it was 'more or less an established convention' that chancellors and keepers of the privy seal should be drawn from either Oxford or Cambridge university, Musson and Ormrod suggest that it was the training in civil and canon law received by John Thoresby, who was chancellor between 1349 and 1356, and

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[57] *Ibid.*

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by his nephew John Walkham, successively Keeper of the Rolls and Keeper of the Privy Seal in the 1380s that 'may well explain the affinity between certain procedures observed in the ecclesiastical courts and the new processes associated [in the chancery court] with the *sub pena* writ.'[58]  It is my contention that a similar crossover links literature, law and theology so that the use of the language of the courtroom at the key narrative points of the poem would instantly register with contemporary readers.

There are, of course, fundamental dangers involved in discussing the message of *Piers Plowman*.  The most obvious of these is that this is a poem of which there are three versions known, ever since Skeat named them, as the A, B and C texts, but that there is a possibility of their being several more versions than that.[59]  Most critics believe these versions represent successive versions of a single poem being revised by one man[60] but they may have had multiple authors.  I have worked from the version of the B-text edited and introduced by George Kane and E. Talbot Donaldson because it is the B-text that is most widely known, since this was the version of the poem printed by Robert Crowley in 1550 (although he knew of the other versions of the poem), and the version of the poem

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[58] Anthony Musson and W.M.Ormrod.  *The Evolution of English Justice:  Law, Politics and Society in the Fourteenth century.*  (Macmillan Press, Basingstoke, 1999): 32.  For details of the common training and accommodations as well as details of the crossover between individual judges, serjeants and parliamentarians see *Personnel* in chap 2, pp28-41.

[59] In "William Langland, *Piers Plowman*: The Z Version*,*" *Pontifical Institute of Mediaeval Studies*, (*Studies and Texts 59* (Toronto, 1983)), A.G. Rigg and Charlotte Brewer asserted that the Skeat-named Z version was not the scribal version it had previously been assumed to be, but was in fact a sort of *Ur*-text, 'a copy of a version written before the A-version.' (foreword)  The proposal was roundly refuted by George Kane in "The "Z" version of Piers Plowman." (*Speculum* 60/4 (1985): 910 - 930) in a decimating criticism that noted, *inter alia*, that part of the argument being used to claim Langland's authorship of this version of the poem could be used for several other versions also.

[60] The multiple-authorship theory of the poem was first put forward by John M. Manly in "The Authorship of Piers Plowman."  *Modern Philology* 7 (1909): 83-144; and "The Authorship of Piers Plowman." *Modern Philology* 14 (1916): 315-16.

represented in the most extant manuscripts.[61]  B is a complete revision which adds a further 4000 lines and eight passus to the A text.  The C text revision adds less but involves much re-arrangement.  The editorial and textual difficulties in providing a true version of the B text from the extant manuscripts are detailed by Schmidt in the introduction to his version, and I do not propose to repeat them here since textual analysis is beyond the scope of this project;  suffice it to say that my reading of the poem is dependent on the accuracy of the work of its editors.

A less obvious, but equally important, danger is in falling into the belief system marked by what Benson respectfully describes as "the Langland myth,'[62] i.e. the possible history of the poem and its author created by the Victorian editor W.W. Skeat in constructing a biography for Langland from small vignettes of information about the poem.  Benson argues that "the most serious objection to the Langland myth is not that it is necessarily untrue, but that it is reductive.  It offers a narrative of poet and poem that obstructs other interpretive approaches."[63]  More possibilities for opening up the meanings in the poem are opened by following the line opened by Anne Middleton's discussion of public poetry in the reign of Richard II which suggests that Langland's writing uses a 'common voice' which 'assigns a new importance to secular life, the civic virtues, and communal service.'[64]  Her suggestion is that there is no single authorial voice

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[61]Many manuscripts contain a mixture of the texts:  for example, British Museum Additional 10574, Cotton Caligula A XI, and the Bodleian MS 814 (BmCotBo) are B texts from Passus III to the end but have a C beginning (Prologue to Passus II 131) followed by an A text of Passus II 90-212.

[62] David Benson,  *Public Piers Plowman:  modern scholarship and late medieval English culture.* (University Park, Penn State UP. 2004): 3-112.

[63] *Ibid.,* xv.

[64] Anne Middleton,  "The Idea of Public Poetry in the Reign of Richard II."  *Speculum* 53 (1978) 94-114: 95.

but a dialogue between competing voices which she categorizes as a series of opposites –

lay versus clerical, popular versus learned, vernacular versus Latinate.[65]  Benson follows

this line, but adds the categories of poor/rich and male/female and prefers to speak of 'the

blurring and overlapping of such categories'[66] so that he can refer inclusively to 'poor *as*

*well as* rich, female *as well as* male' (his emphasis).  The most useful and detailed

illustration of the possibilities of this approach can be seen in Lawton's "The Subject of

Piers Plowman"[67] which is detailed in chapter one when I examine the question of

Langland's own authority.  Lawton argues convincingly that there is no single unified

subject of the poem.  I have borne his argument in mind when thinking about the poem as

a whole, especially when considering the possibilities of meaning for a particular

exemplum – see for example in chapter one (p31-2) on considering the importance of the

'leene lunatic.'  Lawton's idea of the shifting subject works well in conjunction with

Tolmie's explanation of the poem as an elaborate, Wittgenstein-like, 'language game,' in

which the frames of reference for those subjects are constantly being reconstructed and

restated, and I have found these two frameworks particularly useful in thinking about the

poem as a place for processing and revisioning ideas.

The difficulties of approach connected to the poem are no smaller than the

difficulties encountered in researching the workings of the law courts and the drafting of

statutes in this period.  There is no medieval version of the Hansard record of

Parliamentary debate to which contemporary lawyers can turn for help with questions of

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[65] *Ibid.*, 100.

[66] Benson, xvi.

[67] *YLS* 1 (1987): 1-30.

statutory intent, so when we read *De Natis* there is nowhere to turn for help in deciphering whether it was declaratory of the common law or enacting that law itself. The courts themselves have answered questions arising from the statute inconsistently; for example, in the seventeenth century[68] the statute was thought to cover the case where only one parent was a subject but this argument was rejected by both the courts and Parliament on the Act of Anne[69] in the following century.  Clive Parry points out:

> If any warning against the drawing of hasty deductions from the scanty precedents down to the seventeenth century is required, it is provided by the entirely misleading picture of the law of alienage given by Littleton. The mediaeval [*sic*] lawyers followed up the implications of the alien's inability to hold land by denying him a real action. This led Littleton, following the natural instinct of the property lawyer to regard his department as the whole law, to deny him both real and personal actions. But it is doubtful if this ever was the law. And, even if it were the common law, it was not the whole law.[70]

Parry goes on to explain the long history of the foreign merchants in England that Littleton had simply ignored.  The example is illustrative not only of the danger of relying solely on the precedents to be found in the records, but also of relying on previous work on or by the theorists.  In the first part of this project therefore, whilst I have

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[68] 5 Ann c.8 cited in John Mervyn Jones,  *British Nationality Law* (Clarendon P, 1947) IX, 44.

[69] Jones, 76.

[70] Clive Parry,  "British Nationality Law and the History of Naturalization." *Comunicazioni e studi* dell Istituto di diritto internazionale e straniero della universita di milano.  Vol V (1954) www.uniset.ca/naty/parry.htm accessed 06/14/09.

worked primarily with Littleton's ideas, I have also sought similarities in the work of his contemporary theorists.

Without Hansard or fourteenth century court reports, in order to gather together the snatches of information that might shed some light on the thinking behind the drafting of statutes or the deciding of cases, the modern enquirer is left to piece together evidence from the Year Books[71], the *Calendars* of chancery records and the enrolments of commissions of assize and gaol delivery on the dorse of the patent rolls, the plea rolls, assize rolls, gaol delivery rolls and Ancient Indictments and the administrative documents of the courts from that period. Neither being nor claiming to be a legal historian myself, I am reliant on the work of other scholars I know to be working from slim evidence themselves.

Samuel Thorne's introduction to volume III of his translation of Bracton's *De legibus et consuetudinibus Angliae,[72]* 'Of the laws and customs of England,' identifies the many problems in providing a complete text from old legal manuscripts and again, their intrigues are beyond the scope of this project. I do not propose to repeat them in detail here but rather to note that the many inconsistencies, additions and revisions in the manuscripts pertain not only to the accuracy of the laws described but also to the writer of the text itself (who may or may not have been Henry of Bratton) which inevitably affects the authority of the work and the assumptions that can be made about it.

Nonetheless, despite all these difficulties, I do believe that on the basis of the evidence that does survive in the legal records of the period, and the extant versions of

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[71] The Selden Society volumes for Edward II end with the 11th year but the old editions cover the whole reign and most of the next reign while the editions of Horwood and Pike cover any other gaps.

[72] Henry de Bracton, *Bracton on the laws and customs of England*, trans. Samuel Thorne, 4 vols. (Cambridge, Mass., 1968-77): III.

the B-text, it can be shown that Langland's poem claims for itself authority as a public space in which to discuss the basis for the authority of the law, and to set forth ideas of kingship that profoundly influenced the development of the common law of subject status.

## **Chapter 1:  A claim for poetic authority**

In order to enter the contemporary debate about the authority of particular social structures and institutions, Langland must first claim authority for his poem.  From the opening of the Prologue to *Piers Plowman*, it is clear that this is a poet working on a grand scale.  Langland opens with a dreamer, a visionary who introduces his audience to "alle manere of men, the meene and the riche, / Werchynge and wandrynge as the world asketh," (I.i. 18-19).  It is an ambitious vision, a vision incorporating the whole world and all types of people, and the fact that Langland manages to give it cohesion is a poetic feat in itself.  That cohesion stems from his ability to move apparently seamlessly through the vocabularies and linguistic structures of all the earthly sources of authority he depicts, to create a vision that is rooted in the structures of the past even as it presents a new approach to the future.  It is in managing the discourses of those linguistic structures that he proves his worth, and claims a new kind of vernacular authority necessary for his poem to have real life application, an authority based on the fact that his poem is itself an anthology of different sorts of authority.

Langland's choice to write his poem in English implies a belief in the power of and the place for a vernacular authority.  The fact that there is no extant evidence of any official attempt to provide authorized commentaries and translations of authoritative works (such as that sponsored by the French King, Charles V) suggests that this was not common amongst anyone except the Lollards.  The full implications of this choice are beyond the scope of this project but the fact remains that Langland's poem provides a commentary of authoritative works as it grapples with contemporary issues of religious and earthly authority and tries to find sense in them:  it is truly a *translatio auctoritatis* –

a translation of authority into the vernacular.   Minnis has suggested that the relationship between Latin and the vernacular 'allows for a concept of vernacular culture which transcends language to encompass acts of cultural transfer, negotiation, appropriation, and indeed resistance.'[1] I believe it is this 'negotiation' and 'appropriation' that forms the basis of Langland's poetic structure and leads to the authority of his text.  The fact that he uses Latin, the official language of theology, as well as English, suggests that he was not valuing one language over the other but rather seeking to find an authority for his own text by appropriating the advantages of both to create a new kind of vernacular authority.[2]  By entering into the debates being held in the main institutional structures of authority – the courts, the church, the political arena, and the schools – Langland puts his poem in the place of social commentary and exegesis, and claims authority for himself by doing so.

**The need to establish authority: the problem of the narrator as unreliable witness**

The first problem to overcome in claiming authority for the poem is the fact that, from the opening of the poem, the narrative has instantly undermined the poet's voice by characterizing its dreamer narrator as an unreliable witness:  "*I shoop me into shroudes as I a sheep were, / In habite as an heremite unholy of werkes.*" (B.I.2-3).  The echo of

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[1] A. J. Minnis, *Translations of authority in Medieval English Literature.* (Cambridge, Cambridge UP, 2009): x.

[2] See Minnis for the significance of Langland's choice of the vernacular for his poem.  For its theological implications, see Nicholas Watson, "Censorship and Cultural Change in Late Medieval England: Vernacular Theology, the Oxford Translation Debate and Arundel's *Constitutions* of 1409." *Speculum,* 70 (1996), 822-64; also "Visions of Inclusion:  Universal Salvation and Vernacular Theology in Pre-Reformation England," *Journal of Medieval and Early Modern Studies,* 27.2 (1997), 145-87; and also 'Conceptions of the Word:  The Mother Tongue and the Incarnation of God." *New Medieval Literatures,* I (1997), 85-124.

Matthew 7:15, "Beware of false prophets, which come to you in sheep's clothing" warns the reader that the narrator may himself be such a false prophet, while the fact that he dresses like a hermit is also problematic. Hanna's work on the hermetic tradition and the rules of their lives details the ways in which Will's lifestyle and "tools"[3] correspond with the prayers proposed by two of the liturgical *ordines* by which a bishop might consecrate a hermit,[4] and Hanna uses these correspondences, along with the fact that Will dresses like a hermit, to assert that he is one. If, for now, we accept this line of reasoning, it remains unclear what Will's designation as a hermit would mean. Jones points to Langland's use, in Passus 10 of the B-text, of such 'unrealistic' models as Antony, Egidius and Paul the First Hermit, and the 'miraculous provision that sustained the desert fathers,' as evidence of Langland's desire to approve only of those hermits who fit his transhistorical ideal, while excluding from favor those who fail to meet his ideal standards.[5] Certainly, in the opening lines of the poem, Langland includes with approval

> '*Ancres and heremites that holden hem in hire selles,*
>
> *Coueiten no3t in contree to cairen aboute*
>
> *For no likerous liflode hire likame to plese.*' (B.Prol.28-30),

but he appears rather to conflate the two, suggesting that the hermits he considers holy are those who remain in their cells, and do not engage in many of the normal practices Jones details of the hermits of the late fourteenth-century. The 'borwynge' and 'beggynge' done as a practical alternative to waiting for miracles was a necessary norm

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[3] C.V.45-47: "*The lomes at y labore with and lyflode deserue / Is paternoster and my primer, placebo and dirige, / And my sauter som tyme and my seuene p[s]almes.*"

[4] Ralph Hanna, "Meddling with Makings' and Will's Work." *Late-Medieval Religious Texts and their Transmission: Essays in Honour of A.I. Doyle.* Ed. A.J.Minnis. (Cambridge, Cambridge UP, 1994): 85-94; and "Will's Work." Justice and Kerby-Fulton eds., 23-66.

[5] Edward Jones, "Langland and Hermits." *YLS* 11 (1998) 67-86: 69.

but provokes his disapproval.  Since Will is clearly not confined to a cell, were he to be a hermit, in honesty he would have to exclude himself from those in the ideal tradition towards which he unrealistically leans - the "holy eremites" who are included in the C-text version of Truth's pardon in Passus IX.  He would therefore have to place himself instead in that group of 'lewede' hermits explicitly excluded after the detailed description of their failings (C.IX.188-212).

Perhaps subconsciously seeking to defend Will, it is not surprising therefore that critics have not all agreed with Hanna's assertion.  Wittig, addressing Hanna's argument in an article provocatively titled ""Culture Wars" and the Persona in *Piers Plowman*," states that Hanna's argument seems too "loose" to him because "the behavior Hanna presents as appropriate for eremitic life was also urged as appropriate for all Christians" while the *ordines* Hanna relies on for the second part of his argument "simply list the contents of the "primer," the standard prayer book for the literate."[6]  As the title of his essay foregrounds, Wittig's argument is that Hanna has been overcome by his own preoccupations and is looking to see "how he [Will] could have taken advantage of a hermit's state to substitute writing poetry for manual labor, his own discourse for that of his masking vocation." (185)  This seems reasonable, and puts Wittig in line with other critics, such as Jones and Godden, who have turned their attention to the positioning of hermits in the poem, and have not seen Will as a hermit but rather explicitly marked out the ways in which his way of life both differs and overlaps with that of the hermits he describes.[7]

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[6] Joseph Wittig, "Culture Wars and the Persona in *Piers Plowman*"  *YLS* 15 (2001):173

[7] Malcolm Godden,  "Plowmen and Hermits in Langland's *Piers Plowman*."  *RES* 35 (1984): 129-63.  See particularly his discussion of the position of the known fourteenth-century hermit Richard Rolle at p162.

In discussing Will's authority, we must also consider the implications of Will's being "yclothed as a lollare" and living "amonges lollares of londone and lewede Ermytes" (C.V.2 and 4). A useful and succinct summary of the recent scholarship on the derivation of the word loller, including the important work by Wendy Scase detailing the "new anticlericalism" of the Wycliffites[8] and Langland's (possibly original) use of the term "loller" to cover the sort of satiric representations of religious vagabonds contained in the idea of the *gyrovagus* is also included in Wittig's essay[9] and I do not propose to repeat it here. Most importantly, Scase sees Will with a group of "annual priests, pardoners and others who offer intercession for souls as a living" saying that they are each as bad as the other because "they all obtain alms under false pretences in exchange for spiritual services of doubtful value."(145) It is this last claim that Wittig disputes on the basis that there is no evidence in the text to suggest that Will's prayers are worthless. He summarizes what critics can agree on:

> ""loller" seems to be an English adaptation .. of the Dutch word "lollard." … Like the Dutch word, it is derogatory and seems to apply to a range of objectionable types:
> -        One who externally displays a devotion which is regarded as both excessive and hypocritical;
> -        One who wanders about begging sustenance instead of doing useful work and who hypocritically attributes this way of life to religious devotion;
> -        One who manifests a religiosity which seems deficient or deviant."[10]

Clearly none of these implications is good! If Will is as dishonorable a character as Scase proposes, perhaps it is worth remembering that this is the sort of text in which the

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[8] Wendy Scase. *Piers Plowman and the NewAnticlericalism*. (Cambridge, Cambridge UP, 1989). See in particular chapter 5.

[9] Wittig, 167-195. 174-180 summarize the "loller" scholarship.

[10] *Ibid*.,179.

words of a lunatic are not necessarily outweighed by the aungel of hevene who follows him, and a goliard may be the one speaking truth to power (B.Prol.123-142a). Fedotov has unpacked the ambiguity of the figure of the holy fool and proposes a political role for him as a challenger of authority hiding behind real or assumed madness.[11] This idea has been convincingly expanded by Lawton (see below),[12] so that Galloway suggests that:

> perhaps for culturally contiguous analogues we should be looking less at the literary tradition of foolish narrators than at those supposedly humbly penitent early fifteenth-century heretics who claim they cannot read their own abjurations because they were laymen or because their sight was poor.., both possibly calculated postures of ignorance that would allow them to avoid betraying their faith by their own mouths (and also, possibly, with an edge of witty self-parody of their lay "ignorance" in so tricking the ecclesiastical authorities).[13]

For those unconvinced by the argument that Will is feigning his faults, there is the proposition of Wittig who, ever protective of Will[14], argues that dressing like a loller and living amongst them does not necessarily make him one. The more appealing approach is to judge Will on the basis of the defense he puts up for his life, to judge him by his actions, which seems in keeping with the urging of Resoun and Conscience at the end of his defence, not to talk about the perfect state of his mind but to get on with his good works (C.V.102-108). Inevitably such an approach self-referentially foregrounds the text itself and its own creator, leading back again to Middleton's parallel discourse.

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[11] G.P. Fedotov, *The Russian Religious Mind, II: The Middle Ages: The Thirteenth to the Fifteenth Centuries.* Cambridge, MA, 1966. 315-43. Fedotov's argument is detailed and discussed in David Lawton, "The Subject of *Piers Plowman*." *YLS* 1 (1987) 1-30: 22.

[12] David Lawton, 'The Subject of *Piers Plowman*." *YLS* 1 (1987): 1-30.

[13] Andrew Galloway, "Response to 'Langland's Learning'." *YLS* 9 (1995): 10-15: at 12.

[14] Wittig acknowledges that he brings his own personal history and desires to his reading of the text informed by his upbringing as a pre-Vatican II Roman Catholic, (184).

Most related to the development of this project, and most convincing given the importance of the question of salvation in the narrative, Aers reads Will's comparison of himself with 'lewede ermytes' and 'lollares' as part of a conversion narrative. He sees Will's internal conversation with Reason, in which he defends himself by remembering his youth, his education, his clerical status and his ascetic mendicancy, as the moment when Will realizes that although he can reason with himself, he cannot satisfy Conscience (C.V.89-91). Aers argues that this is 'an intense event, a moment of conversion'[15] as Will confesses to having been a waster, 'a spilletyme'(C.V.28): "and so y beknowe / That y haue ytynt tyme and tyme myspened." (C.V.92-93). Will is acknowledging that he has wasted God's gift of time, and so life. However, he simultaneously shows the virtue of hope (C.V.93 – 101), inseparable with faith (as Will shall discover when he meets with Hope/Moses and Faith/Abraham), the two theological gifts that lead the recipient to Christ. Aers points out that Will is able to draw on his education in holy writ to recall two of Christ's parables concerning the kingdom of heaven and the salvation of mankind.[16] By doing so 'he is being drawn, by the graces he prays for, into the divinely given narrative of salvation history.' This understanding of Will's conversion makes Will's previous wrongdoing important as part of his history of sinfulness to be compared with his future with God. It means that all opening details of the flawed narrator are a part of Langland's emphasis on salvation through Christ. It also foregrounds the poet, Langland himself, as the one illustrating the conversion from a position of understanding and grace, allowing him to example the sinful version of the

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[15] David Aers, *Salvation and Sin*. (Notre Dame UP, 2009): 110.

[16] *Ibid.*, 111.

later saved self, even as he claims the authority that comes from that conversion and the resultant knowledge and experience.

Lawton has importantly raised the question of whether or not we need to be asking these questions of the subject of the poem at all.  In 'The Subject of *Piers Plowman*,'[17] he argues against critics from the school of New Criticism seeking to find unity and integrity in the poem.  Doing the opposite of Bowers' attempt to find "a sense of unity and authorial purpose,"[18]  Lawton sees *Piers Plowman* instead as a 'dialogic poem constructed from the discourses of Langland's day – social, political, theological and academic,'[19] and looks at many different functions of the subject:  he considers the subject as narratorial voice(s), 'abandoning a presumption of continuity'[20] in the relationship between author and dreamer; he considers the subject as open persona, suggesting that the persona can be considered 'an embodied universal – or, better still, as set of sometimes conflicting universals'[21] reflecting through his anxieties and faults the anxieties and faults of his society;  he considers the subject as *actant*, both narrator and subject of that narrative with the subject responding "differently in different discourses, according to the semantic role offered by whichever is the dominant context at a given time."[22]  The proposal is that 'it is not the treatment of a persona we see primarily here, but the trying on of the different subjectivities that the different discourses confer – and ,

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[17] *YLS* 1 (1987) 1-30: 2.

[18] John M. Bowers, *The Crisis of Will in Piers Plowman.* (Washington, DC.  1986). xii.

[19] Lawton, 4.

[20] *Ibid.*, 10.

[21] *Ibid.*, 11.

[22] *Ibid.*. 14.

finally, the refusal of all"[23]; he considers the subject as discourse, using an examination of the discourse of penance in late fourteenth-century Europe to show how the dialogic quality of *Piers Plowman* recontextualizes a monologic discourse so mediating 'the one contemporary discourse that sets out authoritatively to mediate subjectivity'[24] both challenging and de-authorizing it in the process; he considers the subject as proxy providing a thinly 'veiled justification'[25] of the poet's work in an elaboration of the holy fool ideas of Fedotov; and, finally, considers the subject as a 'resolutely marginal'[26] figure needing to remain on the outside of governing discourses in order to examine them freely.

As Lawton himself emphasizes, whichever of his subjects we might choose to examine, the one thing that we should not expect to find is unity. I propose instead that there is evidence enough in the breadth of accurate reference to all authoritative discourses of society whether social, academic, political, theological or legal - but particularly legal and theological - for Langland to claim that his text has something pertinent to add to the conversation. In his fluid use of legal terms and understanding of legal practices and customs, he shows himself perfectly at ease with all theories and practices of law, from the precise wording of the pleadings of writs (e.g. B.II.74[27]) to the

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[23] *Ibid.*, 14.

[24] *Ibid.,* 21.

[25] *Ibid.,* 26.

[26] *Ibid.*

[27] Of course, the abbreviated form of the writ in this Passus also works satirically to reference the long tradition of satire over false documents and legal proceedings. My point here is that in order to satirize the form of the writ, Langland has to know its original form.

rules of parliamentary procedure by which bills and petitions were submitted.[28] Likewise, his understanding of the Bible is underwritten with knowledge of the saints' writings, penitential handbooks, homilies and so on. It would be a hard task to argue that his poem is merely peppered with this knowledge when Langland's engagement with its main issues is at the heart of the poem. In Lawton's words, 'he tampers with, reshapes, or transforms everything … he touches,'[29] and as Alford describes, fully to understand *Piers Powman* "we must go to school not only with medieval grammarians, ..but also with medieval logicians, lawyers, theologians, philosophers, political thinkers."[30] Langland is neither tinkering nor decorating, he is immersing himself fully in the cultural discourses of his time and engaging with their main ideas. The poem shows Langland's engagement with the four main institutional sources of contemporary authority: of course, the church, but also the law, the political community, and the schools.

## 1.  Establishing *locus standi***: Langland's legal authority**

The key to Langland's authority in discussing legal issues is his easy command and apparently effortless creative use of legal terms. Of course, it is not surprising that a Christian poet should use legal terminology. As Alford states:

> so intertwined historically are the vocabularies of law and theology that medieval writers found it impossible to explain certain doctrines of Christianity without recourse to legal terminology. The Bible is largely responsible for this intermingling. Not only does it describe the history of mankind as a judicial process – crime, punishment, pardon – but quite naturally it also employs the words of the law itself….. Thus in his choice of vocabulary (if indeed he really

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[28] Matthew Giancarlo, *Piers Plowman,* Parliament, and the Public Voice. *YLS* 17 (2003) 135-173: 153.

[29] Lawton, 3.

[30] Alford, John.  "Langland's Learning." *YLS*  9 (1995): 8.

had a choice, Langland was simply using the words best suited by tradition to his subject matter.[31]

Nonetheless, it is the creativity and fluidity with which he uses that vocabulary that commands respect.  Alford notes that "not until *Piers Plowman* do we read about *lawyers* – or their *clients* or *cases* or *appeals.*"[32]   Langland is so familiar with the terms of the law courts and the structure of formal documents that their inclusion in the poem is as much a part of the fabric of the poem as his alliterative line.  His ease of reference demonstrates a mastery of both legal technicalities and legal theory that gives him a natural authority to talk about the law.  Alford describes how law is at the heart of Langland's thinking:

> It is not a matter of … simply inserting a legal expression here and there, like Chaucer's reeling summoner and the irrelevant cries of *questio quid juris* with which he litters the conversation; on the contrary, ..[the] use of legal forms and terminology generally grows naturally – as the summoner's disconnected cries do not – out of a profound faith in law as the tie that binds all things, in heaven and earth.

The law is used not merely as a descriptive tool but is part of the fundamental structure of Langland's vision.

At the same time his deep understanding of the practice of law, and the concerns centered around it, allows for some of his most creative poetic descriptions:  take for example his comment about the mercenary nature of the advocates at the bar: "Thow myghtest better meete myst on Malvene Hilles / Than get a 'mom' of hire mouth til moneie be shewed.' (B.Prol.211-216).  The need for professional pleaders to navigate through the complex web of rules developed by the fourteenth century was a common

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[31] Alford, John.  *Piers Plowman:  A Glossary of Legal Diction.*  (Cambridge,  St. Edmundsbury Press, 1988):  pxiv.

[32] *Ibid.,* ix.

cause of satire, but Langland uses the alliterative line and vivid imagery to join the idea of the emptiness of the advocates' words with the contemporary concern that advocates were simply educated mercenaries who were motivated to argue cases for monetary gain rather than in the pursuit of justice.

As Langland is entering the discussion of contemporary laws, he is making a claim for *locus standi* for his poem, for its right to be heard in that discussion, for his poem's place. Middleton carefully unpacks the narrator's self-defense against the charges put by the authority figures of Conscience and Reason in the autobiographical passage at the opening of Passus V of the C text to show how the defence acts both as a critique of the anti-vagrancy legislation of 1388 and an assertion of Langland's poetic authority[33]. She argues that, by both mimicking and dismantling the terms of the legislation, Langland claims poetic authority for his vernacular poem, and also its author. The requirement that every worker, servant or pilgrim traveling outside their local vill carry an official letter patent (in theory signed by the King but in actuality signed by a local official in his name) indicating that they traveled with permission and planned to return to their home, in Middleton's estimation marks the replacement of the local landlord rights of prior legislation with the overarching power of the textual "administrative state." She argues that what Will is claiming for his poem is a textual authority that parallels and challenges that authority. In particular, Middleton shows how the beginning of Passus V in the C text places the poet outside the reach of secular law, by remaking the idea of the 'lollar' not as idling non-laborer but as authoritative social commentator.

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[33] Anne Middleton, "Acts of Vagrancy: The C version "Autobiography" and the Statute of 1388" in *Written Work; Langland, labor and authorship*. Eds. Steven Justice and Kathryn Kerby-Fulton. (Philadelphia, PA, U Penn Press 1997): 208-318.

Middleton's focus is on parliamentary legislation which is, of course, the most public of legal texts. It is by nature also the most theoretical since it is the direct result of a debate over the purpose of that law. Furthermore, given parliament's intent to use the legislation to enforce a particular behavior, parliamentary legislation is the most likely to be well documented and to produce textual artifacts so, as Andrew Galloway comments, it is not such an imaginative leap from the idea of the creation of legislation fulfilling a philosophical purpose to the creation of literary texts for the same purpose. He describes Middleton's work as "cultural-legal-literary history, with the emphasis of close-reading within social context placed evenly on all of these terms"[34] and his criticism of her argument is not so much criticism as a note of intention to expand upon Middleton's 'resulting narrative of legal history,' with arguments that constraints of space and focus in the original work inevitably left unaddressed. By way of example, he posits the general pardons nominally issued by Richard to all of his subjects as 'just as much administrative "fantasia" as the vagrancy letters' Middleton describes, these pardons 'positing more explicit claims to a statist, royalist, and flexibly discriminatory textual community.' (119) Galloway points to the comparison between the priest in *Piers Plowman* identifying the deceptively inclusive pardon and those who saw that Richard's issuing of a pardon "in these terms was no pardon at all."[35] The line between literary fiction and theoretically factual record becomes ever less distinguishable.

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[34] Andrew Galloway, "*Piers Plowman* and the Subject of the law." *YLS* 15 (2001): 118.

[35] Galloway notes that "such a pardon for these moments of 'unrest' was a threat to anyone who could not afford to obtain a copy from Chancery. At 18s. 4d., most of the merchant and gentry class could; but in 1382 the Commons claimed that the poor had fled "to the woods and other places" as outlaws because they could not afford one (*Rotuli Parliamentorum* 3.139)." (119).

Middleton and Galloway are claiming literary authority for the literary texts of this period based on their mimesis and citation of other authoritative discourses, the language of statute being an obvious starting point. Middleton points out that Langland gives Will authority to explain the law in his own terms, and with his own referents, whether or not they be outside the mainstream social and economic structures; the result is that his description of what the law should be and should facilitate becomes a part of the frame for the rest of the poem's argument. Within the poem's boundaries, Langland has appropriated legal discourse and also its grounds for authority whilst at the same time revisioned those grounds. Galloway describes this revisioning as "the inversion of the sense of "the subject of the law"" (120), a battle between competing documentary subjects. Most importantly for the purpose of this project, they are subjects fashioned by Langland and presented according to his choices, leaving them thoroughly in his control.

## Are the correspondences between the C text and 1388 Cambridge Statutes truly enough to evidence authority?

Critics following on from Middleton have pointed to the details of her evidence not adding up to the impressive whole of her theory. It is true that many of the correspondences Middleton finds between the C text and the 1388 Cambridge Statutes could arrive from the fact that they share a widely-discussed subject of great importance to their time. Wittig takes issue with the three bases for Middleton's claim that the Passus V encounter is based closely on the 1388 Cambridge Labor statutes,[36] but I

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[36] Wittig, 170.

suggest that the degree of closeness and our twenty-first century certainty is not of great

importance if these ties lead us to a broader consideration of the poem's impact.  His

strongest point against Middleton's argument is to ask "if Langland wanted to portray

Reason as "trying" Will for violation of the 1388 Statute, would not Reason have

demanded that Will produce such a letter?" (since this was the newest and most

demanding stipulation of the legislation).  This point is developed in a response to his

argument by Wilsbacher,[37] who sees instead the Cambridge Statutes as part of 'an

existing textual environment concerning itinerant labor,' an analogue to the CV episode,

by proposing (in accordance with Middleton's own observations of the legislation's

timing (236-40)) that the failed petitions to the Good Parliament in 1376 and the

unsuccessful re-presentation of the petitions in 1377 'indicate that the political and social

debates over vagrancy had moved beyond the manorial concerns of 1349 well before the

decisive parliamentary action of 1388.'  This would allow for the possibility that

Langland could have been responding at any time in the mid to late 80s to this unofficial

discourse, not necessarily to the demands for personal documentation of the 1388

Statute[38].  Wilsbacher also points out that his argument carries a political logic, since the

1388 codification of vagrancy was a move by both the Lords Appellant and Richard to

appeal to a politically expedient cause and strengthen their camps in the process, so it is

likely that the ideas codified had been in circulation for some time and attracted enough

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[37] Gregory J. Wilsbacher,  "Response to "Culture Wars" and the Persona in *Piers Plowman*" *YLS* 15 (2001): 197.

[38] For detailed analysis of the extent to which Langland was responding to parliamentary events and the extent to which parliamentary events were taking a distinctly Langlandian turn see Matthew Giancarlo, "*Piers Plowman*, Parliament, and the Public Voice*" YLS* 17 (2003): 135-173 at 162-164.  Giancarlo illustrates how Langland revised his pre-existing portrait of Meed to be more reminiscent of Perrers in response to the sequence of events in which he found himself whilst dealing with his broader theme.

support to warrant their passing into statute. This certainly makes sense, but does not itself negate Middleton's argument. Given that the petitions were drafted in the latter half of the seventies and continued to be worked on and presented for over ten years, it may be that one of the possible contacts Middleton details did indeed allow Langland access to the statutes' early drafting.[39] Langland may have intended all that Middleton suggests but released his poem before the documentary requirement was added to the final version of the statute. If this were the case, it would have been strange for him to include in his poem something that he did not believe would be prescribed by the statute.

Wittig further suggests that the examination in Passus V is an internal 'examination of conscience, rather than an allegorical civil "trial"'[40] as Middleton has proposed. His evidence for this revolves around a reading of the beginning of the scene "*For as y cam by Conscience with resoun y mette*" (C.V.6). Noting the MED's entry for "comen v." "4a. "(e) ~ bi (to), to get at (sth. Or sb.); come by, acquire; (f) ~ bi, to grasp or understand; solve a problem, find an answer. ..," Wittig takes "come by" as a phrasal verb and examines the only two other occurrences of "come by" in the poem to show that in both of the other cases the object governs how the verb is understood. He therefore proposes that the same should apply to Conscience. Up to this point I am in agreement. However, he goes on to argue that since ""Conscience" is not a place one would come past, or to" the correct translation of line 6 is "*For, as I acquired conscience, I met with Reason.*" I see nothing to prevent another reading of this line: Wittig has no trouble personifying Reason in the same line so why cannot Conscience likewise be a personified character who can therefore be '*come by*' or '*alongside*'? Wittig finds corroboration for

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[39] See Middleton's note 8 p295 from "Acts of Vagrancy."

[40] Wittig, 171.

his reading of an inward encounter in line 11, "*Romynge in remembraunce thus resoun me aratede"* positing that the use of 'romynge,' which he translates as 'moving in a desultory fashion,' affects the following 'in remembraunce' to combine for a complete translation of "in my desultory reflections." However, there are no grammatical clues either to confirm or deny this, and an equally possible translation might be to take 'in remembraunce' as an adverbial phrase acting on 'romynge' to mean "moving in a desultory fashion whilst remembering." In fact, logic supports the latter, since if the ensuing debate were the result of his reflections, it would only be after having begun that reflection that he could either *come by* or *acquire* Conscience and Reason. The fact that Will defends himself towards the end of the scene by using his inner certainty of what Christ would wish him to do ("*For in my Consience y knowe what Crist w[o]lde y wrouhte"* (C.V.83) ) does not prove that the whole scene has taken place inwardly, merely that he is using all arguments available to him to make his case. I agree with most critics that this is a trial of Will's Conscience, but I do not see evidence that Conscience and Reason are acting any more internally than they have in the preceding passus beyond the usual effect of personification/allegory.

Furthermore, this does not seem to me to be an important support for Middleton's macro-argument for Langland's claim to authority, for, as Wilsbacher points out, locating the debate internally does not allow Will simply 'to escape the external social and political realities which seem to underwrite so much of the poem.'[41] Middleton envisages the 1388 statutes directly stimulating Langland to a presentation of Reason and Conscience that defends his authority and argues for his self-worth. Without some clear

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[41] Wilsbacher, 196.

alternate autobiographical event to refer back to, it is hard to see how a text so engaged with the social conditions of its time could not be influenced by those events or realistically intend not to reflect upon them.  Such a position would suggest a dissociated unselfconsciousness on the part of the narrator that is not reflected anywhere else in the poem:  as Lawton describes, the subject of *Piers Plowman* can be characterized in many unstable and shifting ways[42], but never as unselfconscious.  The result is that the degree of closeness of the relationship between the text and the 1388 Cambridge Statutes is debatable, but Middleton's larger point about Langland's claim for authority remains convincing, backed up as it is so fully by the surrounding evidence of his skill with legal discourse.


## 2. Langland's political and poetic claim for authority in the community.

Langland's text is so rooted in his contemporary legal world that, as Machan points out,[43] it is not literary works of the period but documentary records such as court rolls and guild records that bear closest resemblance to *Piers Plowman* in style.  In the nineteenth century, Jusserand took the connections he saw between the poem and contemporary parliamentary issues to suggest that the poem "would almost seem a commentary on the Rolls of Parliament."[44]  Today, Giancarlo illustrates instead how 'there are some crucial *poetical* issues at stake in the question of Langland's political

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[42] Lawton, 1-30.  (See pp 33-35 above).

[43] Tim Machan, "Language Contact in *Piers Plowman*," *Speculum*, Apr94, Vol. 69 Issue 2: 359.  Machan is examining the use of Latin quotations in the poem.  He points to the work of Lawrence M. Clopper in *Chester*, Records of Early English Drama.  (Toronto, 1979): pp7-8 and 18, for examples.

[44] J.J. Jusserand, '*Piers Plowman': A Contribution to the History of Medieval Mysticism.* (Tr. M. E. R. 2nd ed. New York, 1894): 112, quoted by Matthew Giancarlo in "*Piers Plowman,* Parliament, and the Public Voice."  *YLS* 17 (2003) 135-173: 135.

engagement with contemporary institutional forms.'[45] Given that Langland was writing at a time of social unrest, in which access to knowledge was itself political, his choice to write a vernacular poem addressing the social and spiritual institutions of his day could never be apolitical.

In his study of the poem's parliamentary setting and questions of the public voice, Giancarlo illustrates how Langland is putting forward neither simply a topical poem with recognizable referents nor an argument for one parliamentary faction or another, but is instead asking 'a profounder set of questions about who gets to speak, both in and for a community; and indeed, about what can count as a community, and about how it can be "represented."'[46] Giancarlo reverses Jusserand's claim and seeks "to look at some of the rolls and records of parliament as a commentary on *Piers Plowman*."[47] He illustrates convincingly how the trial of Meed in Passus II-IV should be seen in a specifically parliamentary context, particularly since the charges put to Meed are framed not in the terms of an individual tort case that might be adjudicated in the usual courts, but instead in the terms of a political accusation against 'an enemy of "the community" in an institutional sense.'[48] In keeping with that, he points out that the King does not threaten the possibility of tort judgment but rather summary banishment, a parliamentary threat: "Excuse þe ȝif þou canst, I can no more seiȝe, / For conscience acusiþ þe to cunge þe for euere." (B.III.173-4). Similarly, Meed does not respond to the accusations that Conscience has put to her about her behavior, but instead defends herself with a political

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[45] Matthew Giancarlo. "*Piers Plowman,* Parliament, and the Public Voice." *YLS* 17 (2003) 135-173: 136.

[46] *Ibid.*, 137.

[47] *Ibid.*, 317.

[48] *Ibid.*, 146.

argument about the conduct of the French wars.  Giancarlo suggests that it is only by comparison with the parliamentary rolls and the parliamentary accusations against Alice Perrers in 1376 - of intentionally misleading the King and mismanaging royal interests  - that the modern reader can understand what would have been a clear reference to the contemporary reader and see why Meed should be putting her response in terms of self-defense to political treason.

In Giancarlo's reading of this episode, Langland is using the overlap between parliament's position as "the peak of the legal pyramid" (to use Leon's phrase[49]) to discuss concerns about access to justice which, according to the legal historian, Alan Harding was one of the main topics debated in parliament.  Harding comments that:

> If the series of parliamentary petitions, statutes, and judicial commissions are taken together, local justice and not taxation is seen to be the first great subject of political discussion between the king and the people at large … The plaints and bills produced by litigation became the new means of political communication flowing now from localities to government.[50]

Giancarlo's unpacking of Meed's trial, Peace's bill against Wrong and the communal nature of Meed's punishment enables us to see how Langland found 'a speaking voice through the poetical representation of political representation, through a deliberative imagining of a deliberative and argumentative body."[51]  Just as parliamentary sessions might involve rowdy debates with many voices, so too Langland's text uses many voices to enter the conversation.  I propose that Langland is using his poem as a conduit to reason, and that we should take as his purpose Reason's statement  in Passus IV of the C

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[49] Bryce Leon, *A Constitutional and Legal History of England.*  (Cambridge, Cambridge UP, 1931).

[50] Alan Harding, *Medieval Law and the Foundations of State*.  (Oxford, Oxford UP, 2002): 185.

[51] Giancarlo, 162.

text that he seeks to "withouten mercement or manslauht amende all reumes,' i.e. to debate reform without violence or, to use Giancarlo's phrase, 'to speak for the community, from the community.'

Steiner[52] argues that it is the diversity of the opening scene that persuades the reader that the "the dreamer sees the whole world because the poetic field encompasses a total vision, whose lens is both critical and wide."  For her, Langland's authority is based in the poetic display evidenced by the innovative vernacular Prologue which proves his capacity "to create an aesthetic precisely by extending literary forms to political thought." The topic of Steiner's essay is "diversity" as political statement, but I suggest that what she is identifying is also a statement of Langland's own authority.  Steiner argues that the alliterative line helps 'construct human diversity as an aesthetic object' because

> the alliteration of the Prologue insists upon the accumulation of dissimilar parts into a whole and the simultaneous breakdown of the whole into its dissimilar parts. Take, just for example, the lines, ''Barons and Burgeises and bond[age] als / I sei_ in þis assemblee, as ye shul here after; / Baksteres and Brewesteres and Bochiers manye'' (217–19). Alliteration here gives the effect of a *multitudo diversorum*, because it seems to generate random combinations of people, while at the same time building rhythmically toward a total vision, from plurality to unity and back again.[53]

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[52] Emily Steiner, "*Piers Plowman*, Diversity, and the Medieval Political Aesthetic." *Representations* Vol. 91, No. 1 (Summer 2005): 13.  The essay argues that later medieval English poetry, and *Piers Plowman* in particular, developed strains of political thought that originated with Continental legal scholars, specifically helping to shape political thought about diversity, an ''unfinished'' project of earlier Continental philosophers and jurists, through radical experiments in poetic form.

[53] *Ibid.*, 13 – 14.

Steiner illustrates how the work that has been done on the 'sundry folk' of Chaucer's General Prologue by Mann - on the contrast between the 'produced effects' of the text and real society – and by Wallace - on Chaucer's preoccupation with 'associational form'[54] to represent his philosophical position (that 'humankind is a political animal, not an aggregate of atomized individuals') - combines to the effect that 'the political work of the "sundry folk" is not their sundriness but the kinds of associations they form and tell stories about within the Canterbury Tales."  In contrast, she believes Langland's poem "demonstrates not the politics of a literary work but the politics of literary form, its capacity to create new topics of political thought."[55]  What we are seeing is the many ways in which the broad scope of Langland's vision, and the many narrative settings allowed by the structure of the poem, allow him to enter into several different conversational realms simultaneously, so enabling him to comment on many different players in the political scene and establish a place for his work within that scene.

## 3. "Grammar, the ground of al" (B.XV.372): Adopting the school and grammatical models.

### a.  Linguistic and stylistic authority

The extraordinary number of quotations and almost quotations from the bible and other religious tracts has led to much debate about the level of Langland's education,

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[54] Jill Mann, *Chaucer and Medieval Estates Satire:  The literature of social classes and the General Prologues to the "Canterbury Tales."* (Cambridge,  Cambridge UP, 1973): 5.  Wallace, David. *Chaucerian Polity:  Absolutist Lineages and Associational Forms in England and Italy.* (Stanford, 1997): 68.

[55] Steiner, 20.

usually from scholars quick to point out 'errors' in the quotation. This criticism has itself

been roundly attacked by Langland's defenders who find purpose in every change.

However, the most obvious evidence of Langland's stylistic abilities is the fluidity

of his movement from one stylistic realm from another to advance his narrative purpose

whether from the bible to parliament, or from a sermon to judgment. It is evidenced also

in the code-switching that occurs with neither narrative nor structural purpose but rather

for the self-conscious rhetorical flourish it provides. Machan[56] argues that the fact that so

many speakers in the poem 'change languages so pervasively at so many syntactic points'

is explained by the collapse of the Latin-English diglossia; he believes that since the

complex instances of code switching depended on 'forethought and linguistic

sophistication,' they are 'unlikely to be casual and unintentional.'[57] Lexical inadequacy

is an unconvincing explanation, since 'if a speaker perceives that one code lacks a given

word or concept, it is far easier simply to borrow the appropriate material-as Langland

does on many occasions-without the added difficulty of syntactic accommodation.'[58]

The conclusion is that the complex code switching is 'self-referential and pragmatic: the

switch occurs both for the sake of its own ingenuity and for the rhetorical emphasis it

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[56] Tim Machan, "Language Contact in *Piers Plowman*", *Speculum*, Vol. 69, No.2 (Apr, 1994): 359-385. Machan is seeking an explanation for the complex code switching patterns he finds in Langland's moves between English and Latin ("Unlike borrowing, code switching involves alteration of an entire grammatical system: rather than adopting a word from another variety, a speaker switches varieties entirely." (367)), not only at the higher-order constituency adjunctions but also at various intrasentential levels, including that of the single word in a number of constructions. He acknowledges that 'code switching at lower-order syntactic adjunctions would be considerably easier in written rather than spoken discourse, since a writer has far greater opportunity than a speaker to pause while reflecting on the syntax of the entire utterance' (372) but points out that 'such switching nonetheless remains more syntactically complex than either higher-order switching or borrowing, both of which Langland also uses to great effect. Had Langland been interested in the Latin material only for narrative and structural purposes, moreover, direct quotation would have been the syntactically easiest option.' (372).

[57] *Ibid.*, 372.

[58] *Ibid.*

creates.'[59]    Machan demonstrates how the switches 'foreground Langland's linguistic competence and not the putative competence of individual characters'[60] by contrasting Langland's use of language switching with Chaucer's adoption of a northern dialect for John and Allen in the *Reeve's Tale*, where the dialect is used consistently for every utterance by them and only them; Machan suggests that in this way, 'while one is aware of Chaucer's linguistic abilities, within the reader's response the dialectal portions remain identified more with the characters than with the author or even Oswald the Reeve. Although borrowing alone might have sustained this kind of stylistic motivation and would have been, in any case, considerably easier for Langland,'[61]  Machan points to the moment in Passus IV when we see Reason switching fluidly between Latin and English and inviting the King's confessor to translate his words into English:

> For "Nullum malum the man mette with inpunitum
>
> And bad Nullum bonus be irremuneratum."
>
> Lat thi confessour, sire Kyng, construe this [E]ngl[sy]sed, (B.IV.143-5)

to show how 'in its very difference from an observation in the far simpler syntax of a completely Latin or English quotation, .. Reason's utterance simultaneously attests to his intelligence, Langland's skill, and the virtuosity of *Piers Plowman*, with the code switching itself contributing to the pragmatics of the situation.'[62]   For the purposes of establishing Langland's authority, the code-switching shows how he can manipulate a

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[59] *Ibid.,* 376.

[60] *Ibid.*

[61] *Ibid*.

[62] *Ibid*.

rhetorical device to further his narrative while drawing attention to the quality of his text and his own abilities and education.

Minnis has detailed the ways in which authority was ''translated,' appropriated, disposed, exploited, and … challenged' by Middle English literature[63] by showing how the apparatus of literary theory had developed to include all kinds of texts, sacred or secular, and bring commentators much closer to their authors.[64]  The shift in focus for the thirteenth century exegetes, from the divine author of the Scriptures to the human authors through which he communicated, allowed the fourteenth century scholastic philosophers and theologians to produce a universal interpretative model.  Minnis shows how

> Scriptural authors were being read literally, with close attention being paid to those poetic methods believed to be part of the literal sense; pagan poets, long acknowledged as masters of those same methods, were being read allegorically or 'moralized' – and thus the twain could meet.'[65]

The result for Langland is that his poetic vernacular text dealing with complex theological arguments usually dealt with in Latin could expect to be subject to the same level of commentary and debate as the authorities with which his text engaged.

Langland's own engagement with his sources in *Piers Plowman* shows him to be working within a tradition of manipulation of source texts in the medieval educational curriculum.  Mann highlights a 'notable feature of the medieval educational curriculum – namely, the way in which it was continually renewed and updated by the production of new texts which followed the old models but recast them into different verse forms,

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[63] Alastair Minnis, *Translations of Authority in Medieval English Literature: Valuing the vernacular.* (Cambridge, Cambridge UP, 2009): 1.

[64] A. J. Minnis and A. B. Scott, *Medieval Literary Theory and Criticism c1100-c.1375.* (Oxford, Clarendon Press, 1988).

[65] *Ibid., 4.*

brought in new material, or provided replacements which fulfilled similar functions to the originals." [66]  She paints a picture of a fluid educational environment in which standard texts and ideas were constantly being placed in different groupings and reexamined in different forms, where students were encouraged themselves to experiment with these relationships as part of their learning process, and demonstrates how the memorization and repetition of the proverbs of Cato and later writers made these texts 'part of everyone's mental furniture.'[67]

Mann uses her understanding of these learning patterns to examine the sequence in the debate of the four daughters of God in Passus XVIII of *Piers Plowman* when Mercy argues that Mankind can be redeemed on the basis that "venym fordooth venym – and that I preve by reson.'  Just as venom will destroy venom so shall Christ's death destroy death and his guile destroy that of the Devil:

"And right as thorugh gilours gile bigiled was man formest,

So shal grace that al bigan make a good ende

And bigile the gilour – and that is good sleighte:

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[66] Jill Mann,  'He Knew Nat Catoun.'  The Text in the Community, ed. Mann, Jill and Maura Nolan, (University of Notre Dame Press, Notre Dame, Indiana)  2006, 41-74: 51.  Mann lists the six texts commonly brought together to provide a reading programme for students of Latin (which were identified as a group and named the *liberi catoniani* by Marc Boas ("De librorum catonianorum historia atque compositione," *Mnemosyne*, n.s., 42 (1914): 17-46)) - *the Distichs of Cato,* a debate-poem known as the *Eclogue of Theodulus*, the fables of Avianus, the elegies of Maximian, the poem *On the Rape of Proserpina* by Claudian, and the *Achilleis* of Statius - and then proceeds to show how each text was 'constantly renewed through variations on the old themes' (53).  For example, Mann suggests that Hugo of Trimberg's comedy *Pamphilus,* which is found in his *Registrum multorum auctorum* after the text of Maximian and concerns the wooing of a girl named Galatea by the eponymous hero, 'could be seen as an updating of Maximian, preserving an erotic element in the curriculum to hold the interest of the young (male) reader.' Since the *Pamphilus* is followed closely in Hugo's list by the *Facetus* "Moribus et vita," Mann comments that 'it is tempting to see the latter as the theoretical codification of the *Pamphilus*'s practice' and notes that it caters to the same erotic interest of the *Pamphilus* 'but combines it with the instructional mode of "Cato."' (53).


[67] Mann, 55.

*Ars ut artem falleret.* (XVIII 159-61)

Although the Latin phrase is taken from a famous hymn by Venantius Fortunatus ("Pange, lingua"), the English recalls a proverb that is the moral of Chaucer's *Reeve's Tale*: "A gylour shal himself bigyled be" (4321). This is a proverb represented in "Cato":

Qui simulate verbis nec corde est fidus amicus,

tu quoque fac simules: sic ars deluditur arte. (I.26)

[If anyone dissembles in his speech and is no true friend in his heart, see that you

dissemble too; so guile is beguiled.][68]

A Middle English translation of Cato renders this into the familiar form: "So gyle with gyle shal gyled be." Mann demonstrates how Langland's use of the Middle English translation of the Cato enables him to move from the un-Christian sentiment of Cato's *ars deluditur arte,* through the Latin of Fortunatus, to the Christian *ars ut artem falleret,* which will coincide with the eye-for-an-eye Old Testament law Christ quotes later in the same passus:

The Olde Lawe graunteth

That gilours be bigiled – and that is good reason:

*Dentem pro dente et oculum pro oculo.* (B.XVIII 339-40)

It is clear that Langland is using the reworking techniques Mann has identified in the common educational primers as his tools in order to rework the ideas surrounding the redemption. Most importantly, her work illustrates that this would be recognized as quite normal to the medieval reader. The effect of this reworking is theorized by Tolmie, who argues that "the whole text of *Piers Plowman* can be seen as an exercise in moving

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[68] Cato *Distichs* I.26 quoted and translated by Mann, 65.

contested words – treuth, mede, werche, Dowel – through a series of language games, showing how their meanings are generated separately in each one."[69]  She points out that 'so various are the contexts in which the same words must be used that their meanings are necessarily fragmented.  Verbal meaning thus often comes down to choosing between the autonomous meanings generated by different language games and their particular groups of speakers.'  Tolmie compares the development of language in *Piers Plowman* with Wittgenstein's language game,[70] in which language acquisition is a process of training rather than of explanation, and where 'verbal meanings are determined by their uses in an enormous range of discrete language games, each one of which must be encountered and existentially inhabited in order to be fully meaningful."  This means that each language game is inherently connected to what Wittgenstein describes as 'the form of life'[71] of the speaker.  For Tolmie, this attachment of meaning to the form of life of the speaker explains the shifting meanings of Reason, because Reason's role changes from passus to passus.  Thus, when Reason takes on the role of advisor to the King in passus IV (B.IV.44-195) he is part of a language game of advising, which he then abandons when he takes on the passus V role of sermonizer (B.V.11-59).  The shift allows the advising Reason of passus IV cleverly to contain Lady Mede and overcome Wrong, even though the sermonizing Reason of the next passus is as unconvincing as he was previously adept,

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[69] Sarah Tolmie, "Langland, Wittgenstein, and the Language Game." *YLS* 22 (2008): 115.

[70] Ludwig Wittgenstein, *Philosophical Investigations*, trans. By G.E.M. Anscombe, 3rd edn (Oxford: Blackwell, 2001). Section 2.

[71] Tolmie suggests (in n21, *ibid,* 112)  that 'one analogue is the notion of the *habitus*, for which see Pierre Bourdieu*, Language and Symbolic Power*, trans. by Richard Nice (Cambridge: Polity, 1991)' and points to the work of Elizabeth Fowler on personification in *Literary Character:  The Human Figure in Early English Writing* (Ithaca:  Cornell UP, 2003) as an example of the effective use of the terminology.

encouraging the crowd to repent to prevent natural disasters (and bad weather!) rather than for personal salvation.

Reason was so very reasonable in passus IV that the strident tone of the Reason of passus V is less objectionable until the reader stops to consider the shift between passuses.  Tolmie argues that viewing each episode as a separate language game with a separate purpose allows the reader to 'refresh' his vision of Reason and reassess the limits of Reason's power, as well as to understand how at each point in the journey Will is separate from his interlocutors which is why his quest does not advance cumulatively.

Tolmie's linguistic theory and Mann's work on the medieval educational curriculum and its reliance on the refreshing of old texts with new form emphasize 'the union of the clerkly and the experiential'[72] and allow for a freedom of choice for the reader which suggests a comfort on Langland's part with the idea that the poem could be conceived to have many different readings, and was intended to be on a par with the sort of text reworked and revisioned in the universities, texts imparting moral wisdom.[73]

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[72] Mann, 66.

[73] Macklin Smith takes this idea of Langland's acceptance of scribal interpretation a step further in "Langland's Unruly Caesura."  *YLS* 22 (2008): 57- 101.  She argues that Langland's use of multiple, off-centre, obscure or ambiguous breaks in the place of the axiomatic fixed medial caesura creates layered rhythmic complexity which actually invites clerical reading and interpretation.  Smith proposes that:

> the complexity of some of Langland's lines can *never* have been captured by scribal punctuation norms – by the insertion of one and only one caesural point or slash, in rare cases complemented by an extra mark or two.  *Piers Plowman,* whether copied steadily or read and studied deliberately, will have necessitated interpretative work, much of it inexpressible through punctuation, rubrication or even glosses."[73]

Her argument is that "although scribal punctuation favours 'metrical' performance, correcting caesural unruliness, it also preserves, accommodates, or struggles with uneasy syntax, suggesting Langland's authorization of multiple performances, multiple interpretations."[73]  Kane had earlier argued that "Langland identified the caesural pause, in its essentially grammatical character, as a function of meaning" evidencing this with the ways in which Langland

> counterpoints line-end, caesura and syntactical termini.  His syntax will impose a strong logical break at the caesura of an end-stopped line; or a syntactical unit beginning at the caesura will overrun the line end and finish at the next caesura, or at the next line after that, or even at some other point arbitrarily set by his arrangement of meaning.  He uses the caesura to punctuate, or as a point to insert a parenthetic statement or a presumptive subject or object, to enable parataxis, or to

Cannon has identified the ways in which "Langland's literary practices are deeply rooted in grammar school texts and practices."[74] Building on Simpson's work[75] detailing the various 'discourses of education' that Langland uses throughout the poem, Cannon notes the many different educational kinds represented in the third vision, specifically linking Study to the grammar school, Clergy to 'the institution of university theological learning,'[76] and Imaginatif to the '*vis imaginativa* of the scholastics.'[77] He suggests that the crossing of institutional boundaries that Zeeman has detailed[78] is 'particularly noticeable at the level of form, where the language of university debate often introduces Will's encounter with a particular figure ('"Contra!" quod I as a clerc, and comsed to disputen', B.VIII.20), but the encounter itself more typically unfolds as a lengthy and uninterrupted scene of instruction."[79] Cannon's argument is that, although there are what he describes as "aspirational references to a sophisticated academic style" in the poem, the pedagogic style displayed is that of 'the basic texts of the grammar school,

suggest the informal grammar of conversational give and take. Sometimes he develops the caesural suggestion of a two-part line rhetorically by parallelism or chiasmus. So the caesura becomes a component of style."[73]

To Kane, therefore, Langland's use of the caesura was integrally related to his understanding that it was a grammatical tool to be wielded in the service of meaning. Since Smith's argument proposes the caesura also encouraged scribal interpretation, the question then must be what would be the benefit of these multiple interpretations of the text? One interpretation would be to put the text on a par with school texts dispensing moral wisdom.

[74] Christopher Cannon, "Langland's Ars Grammatica." *YLS* 22 (2008) 1-26: 1.

[75] James Simpson, *'Piers Plowman': An Introduction*, 2nd rev. edn. (Exeter: University of Exeter Press, 2007): 84.

[76] Cannon, p7, quoting Simpson, p 95. For a detailed discussion on the meaning of Clergie in these passus, see Nicolette Zeeman, *'Piers Plowman' and the Medieval Discourse of Desire.* (Cambridge: Cambridge University Press, 2006): 201-26.

[77] Cannon draws on the work of Mary Carruthers, 'Imaginatif, Memoria, and "The Need for Critical Theory" in *Piers Plowman* Studies.' *YLS*, 9 (1995): 103-14.

[78] Nicolette Zeeman, *'Piers Plowman' and the Medieval Discourse of Desire.* (Cambridge: Cambridge University Press, 2006): 24.

[79] Cannon, 7.

particularly the *Distichs of Cato* in which an authoritative wisdom is dispensed, at length, by an authoritative figure.'[80] Thus, at the craft level of reference and style, Langland is claiming a particular kind of vernacular authority for the poem.

But this was not something new and shocking. As Lawton notes in reference to *Cursor Mundi*, for many texts of this period, 'the activity most germane … may well be compilation more than authorship'[81] as authors combined their skills in translating or paraphrasing the biblical texts with their skills in exegetical commentary. What distinguishes *Piers Plowman* amongst such texts is the sheer range of sources and the strong sense of the author's framing hand.

### b. Use of the recognized conceit of the grammatical metaphor

In addition to the linguistic prowess outlined above and his comfort with the revisioning of his poem, Langland claims further authority for his poem through his use of the popular contemporary conceit of the grammatical metaphor. The idea that a literary text would be exposing an underlying theory of the natural order of things representing the divine will would not have been new to a medieval reader. Quite the contrary, as Alford explains in the 'The Grammatical Metaphor,'[82] even the terms of Latin grammar used to describe the structure of the English language resonated in the medieval period not only with their technical application to a grammatical concept but also as a metaphor for functionally equivalent offices. A simple example offered by

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[80] *Ibid.*

[81] David Lawton, "The Bible." *The Oxford History of Literary Translation in English.* vol 1. Ed. Roger Ellis. (Oxford, Oxford UP, 2008): 211.

[82] John Alford, "The Grammatical Metaphor.' *Speculum* 57 no.4 (Oct 1982): 728-760.

Alford is of the 'prepositio' which could refer both to a preposition and to the office of one 'put before' others in a *position* of authority.  In its simplest form, Alford notes, the grammatical metaphor 'is hardly more than an extended pun, an elaboration of those double meanings built into the language itself' but in its more complicated form it was a useful satiric tool and lent itself easily to satire of the church and courtroom.[83]

Although the metaphors based on grammatical terminology were easy devices for punning, it was those based on grammatical theory that contained a deeper philosophy because medieval thought equated the processes of grammar with the processes of nature. Alford sums up this position by quoting John of Salisbury:  "While grammar has developed to some extent, and indeed mainly, as an invention of man, still it imitates nature, from which is partly derives its origin.  Furthermore, it tends, as far as possible, to conform to nature in all respects."[84]  Salisbury is continuing the Thomist theme of the

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[83] This wordplay was often directed against the corruption of the Roman *curia*:  Alford gives the example of a fourteenth century poet who puns that although Donatus had identified six cases, Rome got by with just the dative and accusative, that is to say bribery and false litigation.  Likewise, dual interpretation of case names was an easy and favorite device in satirizing sexual behavior (731), and in medieval church satire, particularly since preachers themselves commonly used the device because 'all the best authorities recommended it.'(739) Alford quotes Thomas Waleys' *De modo componendi sermones* showing the preacher how to correlate the double meanings of the grammatical terms 'prepositio' and 'casus,' ("In one mode *praepositio* means 'a preference given to someone' (*praelatio*), and in another it means 'preposition', a part of speech.  I will say, therefore, following Donatus, that only one attribute belongs to a preposition, that is, case (*casus*).  Thus also whoever is in a position of authority (*in paepositure*) has case, that is, a fall unless he watches himself carefully.  Behold how one meaning of the word *praeposito* is joined to the other by means of similitude. And also, as part of the same idea, how one meaning of the word *casus* is joined to its other meaning; for *casus* is equivocal, as is evident, in this example.") as well as Robert of Basevorn's *Forma praedicandi* (1322) illustration of the usefulness of grammatical distinctions in the ordering of a sermon using 'the accidents of the verb – active, passive, neuter, deponent, and common - ..to correlate both structurally and significantly with the coming of Christ.' .  Quoted from Th..-M Charland, Ed., *Artes praedicandi.* Paris, 1936:277. "Suppose that the following is the theme for the Nativity:  "He sent His Word and healed them, and delivered them from their destructions."  Then the declaration might be:  "The Word," I say, which was *active* with the Father in the creation of things, this Word the Father "sent" that it might *passive* in assuming our nature, and "healed them" in the flow of blood and water from His side which the Word was *neuter* [i.e., dead], "and delivered them" in the release of the patriarchs from limbo while the Word was *deponent* [i.e, laid in the grave], "from their destructions," in which the severity of judgment the Word will be *common.*

[84] *Metalogicon* 1.14, p39.

reflection of God in human institutions, but this was taken even further by speculative grammarians.[85] The result of all of this work trying to base grammatical rules on extra-linguistic premises such as logic or 'the nature of things" was the expansion of the grammatical metaphor, to incorporate at a deeper level of meaning a conceptual double-entendre matching the verbal double-entendre of the terminology itself. This allows for a flow of grammatical or linguistic ideas into questions of logic or 'the nature of things' that is compounded by the overlapping of terminology. Alford gives well-known details of the use of grammatical distinctions in the solution of philosophical and theological problems. Since the medieval reader was commonly encouraged to seek metaphors with real life application in the Latin grammars, and of course the Bible, and of course law, they would expect the same in Langland's text since he was dealing with precisely the same issues.

Furthermore, Langland's style illustrates his own belief in this pairing of language with nature, as he uses it to frame his narrative. Alford finds many examples, noting that Langland emphasizes the verbal nature of creation ("Dixit, et facta sunt" (B.IX.33), finds proof of the Trinity in the fact that God uses the plural form of the verb at the creation ("For he was singular hym-self and seyde *faciamus*" (B.IX.35)) and is concerned that there are many names for God – a problem he solves with the answer that all terms can refer to the same individual: "kny3te, kynge, conquerore may be [one] persone." (B.XIX.27).

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[85] Alford describes how in the eleventh and twelfth centuries "dialectics became the foundation of grammatical study…. Bare description was no longer adequate… [The Latin grammarian fl. 500AD] Priscian was now criticized for having given the rules but not the reasons behind the rules… Numerous glossators on his *Institutiones* attempted to repair the defect, largely by identifying the categories of thought believed to underlie grammatical distinctions." The most important of these were Peter Helias (who wrote a commentary of Priscian's grammar ca.1140) and Alexander of Ville-Dieu who wrote about 50 years later.

Most significantly, Alford shows that Langland uses the grammatical metaphor to explain some of the poem's most important ideas:  the search for moral perfection is compared to the positive, comparative and superlative degrees of an adjective or adverb (Dowel, Dobet and Dobest) which are defined in their relationship by way of the grammatical concept of "infinites":    "Dowel and Dobet aren two infinites, / Whiche infinites, with a faith fynden oute Dobest." (B.XIII.127-8);  the Christian man being ruled by love is compared to a transitive verb ruling its object *ex vi transitionis* ("Kynde love coveiteth noght no catel but speche. / With half a laumpe lyne in Latyn, Ex vi transicionis," (B.XIII.150-1));  and syntax is compared with right social order (C.IV.335-409).  Alford argues that examples like these show Langland's respect for language and "his faith in its validity as a guide to truth" which is, after all, the main purpose of the poem – to show the path to the truth.  They also show how the grammatical structure of language was commonly considered a reflection of a 'natural' order of things ordained by God.

It should not be a surprise therefore to find that Langland's legal theory appears to reject the populist or voluntarist arguments for the basis of legal authority, but rather considers the law simply another extension of the same pattern of temporal life matching a divine order.  He assumes that his reader will accept that the structure of language itself falls into that pattern which allows for a consideration of his own text as a further revelation of that divine order.

Moreover, it can also be argued that by entering his poem in the vernacular into the legal and political arenas, Langland was advancing access to justice and the debate that much more by effectively translating into English the issues of the Anglo-Norman

parliamentary rolls and the Latin of the Bible and Church texts.    Given that I shall be looking at the use of *reson* in a written poem, it is interesting that the term was also commonly used to denote a proverb or saying or written sentence of the type that might be engraved or embroidered upon something and used for inspiration.  Along this same strand of thinking was the use of *reson* to mean a sentence or proposition in logic or a main clause in grammar.  It itself signified meaning or signification, as in '*rime or resoun,*' where it meant sense.  Langland's poem could be said to be carving out a place for itself where the fullest interpretations of *resoun* might be found, and, by extension therefore, making the poem itself a conduit to the 'natural law.'

## Conclusion

If we accept that Langland's adroit handling of the language and teaching methods of his contemporary institutions of authority allow him realistically to demand a place for his poem in the debates of his day, we will have come a long way from the view of Langland's nineteenth century editor, Thomas Whitaker, and his famous complaint that Langland 'often sinks into imbecility.'[86]  However, it is my belief that perhaps the poem was so very popular in the Middle Ages precisely because its readers understood that it was what Salter described as the 'almost impossibly ambitious attempt to come to terms with the social, political, and intellectual forces which were powerfully changing the medieval world."[87]  The broad sweep of Langland's vision allows him to illustrate his

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[86] William Langland, *The Vision of William concerning Piers the Plowman.*  Skeat, W.W. Ed.  2 vols. (Oxford, 1886; rpt. 1961). 2: xliv quoted, *inter alia*, John Alford, "Langland's Learning.*"* *YLS* 9 (1995) 1.

[87] Elizabeth Salter,  *Fourteenth-Century English Poetry:  Contexts and Readings.*  (Oxford , Oxford UP, 1983): 107.

mastery of classical rhetorical devices as he manipulates the linguistic structures of the religious, legal and social institutions upon which his poem comments. In doing so, he gives his poem authority and relevance, and establishes it, and its author, as a new kind of vernacular authority.

## **Chapter 2: *Right, Reson* and upholding the law in *Piers Plowman***

When Christ harrows hell at the climax of Passus XVIII of *Piers Plowman*, Langland dramatizes his words to Lucifer in terms of a legal transaction for the souls he is freeing (B.XVIII.349-351):

'So leve it noght, Lucifer, ayein the lawe I fecche hem

But by right and by reson raunsone here my liges:

*Non veni solvere legem set adimplere*.'

This is a narrative crux of the poem;  Will's journey was at first to know how to live well but having discovered this he extended his quest in search of an answer to the bigger question of who will be saved.  It is now that Christ answers him:  Christ's 'liges' will be saved, 'by right,' and 'by reson,' in order to fulfill 'the lawe.'

However, this answer is not as clear cut as it might seem.  Christ argues that he is not freeing these souls "ayein the lawe" but why does Christ feel bound to obey the law?  As the omnipotent deity, surely he can free anyone he wants.  Furthermore, though it may be natural to expect Christ to be referring to biblical laws, is he referencing the laws set out in the Bible or the whole body of canon law that had by then developed around and considerably beyond them?  And what about the common law?  This becomes a part of the argument of the next line, since Christ there frames his argument in terms of 'raunsone' and of 'liges,' which are both terms taken directly from the common law in criminal actions and civil property disputes, as well as from the common law writ of right procedure.  Furthermore, the latter is the only contemporary legal process allowing for the sort of champion Christ here claims to be.  Christ's argument is pulling in two different and competing jurisdictional directions, but appears to be pleading the case in

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both simultaneously.  Precisely which of these bodies of law is Christ fulfilling?  And is it possible for him to fulfill them all or indeed any of them?  Christ bolsters his argument with his emphasis on 'right' and 'reson,' but, again, this leads to questions:  what does 'right' mean in this context?  What 'reson'?  And why does Langland emphasize that Christ needs them working both individually and in conjunction with each other in order to fulfill the promise of the law?    Clearly Christ is arguing that he is acting with legal authority.  But what are the grounds for that authority and what is Langland attempting to achieve by putting his argument in these terms?

In order to answer these questions it will be important to establish the meaning and symbolism of each of the terms that Langland has chosen and the religious, legal and cultural implications of the ways in which he has used them.  This chapter aims to examine the legal framework Langland uses to portray the harrowing of hell, in order to see what relationship there might be between his poem and its contemporary legal culture.

## Why are the terms in Langland's text so slippery?

Seen as a language game[1], the most important feature of the redemption passage in the harrowing of hell sequence in Passus XVIII is its framing in legal terminology. Alford and Seniff have noted that bearing in mind literary production at the time of *Piers Plowman* was mostly by authors trained for a life in the Church or in the law - or in a mixture of both – "it is hardly surprising that the writings of the period, both secular and

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[1] See Chapter 1 p52-54 with reference to Sarah Tolmie,  "Langland, Wittgenstein, and the Language Game." *YLS* 22 (2008): 115.

religious, should be pervaded by legal influence in one form or another."[2]   Alford goes

on later to say:

> so intertwined historically are the vocabularies of law and theology that medieval writers found it impossible to explain certain doctrines of Christianity without recourse to legal terminology.  The Bible is largely responsible for this intermingling.  Not only does it describe the history of mankind as a judicial process – crime, punishment, pardon – but quite naturally it also employs the words of the law itself….. Thus in his choice of vocabulary (if indeed he really had a choice), Langland was simply using the words best suited by tradition to his subject matter.[3]

However, this explanation is too determinist, given Alford's own highlighting of the fact

that "not until *Piers Plowman* do we read about *lawyers* – or their *clients* or *cases* or

*appeals."[4]* In these examples, Langland is introducing a new vocabulary for his

argument, not selecting from language traditionally in use.  Since he has shown his skill

and comfort in handling many genres of writing, we can assume Langland is choosing his

words carefully and framing the discussion in legal terms purposefully.

It is the debate at the beginning of Passus XVIII between the Four Daughters of

God - Mercy, Truth, Righteousness and Peace - that first frames the harrowing of hell in

legal terms.  Langland develops the debate to have Mercy tell Truth,

"That man shal man save thorugh a maydenes helpe,

And that was tynt thorugh tree, tree shal it wynne,

And that Deeth down broughte, deeth shal releve.' (XVIII.139-141)

Mercy sees balance in all things, so Mankind is to be saved by a man and a woman

working together; a tree was the site of the fall and shall now be a site of the redemption;

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[2] John Alford and Dennis Seniff, *Literature and Law in the Middle Ages*.  (New York, 1984): ix.

[3] John Alford.  *Piers Plowman:  A Glossary of Legal Diction.*  (Cambridge:  St. Edmundsbury Press, 1988):  pxiv.

[4] *Ibid.,* ix.

and, Death, that brought down mankind, shall now be overcome.  However, Truth looks only to a reading of the Old Testament for direction, and replies emphatically that Mercy's answer is 'but a tale of waltrot!' for Job states that no-one gets out of hell, so she will not believe anyone who tells her differently.  In response, Mercy explains that it is her experience and her 'reson' that has given her hope:

"Thorugh experience,' quod he[o], 'I hope thei shul be saved.

For venym fordooth venym – and that I preve by reson.'

Her faith in God's justice, rather than his law alone, gives her confidence that just as venom will destroy venom so shall Christ's death destroy death and his guile destroy that of the Devil.

Most significantly, she argues that she can prove it 'by reson,' and sets out her reliance on God's grace to produce a positive outcome:

"And right as thorugh gilours gile bigiled was man formest,

So shal grace that al bigan make a good ende

And bigile the gilour – and that is good sleighte:

*Ars ut artem falleret*. (XVIII 159-61)

In Mercy's view, the same grace that led to Man's creation will lead to his salvation, and the Devil shall be shown the effect of his own actions.  Mercy's answer transforms the harrowing of hell into a question of fair play in the game of salvation - which ties in later with Christ's own Old Testament explanation to Lucifer that

'The Olde Lawe graunteth

That gilours be bigeled – and that is good reason:

*Dentem pro dente et oculum pro oculo*." (XVIII 339-340)).

Peace then arrives with a legal document, a patent letter of authorization which relies on the Scriptures in the form of a quote from Psalms (4:9) to show that it will have lasting validity.  This document is meant to show that God has

> 'forgyven [mankind] and graunted me, Pees, and Mercy
>
> To be mannes meynpernour for everemoore after." (XVIII.183-4).

However, Righteousness is not convinced by a mere document and suggests that Peace is either raving mad or drunk.  Like Truth, she cannot move away from an absolutist approach to the law, and reminds Peace of the details of the law God gave to Adam and the consequences of Adam's transgression.  Righteousness lays out explicitly the terms of the contract between God and Man (XVIII.190 – 199), using the emphasis of the alliterative line to highlight those terms ('if that thei touchesse a tree and of the fruyt eten'), and the punishment they promise ('sholden deye downrighte, and dwelle in peyne after') in the event the contract is broken ('freet of that fruyt, and forsook….The love of Oure Lord and his lore bothe').  Righteousness views Man's punishment as just because it was always the understood consequence of breaking the law ('That hir peyne be perpetual and no preiere hem helpe. (XVIII.199)').  She focuses on the details of the law God set out for Adam and Eve to emphasize that they knew what they were doing when they 'freet of that fruyt.'  She cannot imagine a change in that situation because there is no framework for it in her understanding of God's law, as witnessed by herself and Truthe.  Whatever the patent may say, she cannot imagine a mere document overcoming the weight of her own experience.

In contrast, Peace is working within a different frame. She turns to the idea of learning through experience to argue that God gave Man the opportunity to sin and suffer so that he might understand joy better:

Woot no wight what werre is ther that pees regneth,

Ne what is witterly wele til "weylawey" hym teche.[5] (XVIII.215-6)

Peace proposes that Man's fall is a lesson that will come to an end once Man has learned its point through bitter experience. In her retelling of the story, there is room for development, for a revisioning of the story of the fall into the story of salvation, and so room for Man's restoration in a way that is not possible within the strict narrative frame argued by Righteousness.


## Right or ransom? The significance of the debate of the Four Daughters of God

The idea of the virtues being the daughters of God is a development of Psalm 84:11 that personifies the four virtues and places them together: "*misericordia et veritas occurrerunt iustitia et pax deosculatae sunt*" (Vulgate) [Mercy and truth have met each other; justice and peace have kissed (Douay-Rheims translation)]. However, by Langland's time the idea had been expanded in sermons and treatises, much like the Jewish *midrash,* to include an elaborate debate before God between the four sister Virtues about the fall of Man and the possibility of his redemption through Christ. Owst[6] explains: "Writers of pulpit manuals and treatises, from the thirteenth century onwards,

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[5] [No one can know what it is like to be at war when peace reigns, nor what is certainly good until misery has taught him.]

[6] C.R. Owst, *Literature and Pulpit in Medieval England.* 1st edition, (Cambridge, Cambridge UP, 1933). 2nd revised edition, (1961): 90-97.

were accustomed to illustrate each "branch" of Vice or Virtue, …with … vivid little sketches of contemporary men and women and their ways. Thus grew up a natural tendency to identify topic with illustration and blend them into one." So too, the sister Virtues' debate was merged with the ideas from commentaries and theological speculation about the redemption. The Devil's role in Christ's death is not specifically mentioned in the New Testament, so its whole formulation is the result of theological philosophizing and comment - with the result that there is no individual text either to call a source or to limit the boundaries of speculation.

Augustine dealt with the redemption most fully in *De Trinitate*, book 13, chapters 11 – 16, emphasizing the justice of God in the way that He has dealt with Man: "*Quadam justitia Dei in potestam diaboli traditum est genus humanum.*"[7] [By the justice of God humankind was given into the power of the Devil.] In Augustine's scheme, God has the power to free Man as He pleases, but He chooses to give an example to Man by treating even the Devil, who has defied Him, justly:

> *placuit Deo, ut propter eruendum hominem de diaboli potestate, non potential diabolus, sed justitia vinceretur; atque ita et homines imitantes Christum, justitia quaererent diabolum vincere, non potentia.*[8] [It pleased God that, in rescuing Man from the power of the Devil, the Devil should not be overcome by power but by justice; so that likewise Man, imitating Christ, might seek to overcome the Devil by justice not power.]

Augustine explains the justice of the redemption by saying:

> *Quae est igitur justitia, qua victus est diabolus? Quae, nisi justitia Jesu Christi? Et quomodo victus est? Quia cum in eo nihil morte dignum inveniret, occidit eum tamen. Et utique justum est ut debitores quos tenebat, liberi dimittantur, in eum credentes quem sine ullo debito occidit.*[9] [Therefore, what is the justice by which

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[7] Augustine, *De Trinitate, PL* 42.1026.

[8] *Ibid., PL* 1027.

[9] *Ibid., PL* 1027-8.

the Devil was conquered? What, if not the justice of Jesus Christ? And how was he conquered? Although he found nothing in Him was worthy of death, nevertheless [the Devil] killed him. And indeed it is just that the debtors who were held should be sent away free, those who believe in Him whom the Devil killed without any debt.]

Augustine understands the redemption in terms of justice and power. It was just that God should give the Devil power over Mankind as a result of original sin; the Devil is not an equal adversary but rather another one of God's creatures. However, when the Devil abuses his power by unjustly killing the innocent Christ, it is only just that God should take back Mankind and free it from the power of the Devil. This is the theory often referred to as 'the Devil's rights' theory. However, it should be noted that it is problematic to refer to the Devil's rights as if the Devil had some claim to mankind beyond that he obtained as a consequence of the fall, since that would position God and the Devil as equals. Marx highlights that Augustine does not refer to the *'iura diaboli'* in his discussions about the redemption, but when referring to the devil's rights uses the phrase *'potestas diaboli.'* [10] He points to a passage from book 4 of the *De Trinitate* (*PL* 42.899-900) in which Augustine explains the Devil's power in terms of '*jure*' (right or justice), '*tanquam jure integro*' ('as it were by absolute right'), and '*velut aequo jure*' ('as it were by just right'):

> *'Morte sua quippe uno verissimo sacrificio pro nobis oblato, quidquid culparum erat unde nos principatus et potestates ad luenda supplicia jure detinebant, purgavit, abolevit, exstinxit…. Ita diabolus hominem, quem per consensionem seductum, tanquam jure integro possidebat …. in ipsa morte carnis amisit…. Quocirca etiam ipso Domino se credebat diabolus superiorem, in quantum illi Dominus in passionibus cessit; quia et de ipso intellectum est quod in Psalmo legitur, Minuisti eum Paulo minus ab Angelis (Psalm viii.6): ut ab iniquo velut aequo jure adversum nos agente, ipse occisus innocens eum jure aequissimo*

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[10] C.W. Marx, *The Devil's Rights and the redemption in the literature of Medieval England.* (D.S.Brewer, Cambridge, 1995): 13.

*superaret, atque ita captivitatem propter peccatum factam captivaret (Ephesians iv.8), nosque liberaret a captivitate propter peccatum justa, suo justo sanguine injuste fuso mortis chirographum delens [Colossians ii.14], et justificandos redimens peccatores.'*[11]  [By his death, the one most true sacrifice offered for us, he purged, abolished and destroyed whatever faults there were by which principalities and powers held us by right so that we should pay the penalty (imposed on us).  Thus the Devil, in that very death of the flesh, lost humanity whom he possessed as it were by absolute right, as one led astray by his own consent.  The Devil believed that he was superior to the Lord himself because the Lord yielded to him in his sufferings.  This is to be understood about him from what we read in the psalm, 'You have made him a little lower than the angels'.  In this way Christ himself being innocent and put to death by the evil one acting against us as it were by just right, might overcome him by a most just right, might make captive that captivity which was brought about through sin, and might free us from the captivity that was just because of our sin, destroying the handwriting of death and redeeming those sinners who were to be justified by his own just blood unjustly shed.']

In highlighting this passage, Marx emphasizes that Augustine uses the term '*ius*' not to mean 'an absolute, inalienable right over and above the power of God and something that God was obliged to respect' but rather something that appears 'to depend solely on humanity being in a state of sin.'  By removing mankind's sin, Christ's death destroys the basis of the Devil's rights over mankind and so frees them from his possession.

There is another important theme in Augustine's formulation of the redemption, that of the reconciliation of mankind with God.  Once he has described how the Devil was conquered, Augustine explains further:

*Hoc est quod justificari dicimur in Christi sanguine (Romans v.9).  Sic quippe in remissionem peccatorum nostrorum innocens sanguis ille effusus est.*[12] [It is because of this that we are said to be justified in Christ's blood (Romans v9).  For it was in this way that innocent blood was poured out in the remission of our sins.]

Here the justification leads to the forgiveness of sin and hence the reconciliation of mankind with God.  It was only the sin that was separating God and mankind so once that

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[11] Augustine PL 42.899-900 quoted and translated by Marx on p13.

[12] *PL* 42.1028

has been forgiven, they can be reconciled. There is no mention of the Devil in this transaction because he is irrelevant to it.

However, Augustine's writing also fits with another formulation of the redemption, the so-called 'ransom theory' arising from Matthew 20:28: *sicut Filius hominis non venit ministrari sed ministrare et dare animam suam redemptionem pro multis.* (Vulgate) ["Even as the Son of man is not come to be ministered unto, but to minister, and to give his life a redemption for many." (Douay-Rheims translation)]. Greek theologians such as Irenaeus, Origen and Gregory of Nyssa had asked to whom that ransom should be paid, and answered that since the Devil had possession of mankind justly as a result of the original sin, in order to free mankind and do justice to the Devil, God had to offer Christ as a ransom.[13] Their view was that God was tricking the Devil because, although Christ's performing of miracles had convinced the Devil that he was worth more than mankind, the Devil did not understand that Christ's divinity meant that he could not be held by the Devil. In this theory, there is also an implicit assumption that God has respect for the Devil's 'right of possession' of mankind, separate to his rights of power over them arising from the original sin, since God insists on treating the Devil 'justly' in removing mankind from his possession, even after Christ's suffering and death had negated the consequences of the original sin. Book 13, chapter 15 of the *De Trinitate*, explains:

> *In hac redemptione tanquam pretium pro nobis datus est sanguis Christi, quo accepto diabolus non ditatus est, sed ligatus: ut nos ab ejus nexibus solveremur,*

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[13] See *Gregory of Nyssa, Oratio Catechetica Magna, PG;* J. Rivière, *Le Dogme de la Rédemption: essai d'étude historique* (Paris, 1905) translated as, *The Doctrine of the Atonement: a historical essay,* by Luigi Cappadelta, 2 vols (London, 1909); H. Rashdall, *The Idea of Atonement in Christian Theology* (London, 1919); Gustaf Aulen, *Christus Victor: an historical study of the three main types of the idea of the atonement,* trans. A.G.Herbert, (London, 1931; rpt. 1950): 45.9-106.

*nec quemquam secum eorum quos Christus ab omni debito liber indebite fuso suo sanguinne redemisset, peccatorum retibus involutum traheret ad secundae ac sempiternae mortis exitium*[14] ["In this redemption, the blood of Christ was given as the price for us, by the acceptance of which the Devil was not enriched but bound, in order that we might be loosed from his bonds and in order that he might not draw with himself to the ruin of a second and everlasting death any of those enmeshed in the webs of sin whom Christ, being free from all debt, redeemed by the pouring out of his own blood which was not owed."][15]

The use of the vocabulary of 'the ransom theory' -'*redemptio*' and '*pretio*' – was a focus of attention for late medieval commentators who felt that this confused the two theories. However, Marx argues convincingly that 'the Augustinian formulation is ambiguous: as redemption is used here it seems to refer to the redemption in its widest sense, not just the freeing of humanity from the Devil. The blood of Christ was the price of the redemption; that is, the death of Christ was the means whereby humanity was reconciled to God and freed from the power of the Devil."[16]   In this reading of Augustine, the redemption is primarily concerned with the reconciliation of mankind with God and only secondarily with the defeat of the Devil.

Aers takes up an understanding of Augustine's focus being the reconciliation of mankind with God, and emphasizes the Christology at the heart of this idea.*[17]* He points to Augustine's observation that he wrote *De Natura et Gratia* to "defend grace, not as opposed to nature, but as that through which nature is liberated and controlled,"[18] in

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[14] *PL* 42.1029.

[15] Translation from Marx, 11.

[16] Marx, 12.

[17] (Notre Dame UP) 2009.  See chapters 1 on conversion and agency (pp 1-24) and chapter 4 for the importance of the relationship between the Samaritan and Seyuief (pp83-132).

[18] Augustine, *The Retractions,* trans. Mary I. Bogan. (Washington, DC:  Catholic University of America Press, 1999): 207.

combination with his argument in *Nature and Grace* that "if righteousness comes about through nature, then Christ died in vain" to show the importance to Augustine of Christ's role in the redemption. Augustine goes on to say that if, as Christians believe, Christ did not die in vain, then humanity is justified and redeemed by "the mystery of Christ's blood." [19] For Augustine, the sacrament of Christ is at the heart of Mankind's redemption: "the words of God [Scripture] make it perfectly clear that, apart from community with Christ, no one can attain eternal life and salvation."[20] Aers reads Augustine's City of God as a state of mind to be expressed both internally, in the turning of a mind to God, and externally, by a mind being 'indifferent to the customs, laws, and institutions of the earthly city in which it lives,' involving 'not inward emigration but dissent.'[21] Acts that tie the faithful to God are "acts of "compassion" involving neighbors and self, inseparably collective and individual, offered to Christ, the community's "great Priest" (X.6) [Augustine, *The City of God against the Pagans*[22]]. They constitute and build up the city that is the Church, the body of Christ."[23] In Aers understanding of Augustine, the Devil is truly insignificant in the redemption. He is merely the jailer who the penitent must see past to turn to Christ, before Christ leads him down the path of salvation. Until the sinful understand that there is more to life than the

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[19] Augustine, *Nature and Grace*, seriatim, 2.2, 7.7, 9.10, in *Answer to the Pelagians I.* Trans. Roland J. Teske. Ed. John E. Rotelle. WSA. Pt 1, vol 23. (Hyde Park, NY: New City Press, 1997): 225 – 75.

[20] Augustine, *The Punishment and Forgiveness of Sins and the Baptism of Little Ones.* Trans. Roland J. Teske. In *Answer to the Pelagians I.* Ed. John E. Rotelle. WSA. Pt 1, vol 23. (Hyde Park, NY: New City Press, 1997): 411 - 412.

[21] Aers, 5.

[22] Translated by Henry Bettenson. (London: Penguin, 1984).

[23] Aers, 6.

earthly concerns of the rule of self and submit themselves to be guided by Christ in their actions, they are a part of the "kingdom of death" *(CG XXII.29).*

Accepting Aers' reading would place Augustine firmly on the side of the "devil's rights theory" through his foregrounding of the role of Christ and minimalizing of the power of the devil. As many writers have investigated[24], it was the work of Anselm, *Cur Deus Homo*, that provided the first treatise on the subject of the redemption along with significant changes in the accepted understanding of its working. Anselm points out the logical fallacies in three strands of the 'Devil's rights' theory: firstly, the suggestion that God would deceive anyone misrepresents his divine nature:

> *Nam etsi veritas non omnibus se manifestat, nulli tamen se negat. Ergo, domine, nec ut falleres nec ut aliquis se falleret, sic fecisti; sed ut faceres quod et quomodo faciendum erat, in vertiate per omnia perstitisti.* [Though truth does not reveal itself to everyone, it denies itself to no one. Therefore, O Lord, you acted thus neither to deceive nor induce deception in others. But that you might do what had to be done in a particular manner, you stood firm in the truth at all time] (*Meditatio Redemptionis* 42-45; *Opera* 2.3.85);[25]

secondly, man cannot put rules on God and suggest that he is governed by any law other than his own so there can be no 'right of possession' over any of God's creatures:

> *An aliqua necessitas coegit ut altissimus sic se humiliaret, et omnipotens ad faciendum aliquid tantum laboraret? Sed omnis necessitas et impossibilitas eius subiacet voluntati. Quippe quod vult necesse est esse, et quod non vult impossibile est esse. Sola igitur voluntate, et quoniam voluntas eius semper bona est, sola hoc fecit bonitate.* [Did some necessity force the Most High thus to debase himself or the Most Powerful to struggle so hard to accomplish some end? Is not all necessity and impossibility subject to his will? Surely, what he wishes

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[24] Contemporary commentaries such as the *Sentences* of Peter Lombard (c1100 – 1160) did not mention Anselm's work and it is not until Alexander of Hales's (1186-1245) commentary on the *Sentences* of Peter of Lombard that Anselm's influence is clear. See R.W.Southern, *The Making of the Middle Ages.* (London, 1953): particularly 223-227; G. R. Evans, *Anselm and a New Generation* (Oxford, 1980); Marx 17-27; Richard Firth Green, Richard. *A Crisis of Truth,* Chapter 9.

[25] S. Anselm, *Anselmi Cantuariensis Archiepiscopis Opera Omnia.* Ed. F. S. Schmitt. 2 vols. (Stuttgart: Frommann, 1968). Translated by Green, *Ibid*, 348.

must happen, and what he does not wish is impossible. Therefore, it was by his will alone.... for there was no compulsion for God to save the human race in this manner.] (*Meditatio Redemptionis* 59-64; *Opera* 2.3.86.);[26]

and lastly, there is an impossible legal dualism implied in a bargain between God and

the Devil:

> *Cum autem diabolus aut homo non sit nisi dei et neuter extra potestatem dei consistat: quam causam debuit agere deus cum suo, de suo, in suo.* [Since the devil, or man, can only be God's creatures, and neither may exist outside the power of God, how should God engage in a lawsuit on behalf of one of his own, concerning one of his own, and against one of his own?] (*Cur Deus Homo* 1.7; *Opera* 1.2:56-57).[27]

Instead of Augustine's 'Devil's rights theory', Anselm understands the defeat of

the Devil in terms of righting the insult to God which was the effect of the Fall. The

great ease with which Mankind turned away from God must be matched by an equally

great difficulty in order to right that wrong. Thus, the death and suffering of Christ, in his

mortal form the most worthy of all mankind, is the only price high enough to atone for

original sin:

> *Si homo per suavitatem peccavit: an non convenit ut per asperiatatem satisfaciat? Et si tam facile victus est a diabolo ut deum peccando exhonoraret, ut facilius no posset: nonne iustum est ut homo satisfaciens pro peccato tanta difficultate vincat diabolum ad honorem dei, ut maiori non possit? An non est dignum quatenus, qui se sic abstulit deo peccando, ut se plus auferre non posset, sic se det deo satisfaciendo, ut magis se non possit dare?"* [If humanity sinned with ease, is it no proper that it make satisfaction with difficulty? And if humanity was conquered by the Devil so easily that it could not more easily dishonour God by sinning, is it not just that humanity, in making satisfaction unto God for sin, should experience the greatest possible difficulty in overcoming the Devil, to the honour of God? Is it not worthy that humanity who has thus separated itself from God by sinning so that it could not separate itself further should give itself to god in satisfaction to such an extent that it cannot give itself more?][28]

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[26] *Ibid.,* 350.

[27] *Ibid.*

[28] Anselm, *Cur Deus Homo*, book 2, chapter 11, p111. Quoted and translated by Marx, 18.

In this formulation, the defeat of the Devil is an integral part of the redemption because it is so closely related to the dishonoring of God manifested in the Fall.  The justice of God's treatment of the Devil is not related to any right of possession, or any other right that the Devil might be thought to have had, but rather is a fair punishment for the Devil for his part in the fall.  The Devil's treason means that it is only right that he should have mankind removed from his power:

> *Cum autem diabolus aut homo non sit nisi dei et neuter extra potestatem dei consistat:  quam causam debuit agere deus cum suo, de suo, in suo, nisi ut servum suum puniret, qui suo conservo communem dominum deserere et ad se transire persuasisset, ac traditor fugitivum, fur furem cum furto domini sui suscepisset? Uterque namque fur erat, cum alter altero persuadente se ipsum domino suo furabatur.  Quid enim iustius fieri posset, si hoc deus faceret?* [However, since neither the Devil nor humanity belongs to anyone but God, and neither exists without the power of God, what cause ought God to try with his own creature except to punish his own servant [i.e. the Devil] who had persuaded his fellow servant [*suo conservo*, i.e. humanity] to desert the common lord and to come over to him and as a traitor, took a fugitive, as a thief, took a thief with what had been stolen from his own lord?  For each one was a thief, since one stole himself from his lord when the other persuaded him.  For, what could be more just than for God to do this?][29]

For Anselm therefore, the Devil is a servant of God, a jailer who must follow God's laws alongside all of God's creatures.  His treasonous deception and theft is therefore subject to the same punishment meted out to anyone breaking God's laws.  He holds mankind in hell by God's permission only and that permission can be removed at any time that man has been reconciled with God.

The contemporaneous writing of Hugh of St. Victor (d.1142) includes his description of the redemption in *De Sacramentis*, book 1, part 8, *De Reparatione*

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[29] Anselm, *Cur Deus Homo*, book 1, chapter 7, pp56-7.

*Hominis*[30] and, in many respects, Hugh views the redemption in a similar framework to that of Anselm: the Devil is permitted to hold humanity because of the original sin so mankind's captivity is just, but, at the same time, the Devil holds humanity unjustly because of his part in the original sin:

> *…quia diabolus nunquam meruit ut hominem sibi subjectum premeret, sed homo meruit per culpam suam ut ab eo premi permitteretur .…Juste ergo subjectus est homo diabolo quantum pertinet ad culpam suam: injuste autem quantum pertinet ad diaboli fraudulentiam.* [..while the Devil never served to hold humanity subject to him, humanity, because of his sin, deserved to be allowed to be held by him (the Devil). Therefore, humanity was justly subject to the Devil because of its own sin; however, the Devil because of hi deceit, held humanity unjustly.][31]

Contrary to Anselm, however, Hugh sees Mankind as being subject to the power of the Devil and in need of a patron by whose power the Devil can be brought to trial. The need for satisfaction in order to free Mankind follows from this thinking:

> *Si igitur homo talem patronum haberet cujus potentia diabolus in causam adduci posset, just dominio ejus homo contradiceret; quia nullam diabolus justam causam habuit quare sibi jus in homine vindicare debuerit. Patronus autem nullus talis inveniri poterat nisi solus Deus, sed Deus causam hominis suscipere noluit, quia homini adhuc pro culpa sua iratus fuit. Oportuit ergo ut prius homo Deum placaret, et sic deinde Deo patrocinante cum diabolo causam iniret.* [If humanity had such a patron by whose power the Devil could be brought to trial, humanity might with justice oppose the dominion of the Devil, since the Devil had no just cause by which he should lay claim to a right over it. However, no such patron could be found except God alone, but God did not wish to take up humanity's cause because He (God) was still angry with human kind because of sin. Therefore it was necessary that humanity first placate God and then, with God acting as patron, humanity could take up its cause against the devil.][32]

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[30] Hugh of St. Victor, *De Sacramentis Christianae Fidei, PL* 176.173-618, '*De Reparatione Hominis'*, cols 305-18.

[31] Hugh of St. Victor, *De Sacramentis Christianae Fidei, PL* 176.308; quoted from Peter Lombard, *Sententiae in IV Libris Distinctae,* 3rd edn, 2 vols, Spicilegium Bonaventurianum, 4 and 5 (Rome, 1971-81), Sentences II 127; quoted and translated by Marx, p24.

[32] *PL* 176.308

Hugh does not suggest that the Devil has any rights of possession over Mankind but does see his power over Mankind as dependant on a state of sin. For Hugh, more than Anselm, the redemption is an act of Mercy on God's part so the concepts of justice and Mercy are inextricably linked.

In a separate commentary, *Adnot. In quosdam Psalmos David,* Hugh describes the Virtues' debate before God.[33] That it was a common subject for commentary at this time is clear from the fact that it can also be found in sermons attributed to St. Bernard[34], Werner von Ellersbach (Abbot of St. Blasien)[35], Peter Comestor[36] and Stephen of Tournay[37] as well as in an English tract on Vices and Virtues[38], and two pieces of French dramatic verse. Most extensively, the same allegoric expansion is developed in Robert Grosseteste's Chasteau d'Amour written in Anglo-Norman sometime between 1230 and 1253[39] and translated into Middle English in whole or in part in at least four versions, the closest of which was known in its English translation as the *Castle of Love*. The central theme of the *Chasteau* is the redemption with the first part of the story told through the allegory of the debate of the four daughters of God. Marx has shown that the early work of Sajavaara claiming that Grosseteste conceived the redemption in terms of the 'Devil's rights' does not explain those parts of his thinking indicated by his other writings and

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[33] *Adnot. In quosdam Psalmos David,* cap. Lxiii (Migne, Patr. Lat. Vol. clxxvii, cols. 623-5).

[34] *in Festo Annunc. B.M.V.* A.D. 1140 (Migne, clxxxii, 383-90).

[35] Hope Traver, *The Four Daughters of God: a study of this allegory with especial reference to those versions in Latin, French and English.* (Philadelphia, J.C. Winston, 1907):12.

[36] *de. Adv. Dom.* (Migne, cxcviii, 1736-7)

[37] Hauréau, B. *Notices et Extraits de Quelques MSS. Lat. de la Bibl.Nat.* Vols. Iii, p260, iv, p6, v, p137.
[38] c 1200. EETS ed. OS 89: 112-6.

[39] Kari Sajavaara ed. "The Middle English Translations of Robert Grosseteste's *Château d'Amour,*" *Mémoires de la Société Néophilologique de Helsinki*, 32 (Helsinki, 1967) 43-48.

sermons contained in his *Dictum 10* (or *Sermo 44*)[40] where Grosseteste uses Anselm's master-servant analogy for the relationship between God and the Devil. Even though he describes Christ as a buyer paying a price to God for humanity's freedom and then also to the Devil for humanity's release, he is not following the ransom theory of Gregory of Nyssa *et al* because the ransom is paid to God, not the Devil, in order that Mankind might be reconciled with God, which is consistent with Augustine and the patristic writers' formulation of the death of Christ being the price of redemption. The result is that in *Dictum 10*, Grosseteste appears to be blending both patristic and Anselmian strands of theological explanation of the redemption.

In the *Chasteau*, the redemption is understood again in the terms of the master-servant relationship where God is the king, Christ his son, and the four virtues his daughters. The main source for this version of the redemption is the Latin *Rex et Famulus* sermon[41] but Grosseteste adds the need for Mankind to find someone to take up his cause. Man is a servant who has disobeyed the king, and the Devil is his jailer. Since Man has lost his freedom he cannot plead in court but needs a patron (*patronus*), someone who is free, to plead for him and give satisfaction, an idea which may have been drawn from the writings of Hugh of St. Victor mentioned earlier. However, there is an important difference from Grosseteste's main sources, and from Hugh of St. Victor, which is Mercy's plea that Mankind should be released because he was deceived into the fall. This idea was a part of the justification for the redemption in the writings of

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[40] The full text of Dictum 10 with a translation from two early manuscripts is printed as Appendix 3 to Marx, *The Devil's rights and the redemption*.

[41] Sister Mary Creek, 'The Four Daughters of God in the *Gesta Romanorum* and the *Court of Sapience'*, *PMLA*, 57 (1942): 952-4.

Gregory of Nyssa, Irenaeus and Augustine while those texts following in the Anselmian

tradition took it one step further to argue that the deception nullified the Devil's rights of

possession.  Since Mercy's speech suggests that she sees no further reason why Mankind

should not be returned to God, Grosseteste is following the later view:

> Kar oez donkes ma preere,
> Pur cel dolent, cheitif prison,
> Ke venire peust a rancon,
> Ke en mi ses enemis
> Avez en grief prison mis,
> Ki par premesse li trairent
> Par unt trespasser li firent,
> La premsess li fauserent
> Kar fauseté lur seit rendu
> E le prison a mei rendu (Chasteau, ll 260-270)[42]

[Therefore, now hear my prayer for this pitiful wretched prisoner so that he, whom you have placed amongst his enemies in terrible prison, might have the benefit of ransom. His enemies betrayed him with a promise whereby they caused him to sin; they perverted the promise for him because they always sought falseness, and their falseness may be repaid and the prisoner returned to me.]

This is consistent with Christ's response to the Devil's later claim that he has rights over

Mankind because of the original agreement that Mankind should come under his power

as a result of original sin.  Christ counters the Devil's claims with the Anselmian view

that the deception of the Devil at the fall negated the agreement then so he never held

Mankind by right but only at God's will:

> Li covenanz fu bien tenu,
> Meis tu primes le enfreinsistes,
> Kant en traison li desistes:
> 'Tu ne murras pas pur tant
> Einz serez cum Deu sachant"?
> De le fet fustes Acheson,
> Ores esgardez donc reson,
> Veus tu del covenant joir
> Kant covenant ne veus tenir?  (Chasteau ll.1040-48)

[The covenant was well maintained, but was it not you who broke it first when you in an act of treason said to him, "You will not die because of this but will be wise like God?"

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[42] Quoted and translated by Marx, 68-69.

You were the cause of what happened. Now then you see the reason. Do you want to enjoy the benefits of the covenant when you are not able to maintain it?]

In a further following of Anselmian theology, the ransom to which Mercy refers is not to be paid to the jailor Devil but to the King, i.e. God. Significantly, the Devil plays no part in this transaction since the ransom was the price of reconciliation of Mankind with God alone. The pseudo-Bonaventuran *Meditationes Vitae Christi* offered a description of the four daughters of God debating the significance of Christ's birth and death in similar terms.

In Langland's framing of the debate of the four daughters of God, just as in the *Chasteau,* Mercy argues for the redemption on the basis of the Devil's deception of humanity at the fall, and Peace's role is expanded to include a prophecy of the redemption, and a reworking of the idea of the purpose of the fall being that having experienced evil Mankind might better understand good. Langland then proceeds to follow the Augustinian 'Devil's rights' theory of the redemption through Lucifer's claim that the only way Christ can take humanity is by overpowering him because he holds Mankind by right:

> If he reve me of my right, he robbeth me by maistrie;
>
> For by right and by reson the renkes that ben here
>
> Body and soule beth myne, bothe goode and ille.
>
> For hymself seide, þat Sire is of heuene,
>
> If Adam ete þe Appul alle sholde deye
>
> And dwelle wiþ vu deueles; þis þretynge dri3ten made.      (B.XVIII: l276-281)

His argument is that since the law that God set down to Adam and Eve was that if Adam were to eat the apple then all people would die and he, Lucifer, would have possession of

their souls, then a strict adherence to God's own decree will not permit him from taking back those souls by force alone (ll B.XVIII.283-4). His second strand of argument is that since he has had possession of man's soul for seven thousand winters, he has the rights associated with long possession:

'And siþen I was seised seuene þousand winter

I leeue þat lawe nyl no3t lete hym þe leeste.' (B.XVIII.1283-4)

Both of these arguments can also be found in the *Chasteau* and Hugh of St. Victor's debate between God and the Devil. However, Gobelyn points out to Lucifer the Anselmian view that

'God wol noght be bigiled … ne byjaped.

We have no trewe title to hem [the souls], for thorugh treson were thei dampned.'

(B.XVIII.291-2).

The same rebuttal of any claim to rights over mankind the Devil might claim is taken up by Christ when he enters Hell which suggests that Langland was arguing against the patristic ideas of the Devil's rights of possession and the requirement that God treat the Devil justly. The theological problems arise when Langland uses the weak form of the Devil's rights theory alongside the more modern formulation of Anselm.

What is clear from looking at the different strands of redemption ideology is that there were major theological differences about the harrowing of hell. As Richard Firth Green explains so fully,[43] Langland provides no coherent theological dogma of the

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[43] Richard Firth Green. *A Crisis of Truth*. Chapter 9, "Bargains with God," explains in great detail the logical problems faced by theologians in attempting to understand the covenant in legal terms and the occasions on which the scenarios Langland creates for his argument in *Piers* inevitably result in procedural solecism.

covenant because there was no agreed dogma on which he could rely.[44]   Langland

appears to follow the "Devil's rights" theory of the covenant while orthodox theologians

of his time were following Anselm's rebuttal of this theory some three hundred years

previously.   Green suggests that the reason for this literary use of pre-Anselmian

soteriology may be that an active God who will go into battle on behalf of mankind is

psychologically more appealing than a God who neither gives nor respects rights[45];

while that God may never break his word, he will also let mankind battle alone with the

devil, neither party having any more rights than the other to his notice.   A God who

confronts the Devil for man's soul is certainly more dramatic; in *Piers Plowman*, that

drama is acknowledged by Will's witnessing of the harrowing of hell, and then rushing

dramatically to Mass when he awakes from his dream on Easter morning, overwhelmed

with a new understanding of the importance of Christ's role in his redemption.

This is a problem going back to the covenant itself.   As McGrath illustrates, "any

covenant theology runs the risk of diminishing God's spontaneous graciousness and of

making God appear under an obligation to man."[46]   Nevertheless, it is natural for humans

to want something to reassure them that salvation is possible for them, and a promise, a

"troth," from a trustworthy God is suitably comforting, even as logic simultaneously

demands that an omnipotent God is not fettered in any way.   Clearly, the two positions

are diametrically opposed - and as they sit at the heart of the religious questions Langland

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[44] Marx attempts to read Augustine in ways that agree with Anselm but the important fact for the purposes of this project is that medieval readers of Anselm did not interpret his writings in that way.

[45] This expands on Alford's comment that Langland is seeking a poetic solution full of drama and confrontation between Christ and the Devil for the soul of man.

[46] Alister E. McGrath, "The Anti-Pelagian Structure of 'Nominalist' Doctrines of Justification." *Ephemerides Theologicae Lovanienses 57* (1981): 117.

is addressing, it is not surprising that there are problems in some of the legal metaphors he is trying to negotiate.

So does mankind have rights to salvation or not?  Langland seems to think so, for Pacience tells Haukyn:  "Forthi al poore that pacient is, may [asken and cleymne], / After hir engynge here, heveneriche blisse" (B.XIV.260-261).  This is what the dreamer spends the central part of the poem trying to understand when he looks at the idea of baptism as a contract.  Green puts the dilemma clearly:

> Dowel, the argument runs, is either possible for sinful humanity or it is not.  If it is not, how can God justly enter into a contract whose fulfillment is impossible? If it is, how can God justly deny salvation to the virtuous unbaptized, since those who respect a contract that is not even formally binding on them might be argued to be more virtuous than those who are legally obliged to respect its terms?  The first horn of this covenantal dilemma threatens to undermine the importance of good works, the second the sacrament of baptism.[47]

Eventually, again, the legal problem comes down to a religious question unclear in the Bible.  Is it faith or good works or a combination of the two that is needed to get into heaven, or are these irrelevant as predestination has already chosen those whose names are written in the book that will evidence the ultimate contract on the Day of Judgment? Is the only way to be sure of salvation to throw oneself on God's mercy?  Marx sees the Anselmian tradition as the historical theological context for all of Langland's choices but is there another framework that might provide a more cohesive answer?


## A legal frame for the redemption

Since Langland has chosen a legal vocabulary through which to portray the redemption, can the redemption be explained in contemporary legal terms?  Green has shown the logical and legal impossibility of having mankind both as party to the dispute,

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[47] Green, 363.

the plaintiff who is championed, and the object of the dispute, the fee in demand, and he also shows in great and clear detail many more legal problems – both logical and procedural – that arise because "weak forms of the devil's rights theory, in which Lucifer's title to humanity is shown to be unfounded (B.18:286-92), stand alongside strong forms, in which Christ is reduced to trickery in order to outwit his opponent."[48] As Alford has shown, the common law theories of property rights are not much help either:[49] Viewed through the lens of the laws surrounding feudal rights, because of the original sin, Man, through his agent, Adam, has put himself in the analogous position of a serf in bondage to the Devil because of the biblical law in John 7:34 that "Whosoever committeth sin is a servant of sin." Under this relationship, whilst he can deal as a free man with others, against the Devil's claims, Man has no rights at all: he cannot buy his freedom because everything he owns belongs to his lord; he cannot appeal to a court of law for his freedom because the appeal would not be against the Devil but against the law that put him in bondage in the first place. Thus the legal analogy demands a third party to intercede if man is ever to be freed, and that third party must be God since only a free man, i.e. someone not descended from Adam, or someone not a servant of the Devil because of some other sin, would have *locus standi*, the right to bring an action, to be heard in court. As Alford puts it, by this theory 'the Incarnation became a legal necessity.'[50]

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[48] *Ibid.,* 362.

[49] "Literature and Law in Medieval England." *PMLA* 92 (1977): 943-946.

[50] *Ibid.,* 944.

However, although Christ has theoretical *locus* to pursue his legal title to man (now reduced to the status of property), under the common law he would fall foul of the land law tenet of 'seisin' or 'possession,' which stated that the person in possession of a property had a proprietary right to it unless anyone could prove an older right. Since the statute of limitations on this right prevented anyone challenging a title predating the reign of Richard I in 1189, just two hundred years previously, legal custom would leave possession with the Devil, since he had possession of mankind for seven thousand years. Strict adherence to the rights enshrined in the letter of the law would not enable Christ to regain his property.

It would only be with an appeal to the King's sense of justice, his 'reason,' in the court of equity that Christ might have purchase. Birnes suggests that Langland is referencing the 'new' law of equity to reflect the developments in the law during the reigns of Edward III and Richard II. He argues that "Christ, as the bringer of the New Law, demonstrates that Lucifer's trickery constituted an injustice under the Old Law, and the New Law, equity, because it concerns itself with the spirit of justice, can remedy the injustice and release man from Hell."[51]

However, Alford points out that the contemporary law on deceit which deemed a claim invalid if possession had been obtained through fraud allowed the plaintiff only to recover damages and not possession, so does not fit the circumstances of the redemption. Furthermore, the principle of good faith on which that law was based was not a feature of the English civil law but rather of the canon law which followed the Roman law principle that time ran on a transaction only "if the possessor had acquired under a *justus titulus* …

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[51] W.J. Birnes, 'Christ as Advocate: the legal metaphor of *Piers Plowman*', *Annuale Mediaevale*, 16 (1975):72.

and was in good faith at the beginning of his possession.'[52]  Langland's construction of

the redemption passage therefore seems neither to be following a particular theological or

legal framework.  How then can Christ be saying that he comes to fulfill the law?

**The need for 'right' and 'reason' to fulfill the law**

Christ argues that he will ransom his lieges by 'right' and 'reason.'  Although the

MED shows that right and reson were used in common parlance in conjunction with each

other, it is clear from Langland's use of them separately at the heart of his poem that their

individual meanings were important.  Reason appears in Langland as 'Reson' but the

most common forms found in the Year Books also include *raison* and *reason.*

Furthermore, '*ratio*' is often translated as reason[53].  The Oxford English Dictionary and

Middle English Dictionary show that reason's primary meaning is the intellectual faculty

and its use, sensible judgment, good sense, logical consideration and speculation.  Its

connection to wisdom and good judgment can be seen in the phrases '*in (of) his resoun*' –

in his mind, and its opposite '*oute of resoun*' – out of one's mind with fury, beside

oneself; in '*resoun willeth*' - reason requires and '*resoun wil excusen*' – good sense will

excuse; and, '*in his resoun'* – in his wisdom.[54]     In the same vein therefore, '*ayen(es)

resoun'* meant foolish, unreasonable or wrong or madly or senselessly.

Reason was also used to denote an action or proceeding agreeable to reason, that

which is reasonable.  It includes an understanding of that which is right, proper or

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[52] Gabriel LeBras,  "Canon Law" in *The Legacy of the Middle Ages,* eds. C.G. Crump and E. F. Jacob
(Oxford:  Clarendon, 1926): 356 quoted by Alford, "Law and Literature in Medieval England": 945.

[53] See chapter 3 for examples.

[54] An example of this is seen in Chaucer's Knight's Tale[54] when Theseus forgives Palamon and Arcite:
"And although þat his ire hir gilt accused / Yet in his reson  he hem bothe excused.' (lines 1765-6).

customary. Thus to '*ben no resoun*' was to be wrong, foolish or unreasonable while to '*bringen to resoun*' was to bring someone to behave reasonably, to '*heren resoun*' – to take a reasonable view of something. Importantly, this meaning includes the idea of doing right or justice. So to '*don resoun and right*' was to treat (sb.) properly, to do right by them and '*bi resoun min ouen,*' meant by virtue of my own sense of right. In this vein, to '*don resoun*' was to do justice and to '*haven resoun*' to obtain satisfaction for a grievance. To '*haven (right and) resoun*' was another way of saying to have justice, common parlance separating the two terms as Langland does.

Another use of reason was as an account or a reckoning: to '*asken (don, setten) to resoun*' was to call to account or question; to '*don resoun*' meant to render an account and to '*putten to resoun*' to call to account; to '*yeven resoun*' was to account for one's actions to somebody. In this same line of thinking 'resoun' could also be used to indicate income or revenue, or compensation or payment for services rendered. Thus it could be used to indicate a miller's measure and it is similarly appropriate as an underlying theme when Christ uses it at the harrowing of hell, for he too is demanding a reckoning or accounting.

More generally, resoun might be used to mean speech, talk or discourse so that 'setten a resoun' meant to engage in talk, to be '*ful of resoun*' was to be argumentative and to '*yelden resoun*' was to offer a defense. A reason might be a story, narrative or tale, or an account or report. It might also be a riddle or a proposal, plan or scheme or indicate a petition or request. In medicine it was a recipe for compounding a medicine.

These many significations of 'resoun' are reflected in the number of changing ways in which Langland uses the term throughout the poem. When Anima tells Will that

"It were ayeins kynde,' .. 'and alle kynnes reson

That any creature sholde konne al, except Crist oon.' (B.XV.53),

he acknowledges that there are many kinds of reasons and many ways of construing the term.  Importantly, as we shall see, it is Christ alone, who can expect to know everything.  Most simply, Langland uses Reson simply to mean argument:  in Passus II Holi Chirche warns Will against Mede saying that he will only need to 'put forth thi reson' for turning away from her when 'Leaute be Justice / And have power to punysshe hem [Mede, Fals Fikel-tonge, and Lieres].' (B.II.48-49); and similarly, in Passus X, Dame Studie refers to clerkes who 'bryngen forth a balled reson' in trying to work out the nature of God.  Likewise, sober, serious arguments are described in Passus XV as 'sadde reson.'[55]

It is only late in the poem, in Passus XV, that Anima quotes Isidore of Seville's *Etymologies* to explain that

'whan I deme domes and do as truthe techeth,

Thanne is Racio my righte name – "reson" on Englissh';

i.e. Reason is the soul's capacity to make moral judgments.  However, by this point in the poem, that has not been consistently apparent.  At the beginning of that same Passus, Will had been raving in 'that folie' of trying to 'knowe what was Dowel' 'Til reson hadde ruthe on me and rocked me aslepe.'  Here reson brings about an end to his raving and a return to order.  This use of 'reson' as order is a frequent theme:  For example, Holi Chirche enumerates the three things that men need to live saying that she will 'rekene hem by reson'[56] so that Will can declare them later.  Nevertheless, just a few lines later Holi Chirche reminds Will of the gospel teaching to render to Caesar that which belongs

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[55] B.XV.510.

[56] B.I.22.

to Caesar and to God the things that are God's (Mt. 22:21) 'For rightfully Reson sholde rule yow alle' (B.I.54). This is not so clear as it could be glossed both as 'it is right that you should all be ruled by Reson i.e. the letter of the law' and also as 'you should be ruled by the letter of the law in so far as it enforces what is right i.e. moral.' In this instance, the personified Reson could require that the additional element of morality to be added to questions of order and judgment. Likewise, in line 94, Holi Chirche says that 'Kynges and knyghtes sholde kepe it by reson' but again it is not clear what the pronoun now refers to which impacts the meaning of reson. If the 'it' refers back to Treuthe which is the main subject of Holi Chirche's speech, the many aspects of Christianity that can be described as Christian truths are possible referenced subjects, and moral judgments can be added to the meaning of the phrase i.e. the kings and knights should act according to Christian teachings. Alternatively and more specifically, the subject of the previous use of the 'it' pronoun is the Gospel of Luke's claim of the divinity of God so if this is the referenced subject the Kings and knights would be guarding against non-believers. The situation is only complicated by the following lines: Holi Chirche goes on to say that they should

> 'Riden and rappen doun in reaumes aboute
>
> And taken *transgressores* and tyen hem fast
>
> Til treuthe hadde ytermyned hire trespass to the ende.'

which could reference either a general duty to maintain order in the kingdom or a more specific duty to uphold Christianity throughout the realm. Is Langland referencing order, Christianity, the divinity of God or biblical law, or all of the above in his 'reson'?

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In Passus III, Conscience separates the concepts of right and reson in describing the actions of the good King David in the Bible when he praises werkes that are done both 'with right and with reson' behind them.[57] 'Reson' has taken on the role of representative of the civil law while 'right' represents the moral code or canon law. The ideas are related but separate. Conscience then says:

I, Conscience, know this for kynde Wit it me taughte –

That Reson shal regne and reaumes governe. (B.III.284.)

The term Reson seems to have switched back to denote a moral judgment that was not included before. Similarly, when Will is speaking to Scripture in Passus XI, he argues that

though a Creisten man coveited his Cristendom to reneye,

Rightfully to reneye no reson it wolde.' [Even though a Christian wanted to

renounce his Christianity, there is no reason that would allow him to renounce it]

(B.XI.125-6).

This implies that Reason would be making a moral judgment, but Will then extends his argument with a legal metaphor that bases itself firmly in civil land law:

For may no cherl chartre make, ne his c[h]atel selle

Withouten leve of his lord - no lawe wol it graunte.' (B.XI.127-8)

The comparison of the lapsed Christian with the villein who has left his manor cleverly conflates civil and biblical laws through its emphasis on the similar result in both, i.e. that neither Christian nor villein can escape his debt because he will be followed by Civil law, in the form of Reason, and divine law, in the form of Conscience:

'Ac Reson shal rekene with hym and rebuken hym at the laste,

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[57] B.III.239.

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And Conscience acounte with hym and casten hym in arerage,

And putten hym after in prison in purgatorie to brenne

For his arerages rewarden hym there right to the day of dome.' (B.XI.131-2)

Contrastingly, 'reson' next appears in the discussion between Haukyn and Pacience now representing the letter of divine law, a sort of divine formalism. Pacience says that at their day of reckoning,

the poore dar plede, and preve by pure reson

to have allowaunce of his lord; by the lawe he it cleymeth.' (B.XIV.108)

At this point, reson appears to represent the arguments made by Jesus that the poor shall inherit the kingdom of heaven (Matthew 5:3, Luke 6:20)**,** ie. now to refer to biblical law.

Alford suggests that the best way to make sense of all of these meanings is to understand the idea of reason within the concept of 'Truth.' He points to Augustine's understanding of divine or natural law as "truth" in *De vera religione*: 'Transcending our minds a law appears and this is called Truth.'[58] He notes that since the Bible itself used the term *veritas* often to signify justice – see for example Romans 2:2: '*Scimus enim quoniam iudicium Dei est secundum veritatem in eos qui talia agunt*' (Vulgate) [For we know that the judgment of God is, according to truth, against them that do such things][59] – by the medieval period, Augustine's understanding that *veritas* referred to justice had become a commonplace. It appears with this reference in the letters of Gregory VII and Urban II and has a prominent place in Gratian's *Decretum* and hence in canon law.

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[58] J. –P. Migne, ed., *Patrilogiae ... Cursus Completus*, Series secunda (Latina), 34:147 quoted by John Alford, "The Idea of Reason in Piers Plowman"*, Medieval English Studies Presented to George Kane*: 202; cf for a description of Aquinas' use of the same idea see *Ibid.,* 202, n15.

[59] Douay-Rheims Translation.

Moreover, the link of Christ with the law and truth was prominent because of Augustine's understanding of Christ's words in John 14:6 'ego sum veritas' [I am the Truth].  The result of this understanding of the concept of truth is that it is ultimately a function of the intellect rather than a command of the will since the natural law is an instinctive function of the intellect[60].  Only an understanding of reason as the revealer of natural law and divine order makes sense of all of reason's meanings.  It is both that which is understood and that which understands.  Man's reason is what enables him to understand God's grace.

Aers unites these ideas in his work on Augustine's Christology and the symbolism of Langland's allegoric use of the parable of the Good Samaritan by showing how Langland emphasizes the importance of grace in his retelling of the parable.  When Will is in conversation with Faith and Hope (in the forms of Abraham and Moses respectively), confused as to whether he should follow the law of the Old or New Testament, they see a man

> 'wounded, and with theves taken.
>
> He myghte neither steppe ne stande, ne stere foot ne handes,
>
> Ne helpe himself smoothly, for semyvif he semed,
>
> And as naked as a needle, and noon help abouten.' (B.XVII.55-58)

Faith and Hope are appalled by the condition of this man and hurry by him since the teachings they have been impressing upon Will cannot help this man.  The man is only half-alive, 'semyvif' (the "semivivo relicto" of Luke 10:30), and his inability to help himself is emphasized by his immobility and nakedness.  It is only Christ the Samaritan who sees that without immediate treatment, 'rise sholde he nevere," and knows what to

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[60] See chapter 3 for a full explication of this idea.

do. He immediately washes his wounds, lays him in his lap and takes him to a farmhouse

called *lex Christi*, (the law of Christ), where he pays for his treatment and promises more

payment on his return before hurrying "to Jerusalem the righte wey to ryde." (B.XVII.81)

Aers illustrates how within the allegory,

> "the Samaritan is both Jesus Christ and, as most exegetes also observed, "keeper"
> [*custos*], the keeper of the weak. He comes as the essential mediator and
> reconciler, bringing oil and wine for the endangered man: respectively pardon
> given for the reconciliation of mankind and the "incitement to work fervently in
> spirit," or "the anointing of the chrism" and "sanctification" through the blood of
> Christ's passion…. This model for thinking about salvation and sin is profoundly
> Christological, with a strong sense that the consequence of sin undermines the
> natural, God-given powers of the soul and their due fulfillment, paradoxically,
> once more, through the gifts of grace."[61]

It is important that the result of Will's bearing witness to the Samaritan Christ is that he

follows after him, drawn to offer his service freely and so, finally, to find himself on the

road to redemption, the very model of a man drawn to Augustine's *City of God*.    Aers

shows how Langland's portrayal of the parable and then the harrowing of hell in these

terms emphasizes that only when the biblical law is understood within the context of

God's grace and the salvation offered through Christ, will mankind be redeemed.  It is

Mercy that is at the heart of the redemption story, Mercy at the heart of justice.

Aers' reading of Augustine and his exegesis of the parable of the Good Samaritan

explains the emphasis created by Langland's choice of a legal framework for the

harrowing of hell.  Will has been seeking advice from all quarters as to how to find

salvation, aware that his instinctive understanding, his human reasoning or 'kynde'

Reson, can only get him so far.  He knows enough to know that he needs divine help and

seeks it through Holy Churche.  He receives all that the earthly church can offer him in

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[61] Aers, 90-91.

the form of instruction on the Old Testament law, on the life of Christ, on the Trinity (from Abraham/Faith), on the new Testament command of love (from Moses/Hope) but is still lost. He is semyvief because, despite his baptism, he is still separated from God by the inherited iniquity of the Fall. As the debate of the four daughters of God reveals, a rigid understanding of the law of the Old Testament leaves him suffering eternally. It is Christ who brings salvation, in the form of 'right' and 'reason.' What Will's own reason could not show him, is, paradoxically, revealed through his turning to Christ instinctively. Christ's example inspires Will freely to turn and follow him, and so take the first step towards redemption. Christ's Mercy allows all of the meanings of 'riht' and 'reason' to come together to save Mankind. An understanding of the grace of God, expressed through Christ's harrowing of hell, allows for Mankind to be dealt with justly. Just as Man's birthright is to inherit the sinfulness of the Fall, so too is it to inherit the possibility of salvation in Christ. Thus to redeem Mankind, Christ relies simultaneously on the 'riht' of the biblical law, of his place in the Trinity, of the justice of his Mercy and his love, of Man's birthright, as well as the 'reason' of the proper order, of justice, of a reckoning for Mankind, of Man's understanding of a renewed relationship with God, on an unequivocably legal understanding of 'reason.'

# Chapter 3:  Reason in the courtroom: the origin of legal authority?

In order to see the issues Langland is working with in the poem through his necessary framing of the redemption in legal terms, we must consider the authority of the law, as well as, and in the context of, that of the poem.  This chapter investigates the theorists' explanation of the basis for legal authority and compares it with the fourteenth-century practitioners' reality in the courtroom; it moves from an examination of the practitioners' approach to the theorists' explication of the authority of the canon and common law.  It then examines the implications of legal practitioners' understanding of the relationship between 'right' and 'reason' for Langland's framing of the redemption in those same terms in *Piers Plowman.*

## Legal authority in the courtroom

Given that there was relatively little written substantive secular law until the fourteenth century, it is perhaps not surprising that there should have been little written theorizing about it.   There is no fourteenth-century equivalent of Hansard or the court reports, so the best the modern enquirer can do is collate judges' comments from the rolls and administrative documents of the courts.  As I shall illustrate, this soon creates a picture of judges who appreciated that upholding the law in a particular case might cause an injustice or make a nonsense of the original intent of the drafters of the law, but who nonetheless tried to find a way to act justly within the confines in which they found themselves.

The problems of interpretation were made all the more considerable for these judges because they had such little precedent to work from. In the first part of the century, Edward I's legislation was still within living memory and the best Judges, like Hengham, could interpret the statutes from memory: Hengham famously dismissed a pleader attempting to rely on the Statute of Westminster II by saying: "Do not gloss the statute, for we know better than you; we made it." The next generation of judges, however, were the first to be relying on a tradition of professional knowledge while, by the time of Edward III, study of the statute itself was the only place from which the intention of the law maker could be inferred. It was also the reign of Edward III that saw the definition of what constituted a statute. Plucknett convincingly repudiates the doctrine of Coke that there was a fundamental distinction between a 'statute' and an 'ordinance,' to show that legislation passed by the council of magnates, and by parliaments, was equally valid as law.[1] The effect of all of this was to muddy the waters even further for the Judges, so that they felt at liberty to give themselves great leeway in the application – or not – of a statute, most famously refusing to apply one on the grounds that not even its maker would wish to put it into effect! At the other end of the scale, contrary to the wording of the statute *De Donis Conditionalibus*, the courts decided to interpret it as acting retroactively.

Interpretation became stricter in the years of 1340 and 1341, times of constitutional crisis, but there was still great difficulty in negotiating the relation of

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[1] T. F. T. Plucknett, "Statutes and their Interpretation in the First Half of the Fourteenth Century." *Cambridge Studies in English Legal History.* Ed. H.D.Hazeltine (Cambridge UP, 1922). Tout gives two useful examples of this when he notes that 'two mere 'household ordinances' made by Edward I with the council that happened to be with him, were universally called the "Statute of St. Albans" and the "Statute of Woodstock" while, at the other end of the scale, "the administrative measures to enforce that rates of wages before the Black Death were much more based upon the so-called "Ordinance of Labourers' than on the subsequent "Statute of Labourers."" (Thomas. F. Tout, *Chapters in the Administrative History of Medieval England,* 6 vols. (Manchester UP, 1920 – 33)).

statutes to the common law and local custom, not to mention the increasingly obvious need for a court of equity that arose from the new rigor in interpreting the law. Whereas the modern lawyer can turn for authority to parliamentary legislation, the many types of secondary legislation and the law reports, the fact that in the fourteenth century judges were still debating whether they even needed to follow statutes shows how the early common lawyers were still creating doctrine, and had yet to establish the idea of legal precedents as a source of authority. Instead, they looked to a more fundamental type of authority, ideas of right and wrong inevitably based on the teachings of the bible. Legislators would use divine law as justification for enactments, while judges would talk about 'natural' law which included distinct ideas of morality.

The paucity of details in the extant sources makes it difficult to know where to start in developing an understanding of an individual's philosophy. However, an examination of the records for the arguments of Sir William Shareshull[2], Chief Justice of the King's Bench from 1350 – 1361, bears particular fruit because of his historically useful habit of reflecting colorfully on his personal and learning experiences in deciding a case, many of which reflections have become part of the record.[3] Furthermore, because of the frequency of these utterances, it has been possible to verify their accuracy from outside sources[4] and establish that he had an excellent memory. Taking any comment or

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[2] For a biography of Shareshull see Bertha Haven Putnam, *The Place in Legal History of Sir William Shareshull, Chief Justice of the King's Bench, 1350 – 1361.* (Cambridge UP, 1950).

[3] These quotes allow a glimpse of his personality whether in the polite but friendly terms with which he addresses colleagues such as Cantebrigge: 'Sir, jeo croy bien, car ceux Justices ne fuerunt auxi sages come vous estes' (Y.B. 6 Edw III, Pasch. pl.16.), or the sharp and scornful comments he makes to Pulteney: 'It will go to the winds, as does the greatest part of that which you say' (R.S. Y.B. 17 Edw III, Mich. pl. 75 (p350). For many more colorful quotes from Shareshull see Puttnam 117.

[4] See especially Chap 2, Professional Career in Puttnam. One example of many provided in the chapter is the entry in RS Y16 Edw III (pt ii, Trin. Pl. 3 (p6): 'When you [Pole] and I were apprentices and Sir W. de

idea out of its time and context carries translation risks which is why I have looked for the arguments of other lawyers, such as John Stonor, whose approaches are well-evidenced in surviving records.[5]  Stonor was pleading in 1311 and made Judge by 1320 so he is older than Shareshull and may well have played a part in his training since Puttnam shows that Shareshull's student days probably lasted from 1305 – 1321.[6]  These years were spent observing the serjeants and judges of common pleas, one of whom would have been Stonor.  Another judge of the same period about whom there is relatively good extant information was Roger Hillary, who was about the same age as Shareshull, from the same part of England, and was a close associate both as pleader, as judge of common pleas and on circuits of assize.  There is evidence of he and Shareshull claiming rights of common through a tenancy in Walsall, and so tearing down a fence together in Bloxwich in 1309.[7]  While it is likely that they roomed together in London, it is certain that they would have been seated in court together in 'Le Crib' – the section of the court of common pleas set aside for apprentices-at-law after Bereford succeeded Hengham as Chief Justice in 1309.[8]  Since both men had similar experiences and training, it is worth bearing in mind that it is likely that they might share ideas and added weight should not be given to an idea solely because they both adhered to it.  There is a

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Herle and Sir J. Stonore were serjeants…'  From this, Haven Puttnam is able to confirm that the case in the common pleas to which Shareshull referred must have been argued between 1311 when Stonor began to plead and August or October of 1320 when Stonor and Herle received their first appointments to the bench.

[5] Cf: Kingsford, C.L. Ed.  *The Stonor Letters and Papers, 1290 – 1483*, Camden Soc. 3rd se. (1919) .

[6] This would correspond with the sixteen years Fortescue specified as normal in *De Laudibus Legum Angliae*[6] some two hundred years later.

[7] *Staffordshire Historical Collections*, Staffordshire Record Society x, 6-7 (case in King's Bench)

[8] It is Bereford whom Puttnam posits as a possible influence over the early studies of a young Shareshull during his period of disgrace from 1290-1299.

similar link between Shareshull and Stonor.  Puttnam points to a case in which Shareshull was arguing as a serjeant and Herle said 'jeo die pur les joesnes qe voilont la nouel Leys apprendre'[9] (I say this for the young men who wish to learn the new laws') as evidence that Shareshull may have been trained under Herle in some of his early years at Westminster.   She goes further to suggest that Shareshull's agreement with the fundamental principles of law as stated by Stonor, and his various references to his apprenticeship days when Stonor was serjeant, suggest that he was also trained by Stonor and that had this been the case, "it is possible that on their own appointment to the bench [Herle and Stonor, in 1320] they had recommended to chief justice Bereford the promotion to be serjeant-at-law of a promising apprentice.'[10]  The result is, again, that agreements on approaches to the law and decisions on points of law are perhaps therefore more likely, though that does not negate the weight of their agreement since all three were independent and outspoken.   In the course of his career, this led to Shareshull's being imprisoned from early December 1340 until May of 1342 on a charge of maladministration by Edward III before his reinstatement as a Justice of common pleas, and later, in March 1357, his excommunication by the Pope, for refusing to appear when summoned to answer for a sentence he had delivered against Thomas Lisle, the Bishop of Ely, for harboring a man who had slain a servant of Blanche, Lady Wake.  Clearly, he was not a man afraid of controversy.

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[9] Y.B. 5 Edw III, Trin. pl.48

[10] Puttnam, 20;  Puttnam also finds geographical support for her theory from the many connections between Shareshull and Oxfordshire and the fact that Stonor's house was there near the Buckinghamshire border, so he may have advised the Purcells to use Shareshull in a large Buckinghamshire, Oxfordshire and Staffordshire land case.

A study of the arguments of these three men and their contemporaries in court illuminates not only their decisions on specific points of law but also their approach to the controversial legal issues of the day. Most importantly for the purposes of this project, all three were concerned by the apparent distinction between law and justice which did not balance with their personal legal doctrines. In 1345, Shareshull found against an argument based on a previous decision of Bereford and Herle JJ saying: "One has often heard speak of that which Bereford and Herle JJ did in such a case … but nevertheless no precedent is of such force as that which is right" (*'mes nepurquant nulle ensaumple est si forte comme resoun'*).[11] Earlier, Bereford CJ had himself ignored precedent in <u>Whiteacre v Marmion</u> when it was put to him that "One who was the King's nephew has before now advantaged himself of this law" to which he is noted to have replied by quoting Sir Henry de Berth: "Our judgments are founded, not on precedents, but on reason." (*non exemplis sed rationibus adiudicandem est*.)[12] These two examples show the judges relying on the terms '*resoun*' and '*ratio*' interchangeably. Their concern at the inadequacies of the law to provide justice are apparent in comments such as that of Stanton J who, relieved at the reaching of an agreement between the parties before him, says "Well, it is for me that you are agreed, for this Court is relieved of much trouble. For in justice, although you have good faith on your side, the law of the land would have served you nought."[13] Similarly, we see Stonor trying to find an explanation for a case in which what was 'right' and what was lawful seemed opposing:

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[11] Y.B. 18 & 19 Edw 3. R.S.376-378.

[12] Y.B. 8 Edw. 2. ff 273-4; 7 Edw. 2, S.S. xxxiv – xxxvi.

[13] Y.B. 4 Edw. 2, S.S. 87.

> We see, on the one hand, that according to good conscience and the law of God it would be contrary to what is right, if the plaintiff speaks the truth, that by such a fine, which is void, he should be disinherited; and on the other hand, it is a strong measure, having regard to the law of the land, to take an averment which may annul the fine; wherefore we wish well to consider it.[14]

A few years later, in 1343, he made a distinction between law and equity by saying: 'et jeo vous die bien qe *Audita Querela* est done plus dequite qe de comune ley, qar ore tarde il ny avoit pas tiel suyte, et par cas la suyte est done forsqe al primer.'[15]

The clearest statement of his beliefs of the origins of law is found in a response to Hillary's[16] assertion that law 'est volunte des justices' – 'the will of the justices.' 'Nanyl' says Stonor, 'ley est resoun.'[17] Pike translates this as 'right' in this instance but in his introductions to Y.B. 18 & 19 Edw III, p.xxvi, n.I and Y.B. 20 Edw III, pt.ii, p.lxxiv. he translates it as reason. Shareshull repeatedly uses phrases such as 'contrary to reason' and 'against law and reason'[18] and it appears from their context that despite the conjunction, he views the terms as linked entities. That this was a long held view for Shareshull is evidenced by the fact that in pleadings many years before he became a judge he argued that it would be 'against reason'[19] were a writ of trespass to be set aside against all but one of the defendants due to an error in form and for that one defendant

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[14] R.S. Y.B. 13 Edw. III Mich, pl. 51 (p96).

[15] R.S. Y.B. 17 Edw. III Pasch, pl. 24 (p370). "I tell you plainly that *Audita Querela* is given rather by Equity than by Common Law, for quite recently there was no such suit, and possibly the suit is given only to the first.'

[16] Robert Hillary, contemporary of Shareshull and fellow student in 'Le Crib' (the section of the court of common pleas set apart for the apprentices-at-law), appointed to the Irish bench in 1329 and later becoming Chief Justice of the Court of common pleas.

[17] R.S. Y.B. 19 Edw. III, Hil. Pl. 3 (p378).

[18] See for example, *inter alia*, R.S.Y.B. 13 Edw III, Hil. Pl. 19 (p114); 16, Mich. Pl. 22 (342).

[19] Y.B. 6 Edw III, Mich. pl. 7.

then to be held liable for all of the damages. In this case, his pleadings request a judgment contrary to a strict interpretation of the law. His opponent, Shardelow, simply asserted that the law by its nature could not be unreasonable and pled in rebuttal: 'It will not be against reason, for it is law.'[20] The basis of their argument over the correct use of the word 'reason' was not the particulars of the plea they were arguing but their own legal philosophies. Although they may have felt compelled to take a formalist line in their decisions, they appeared to have all shared a legal philosophy of the law as a 'natural' system of justice trying to do what was 'right.'

Whatever the fifteenth-century theorists might argue, it is an important feature of the Year Books and legislation that explanations are given both for the developing substantive law and the old customary law that overtly absorb moral arguments. Both legislators and judges widely use the idea of a 'divine' or 'natural' law and explain decisions in terms of 'conscience' and 'reason.' The theorists may be explaining the authority of the law in terms of popular consent but the judges and practitioners are considering their duties to their clients under the umbrella of moral judgment of right and wrong. The judges can be seen trying to do justice. The competing factors in any decision are evidenced in Bereford CJ's comments in disallowing a technical plea to a voucher in Gaunt v Gaunt: "Reason requires that you warrant him, and the law is founded on reason, and good faith demands it."[21] The first factor is reason, and the second, good faith, but this is not faith in the written law of statute or precedent but rather in the divine nature of justice.

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[20] *Ibid.*

[21] Y.BB. 3 Edw. 2. S.S. 80; 2 & 3 Edw. 2, 33; 18 Edw 3, 308; 18 & 19 Edw. 3,60.

At the heart of these opposing approaches is the question of the source of the law's authority. Although European medieval civilians and canonists had been discussing theories of the origins and authority of law for a very long time, this was not true in England until the fifteenth century, apart from some discussion in the work of Bracton and Ockham at the middle of the thirteenth century. Thus, it is to the writing of the early fifteenth-century lawyers that we must turn for an understanding of fourteenth-century theory. As Norman Doe illustrates[22], these theorists – Bishop Reginald Pecock, writing between 1443 and 1456 about the canon law, and the common law writers, John Fortescue, writing between 1463 and 1471, Thomas Littleton (1422-81?) and Christopher Saint German (1460? – 1540?) - examined two opposing sets of fundamental ideas about the nature and authority of law. The 'positivist' theory of the law considers the law as an autonomous device dependent on human will, composed of precepts and prohibitions, with the sole purpose of dealing with dispute and injury. It is of human origin because its power comes from the people's consent to it and its goal is to order society in the way that the majority of people choose. A law has power because of society's consent to it, irrespective of its moral quality. On the other hand, the same literature emphasizes the connection between law and morality through the expression of the law in moral terms, so the law is not only subordinate to morality but also incorporates morality into the development of its substantive law. The common practice of explaining legislative and judicial decisions in moral terms is widely evidenced in both the Year Books and contemporary legislation.

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[22] Norman Doe, *Fundamental Authority in late medieval English law.* (Cambridge, Cambridge UP (1990).

Positivism and naturalism are in direct opposition: the one has as its basis human will, with authority relying on common consent, so usage and enactments shape the law – the law is 'posited' by the legislature; the other relies upon a divine morality for its authority, accepting rules as laws so long as they conform to an outside and abstract idea of right and wrong. The distinction between these two theories of the origin of legal authority reflects the reality of the practice of law in the fourteenth century. Legal activity was divided between two distinct jurisdictions and sets of procedures, those of the common and those of the canon law. Naturally, there was little problem with the canon law having as the basis for its authority a direct relationship with the divine will. The tensions arose rather in the common law where both theories were in place and the judges were struggling to know which to apply at any given time.

**The authority of canon law**

The authority for canon law derives from its claim to be fulfilling God's will on earth. Taking the laws set out in the Bible as its starting point, medieval canon law was well-established in a host of additional rules and 'canons' which included creeds, doctrinal statements and theological discussions aiming to fill in the gaps of those situations not clearly explained, or in come cases even covered, by the Biblical laws. In the middle of the twelfth century, these rules and canons were collated by Gratian, a Bolognese monk, in his *Decretum,* which attempted to categorize the canons within a hierarchical scheme of authority descending from God to the Pope, his earthly representative. The argument was that whatever the Pope decreed should be followed on two theologically inconsistent grounds: firstly, the Pope was infallible since he was

acting out the will of God on earth; secondly, and perhaps more pragmatically, if the Pope erred only he would suffer the spiritual consequence while the obedient would be spared. The reasoning was that if the Pope's decrees led to earthly injustice and suffering, such suffering was nothing when compared to eternal damnation. Gratian's *Decretum* could not cover every situation and many cases arose on which clarification was sought from Rome; the answering letters, called 'decretals' provided a body of additional law. By the fourteenth century, canon law was contained in a series of legal rules, the *Corpus Iuris Canonici*, literally a body of written laws. It was based on its Roman model and made up of Gratian's Decretum (c.1140), the Decretals of Pope Gregory IX (1234), the Sext (1298), and the Clementine Decretals (1305-14). To these the Extravagantes of Pope John XXII (1316-34) and the Extravagantes Communes (c.1300-1480) were added later. The aim was for a clear set of rules establishing God's justice on earth.

The biggest conflicts involving the canon law were not doctrinal, but were contained in the question of where God's jurisdiction should end and the King's begin on a practical, day-to-day basis. Ecclesiastical matters were originally dealt with in the local assemblies. In the shire court both the Bishop and the sheriff presided, with spiritual matters dealt with first. However, this ended with William I's attempt to prevent the income generated by the corrective business of the Church from falling with the hundreds into lay hands by ordering that pleas at the lowest level – to archdeacons and bishops - should not be heard in the hundreds court, although the sheriff could still use his power to compel appearance at the ecclesiastical hearing. By the end of the twelfth century, canon law had established a transnational system for the Church, with

archdeacons at the bottom of the hierarchy dealing with criminal courts for moral and disciplinary offences. From there, appeal was to an Episcopal 'court of audience.' Bishops had consistory courts to hear matrimonial and defamation cases, and appeal from there was either to the Chancery Court of York under the Archbishop of York or to the Court of the Arches under the Archbishop of Canterbury in London. After that, appeal was to the pope, either to papal delegates or to the papal audience court itself, known as the Rota. This court consisted of doctors of law from all over Europe and sat in the palace of Avignon having been formed by Pope John XXII in 1331.[23]

Since the canon law of the western Church was taken to apply to all Christians, and nearly all people in England were, or were assumed to be, Christian (the Jews having been expelled in 1290), in theory canon law governed all the people in England. However, the degree to which canon law might be enforced, at least in the physical world, depended upon the cooperation of secular forces. In the abstract, neither the King nor anyone else in England would dispute the authority of the Church over spiritual matters, but papal authority was a different matter since some popes laid claim to matters that could be considered temporal. Conflicts of jurisdiction arose since there were two systems of law operating over the same physical territory, and inevitably politics became involved. Kings did not want to incur the wrath of the church, but neither did they want to cede jurisdiction and the potential income from fines etc. The church needed secular authorities to force people to appear before their courts and uphold their own authority with imprisonment, and it was really this that prevented there being too many

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[23] The Bishop of Norwich, William Bateman was one of the first papal auditors and founder of a law college at Cambridge. It is thought that it was either he or his students who began the tradition of reporting the cases in the Rota. The earliest printed rotal reports are those of Dr Thomas Fastolf from 1336-37 which were published in 1475: cf: *Cambridge Law Journal* (1986) p84.

jurisdictional battles between church and state; most disputes were between private litigants in particular cases.[24]  The pleader would publish a royal writ of prohibition seeking to prevent the case being heard in an ecclesiastical court; the response would be the setting in motion of the process of excommunication of the pleader.

It was Edward I who kept authority ultimately within his secular jurisdiction by establishing a procedure whereby it was the king's judges who decided whether or not a cause was spiritual.  This was a result of repeated complaints by the bishops that writs of prohibition were being made as a matter of course as soon as an application was made.  Edward's solution was encapsulated in the writ *Circumspecte agatis* (1285) and the *Articuli cleri* of 1315.  These gave the church jurisdiction over all family matters, and wills, sexual offences, defamation and breach of faith, but left the King's courts with complete control over all temporal property, including some of the land owned by church institutions.  An example of this division in practice was that the appointment of clergy to a benefice was in the power of the bishop, but the right to nominate a clerk for the position ("advowson") was considered a temporal right and so within the jurisdiction of the King.  Church land was only removed from the King's jurisdiction if it had been given 'in free, pure and perpetual alms,' without any feudal service involved; any dispute over this was to be settled by an assize '*utrum*' under the King's jurisdiction.  Most importantly, in case of conflict, the common law prevailed, even when, and perhaps

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[24] The first and perhaps most famous dispute was that between Henry II and Thomas Becket, the archbishop of Canterbury over the immunity from secular criminal jurisdiction claimed by the clergy.  A compromise reached at the council of Clarendon in 1164 agreed that clerks would be arraigned but passed to the bishop's court if they asserted and proved their clerical status.  If the crime were then proved against them, they would have their holy orders removed and returned for punishment to the secular court as laymen.  Becket argued that this system resulted in double punishment and his subsequent murder succeeded, not only in making him England's most popular saint but also in hardening the papal resolve.  The privilege of 'benefit of clergy' was won from a remorseful Henry II.  This incident shows the power of the church at the time, since it is inconceivable in the 21st century that priests should enjoy freedom from temporal punishment for criminal activity.

especially when, it limited papal authority.  For example, the parliament of Edward III in 1351 and 1353 passed two *Statutes of Provisors* to prevent the pope's practice of taking over church livings to use as rewards, often for absentee foreigners.  The argument was that the kings and nobles of England had endowed the benefices to "the Holy Church of England," and so they were protected by the common law.   These statutes also provided for harsh punishment for removing any case that belonged in the King's courts out of the kingdom, including actions in church courts in England[25].  Furthermore, whilst the courts recognized the pope as Bishop of Rome, since he was not a bishop to whom the courts could send writs, papal excommunication was treated as invalid since without the communication by writ a party would have no regularized means of communication.[26] The best that can be said of this relationship between the church and state is that it maintained an uneasy peace in the thirteenth and fourteenth centuries, a peace that would only deteriorate until the severing of the Church of England from Rome in 1534.

Despite the severance from Rome, however, there was still a need for an adherence to moral principles of justice, so it is not surprising that various canonist principles can be found at the heart of the law of equity.  Plucknett attributed the rise of the Chancery court in the fifteenth century to its focus on the doctrine of "good faith," saying that "the old canonist idea of good faith …easily became transformed into conscience and thence into a formal system of legal philosophy."[27]  The chancery began simply as an administrative office responsible for writing the charters, letters patent and

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[25] Statute of Provisors 1351, 25 Edw III, stat. iv; Statute of Provisors 1353, 27 Edw III, stat. i.  The provisions of these statutes were reinforced by the 1393 Statute of Westminster, 16 Ric. II, c5.

[26] *Seton v Cokeside* (1358) Y.B. 30 Edw III, Lib. Ass. pl.19.

[27] T.F.T. Plucknett, *A Concise History of the Common Law,* 2nd ed. (Rochester, N.Y.:  The Lawyers Co-operative, 1935): 614.

letters close (i.e. writs) that were issued under the great seal but, during the course of the fourteenth century, developed a second branch that was considered the 'court of conscience.' This was a tribunal that allowed a plaintiff to set out the full details of his case, and request that consideration be given to circumstances that would not be admissible under the common law through the exercise of the king's right of discretion. There was no jury, but rather the chancellor, as president of the court and keeper of the King's grace, gave judgment when he felt that he had enough evidence to make a decision one way or another.

Chancery business was split between the 'Latin' side and the 'English' or 'equity' side. The Latin side divided its time between matters *de cursu* ('of course'), the day to day administration of legal procedures over which it had immediate jurisdiction - such as the authority to issue writs or carry out certain administrative judicial processes -, and matters *de gratia* ('of grace') which involved the exercise of royal discretion, usually in common law cases where the king's prerogative rights were under threat such as in cases involving the disposal of estates held in chief of the king or the misuse of documents issued under the great seal. It was here that the King's grace, his Mercy, was to be administered. It was on the English side that the chancery's role as the 'court of conscience' became the most developed, since it was here that cases involving 'uses' or trusts of succession were heard. Under the terms of a use, it was only the trustees, the '*feoffees to use*,' who had legal title to the land in trust, and therefore rights enforceable in the common law courts, so beneficiaries under the use, '*cestui qui use*,' could only look to the prerogative courts to uphold their interest since it was a right in conscience alone. Since the earliest surviving records of chancery proceedings date only to the late

1380s, legal historians are still debating precisely when and why this line of argument was particularly assigned to the chancery court, but it is clear that, by that time, the exercise of royal grace in this way was considered an essential part of the king's duty to provide justice to his people.[28]

## The authority of the common law

The basis for the authority of the common law is not so easily described since late medieval thinking was comfortable with the two conflicting theories of law, 'positivism' or 'populism,' and 'naturalism,' that created a natural tension in the legal discourse of the period.

### a)      The populist theory

After the Romans withdrew from England in the fifth century, the earliest forms of justice in England were based on the custom of the people, communal justice or 'folk-right' (*folcriht*).   The ancient assemblies were not presided over by a judge or representative of the king but by a local ealdorman who acted as chairman for those who attended.   Historians have found it very hard to trace the transition from this local communal justice to the vesting of authority into an individual since it appears to have been particular to each area and to be identified with the personalities of particular individuals.   It may be that some ealdormen were members of earlier royal families or had their position from traditions of chieftainship; there does not seem to have been any

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[28] For more information on the development of the court of chancery see Anthony Musson and W.M.Ormrod. *The Evolution of English Justice:  Law, Politics and Society in the Fourteenth century.* 1999 (Macmillan Press, Basingstoke) especially chap 2 pp12-25; T.S. Haskett, 'The Medieval English Court of Chancery,' *Law and History Review* 14 (1996):245-313; B. Wilkinson, *The Chancery under Edward III.* (Manchester:  Manchester UP, 1929).

political theory of authority but rather the practical fact of power and leadership. What is clear is that the rights of a churl and the rights of a lord were considered to be different, which is why there was a separate system of courts alongside the counties and the hundreds set up with jurisdiction over seigniorial issues, but it was only as a consequence of the move from communal to personal authority that a single king would be able to assert jurisdiction over the whole kingdom. When England became a single kingdom in the tenth century, the king had already divided the land into boroughs, hundreds and shires under the control of his reeves whose duty was to ensure that all men were protected by the customary law and the 'doom-book' (Alfred's code). Even in those cases where parts of the jurisdiction had been passed to a lord's control, the king continued his supervisory control and could relieve a lord who abused his role or his position. Thus, the idea that justice was the king's prerogative had a basis in fact even if it was not yet being theorized in these terms. Certainly the term, "the king's peace" covered civil and criminal complaints and brought so many cases before King Cnut that he had to limit appeal to his court to claims that had already been heard in the hundred. Furthermore, the king as a feudal lord was expected to do justice to his tenants - although it was not until William I that all land was considered to be held from the king.

Fortescue described the English system of law-making by the king and parliament as '*dominium politicum et regale*,' government by the community and the king together consenting to the creation of laws. By this he combined the ideas of feudal practice with the populist theory of consent, theorizing that both parliament and the king were treated as elected. The continental theorists Pierre D'Ailly (1350-1420), Jean Gerson (1363-1429) and Nicholas of Cusa (d.1464) also believed that popular consent was the source of

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secular authority.[29]    Fortescue describes how Henry II was made King by common consent of the realm of England in open Parliament: '*communi consensus procerum et communitatis regni Angliae instantiam et requisitionem ipsius Stephani, in publico parliamenti ordinatum atque conclusum est quod Henricus ... fierat rex.*'[30]   The difficulty in the theory arises from the fact that he also describes how the king is appointed by God. It was commonly conceived that all power came from God[31] but Fortescue goes a step further to describe the king as 'hanging' from God, *ex deo pependi*[32] and, in the case of Henry VI, having been set on the throne by God. This ties in with Bracton's earlier concept of the king as *vicarius dei*[33] though not with Ockham's description of kingship as a wholly temporal institution.

Feudalism had at its basis a consensual agreement between the lord and his vassal over land tenure. As a feudal lord, the king was effectively entering into contractual relationships with his tenants-in-chief which in turn gave him his governmental position. It was only outside those contractual relationships that the king's authority needed a divine mainstay. Bracton's description of the creation of laws as 'approved with the counsel and consent of the magnates and the general agreement of the *res publica*, the

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[29] For a summary of sources for the related ideas of Pierre D'Ailly, Jean Gerson and Nicholas of Cusa, see Doe, 8, n5.

[30] John Fortescue, *The Works of Sir John Fortescue,* collected and arranged by Thomas (Fortescue), Lord Clermont, 2 vols (London, 1869): p505.

[31] cf: John Fortescue, *De Natura Legis Nature, The Works of Sir John Fortescue,* collected and arranged by Thomas (Fortescue), Lord Clermont, 2 vols (London, 1869). Vol I, c.27; Reginald Pecock. The Repressor of Over Much Blaming of the Clergy, (1449-55), Ed. Churchill Babington, 2 vols, *Chronicles and Memorials*, number 19 (London, 1860). Vol II, p443; L. B. Pascoe, *Jean Gerson: Principles of Church Reform,* Studies in Medieval and Reformation Thought (Leiden, 1973), p22.

[32] De Natura, II, c.36.

[33] Bracton, *De Legibus et Consuetudinibus Angliae*, translated by S.E.Thorne, Vol II (Harvard, 1968) p.33; discussed by W. Ullmann, *Medieval Political Thought*, (Harmondsworth, 1975) p152 and Doe, 10.

authority of the king or prince having first been added thereto'[34] is a description of the feudal relationship emphasizing its populist basis. It is on this voluntarist basis that Fortescue builds his theory two centuries later arguing that law created under the *dominum politicum* has the consent of the people as its authority. The king could not change the law, nor take his subjects' property or detain them except by authority of the law of the land and the ordinary judges. Likewise, he could not impose taxes without the assent of parliament which in theory represented all classes of people in the realm.[35] Doe gives numerous examples of instances from the custumals in which it is stated that the usages of a local community were assented to by that community which show a clear pattern of understanding that at the law's basis was the will and consent of a community.[36] There is need for neither God nor morality in that relationship. Fortescue described law as '*lex est sanccio sancta iubens honesta et prohibiens contraria*,'[37] a sacred sanction ordering the virtuous and prohibiting the contrary, yet although the idea of law advancing morality appears in theory, in practice law served the common profit and was used to resolve ordinary disputes since spiritual claims would be heard in the church courts.

The emphasis on the community's consent allows the law to become separate from morality. Thus a rule can become a law because it is used, or consented to,

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[34] Translated by Doe, 11, from Bracton, *De Legibus*, II, pp19. Doe further illustrates the similarities between Bracton's theory and those of the continental jurists of the period.

[35] This was the effect of the 1340 Statute 14 Ed. III, St. II, c.1: the people shall not be forced 'to make any aid, or to sustain charge, if it not be by the common assent of the prelates, earls, barons and other great men, and the commons of our said realm of England, and that in the parliament'.

[36] Doe, Chapter 1, 19-33

[37] *De Laudibus*, c.3, p.9. *Honesta*, in Fortescue is translated as virtuous. Compare with Thorne's translation of Bracton *(De Legibus* II, p25): 'honeste vivere, alterum non leadere, ius suum unicuique tribunes' (the three precept of ius: 'to live virtuously, to injure no-one, to give each man his right.'

regardless of its moral abhorrence:  it is voidable but not void.  But where does God and morality fit into all of this?  Fortescue does not seem to notice he has two conflicting principles at work – or at least not to think it worthy of comment – but, as detailed above, these two principles were causing confusion in the day-to-day practice of the law in courtrooms.

## b)      The Practitioners' doctrines:  *rigor iuris* and natural law

Within the view of the law as a 'natural' system of justice lies the idea that the law's authority does not lie solely within the custom or will of the community but is subject to a superior ethical imperative of a divine morality.  The Thomist view is that natural law and divine law are the same: '*ius naturale, id est, ius divinum.*'[38]  Aquinas was following on from St. Augustine's definition of eternal law: "The eternal law is the divine order or will of God, which requires the preservation of natural order, and forbids the breach of it."[39]  According to this view, the common law is not autonomous but relies for its authority on its conformity with morality so is judged both on its applicability and on its adherence to an overarching set of ethical principles.  Its purpose is to enact the divine will on earth.  Apparently not seeing the inherent contradiction in their views, the fifteenth century theorists agree:  Fortescue follows Aquinas's *Summa*, restating that 'natural law is nothing else but the participation of the eternal law in a rational creature.'

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[38] Cf: W. Ullmann, *Medieval Papalism:  The Political Theories of the Medieval Canonists*  (London, 1949) p40; and B. Tierney, 'Natura id est Deus:  a case of juristic pantheism?' *Journal of the History of Ideas* 24 (1963) p307.  Both are referenced in the detailed explication of this theory in Doe, *Fundamental authority,* Chap 3, 'Natural law: the superior moral law' p60-84.

[39] *Contra Faustum Manichaeum,* xxii.27, trans. Richard Stothert, in *A select library of the Nicene and post-Nicene Fathers,* 1st Ser., iv (1887; rpt Grand Rapids:  Eerdmans, 1974): 283.

Pecock agrees only calling natural law 'the lawe of kynde' which he sees as a meeting of law and reason.[40]

Langland is another who takes the Thomist view.  He sets out the relation of law and divinity in the Prologue when the Angel of Heaven tells the King:

> *O qui iura regis Christi specialia regis,*
>
> *Hoc quod agas melius – iustus es, esto pius!*
>
> *Nudum ius a te vestiri vult pietate*. (B.Prol. 133-5)

(O you who administer the sublime laws of Christ the King, in order to do better what you do, as you are just, be godly!  Naked law requires to be clothed by you with a sense of your duty to God.)[41]

The angel is contrasting the view of law as a purely earthly institution subject to the will of either the King or his people and the view of law as a reflex of divine justice.  Of course, it is unsurprising that a heavenly angel should be emphasizing the closeness of the relationship between divine justice and law, but the angel also provides an incentive to follow his argument; his emphasis is on the result that this will have:

> *Qualia vis metere, talia grana sere:*
>
> *Si ius nudatur, nudo de iure metatur;*
>
> *Si seritur pietas, de pietate metas. (B. Prol. 136-8)*

(If the law is nakedly administered (lit. stripped bare) by you, then let (judgment) be measured out (to you) according to the letter (lit. naked law).  If goodness is sown (by you), may you reap goodness.[42]

The effect of the angel's argument is to take as understood the fact that the approach of *rigor iuris* is inherently unjust and open to abuse, but to argue against that approach, not

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[40] *Represor,* I, p18, II, p504.

[41] Translated by A.V. C. Schmidt.  Langland, William.  *The Vision of Piers Plowman: a complete edition of the B-text.*. Ed. A.V. C. Schmidt.  London:  Everyman, 1978: 6.

[42] *Ibid.*

because of the injustice it might do to the King's unfortunate subjects, but because of the effect it will have on him personally, i.e. that he will reap the injustice he sowed, whether on the day of judgment or in the chaos of his land; in the Latin, this is underscored by the play on measure and reap that is lost in translation.  Clearly this is a reflection on the nature and demands of kingship (see chapter 4) but also a comment that seeks to place the law firmly within the ambit of divine justice.  This is referred to explicitly in Passus VI in the A and C text  - and so in the Kane-Donaldson edition of the B-text – as the 'lawe of kynde' which Hunger refers to as the overriding law when he instructs the dreamer to care for 'any freke that Fortune hath apeired' before quoting from Galatians 6:2.  Hunger tells him to 'Love hem and lene hem, for so lawe of kynde wolde: *Alter alterius onera portate*.' (B.VI.221-2).  The quote is an oblique reference to the divine nature of natural law since the instruction from Galatians to 'bear ye one another's burdens' is completed in the unquoted second half of the line by the explanation 'and so you shall fulfill the law of Christ,' (something that shall echo later in the poem when Christ tells the Devil that he has come to fulfill the law at the harrowing of hell).   Moreover, Langland views all earthly jurisdictions as part of the same judicial process:  he describes bishops 'if thei ben as thei sholde / Legistres of bothes lawes, the lewed therwith to preche.' (B.VII. 13-14) i.e. conversant with both the canon and common laws in order to teach justice.   Thus, for Langland, both the canon and common law's authority stemmed from its relationship with divine law and a separate set of moral principles.  For Langland, all law is grounded in the same law:  it is the 'natural' or 'divine' order of things.

The move from the old legal systems of trial, oath and ordeal to a new system of a body of laws brought with it a new culture in the courts.  Emphasis was now placed on

the documentary evidence brought before the courts. The move from an oral tradition of law to a documentary culture had allowed the Anglo-Saxon kings to issue codes declaring the law and containing instructions to reeves and lords. The kings used written instruments to define or confer jurisdiction, such as charters of *sake* and *soke* - the right to hold a court and compel attendance – or writs declaring rights to assemblies of the shire. The real problem was the lack of uniformity. Although litigants had all had recourse to trial by oath, ordeal or battle, the implementation of these varied by geography and participant – so much so that the writer of the *Leges Henrici Primi* (c1118) famously described the outcome of litigation as uncertain as a game of dice.[43] The same observer also noted that the advantage of the royal court was that it preserved 'the use and custom of its law at all times and in all places and with constant uniformity.'[44] It would be this uniformity and the move to a documentary system of law that would eventually enable the King to assert the authority of his law, the standard or 'common' law, over the use of local custom. There was a common medieval legal maxim that the people would rather suffer a 'mischief' than an 'inconvenience,' i.e. some injustice was better than the inconsistency or unpredictability that might arise from the making of exceptions to a general rule.[45]

As the common law was being developed in the fourteenth century, although there were some procedures that could be begun without writ, the rules of the common law were really hidden in the form of the recognized claims a plaintiff could put before

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[43] Leges Henrici Primi, vi.6 (Downer, ed., p98): 'incerta penitus alea placitorum.'

[44] *Ibid.,*109.

[45] See 94 SS 38.

the court, the language of the writs which begun those claims and the remedies that could be requested by that writ. Thus the settlement of a claim rested upon a party being able to make an acceptable claim by means of a correctly worded writ for an available remedy. Milsom explains:[46] '[I]n the whole process the only substantive rules visibly at work are those implicit in the canon of acceptable claims.' It was therefore to the Register of writs that the early common law student turned to learn legal practice rather than to a stated body of rules derived from legislation or judicial decision.[47]

The only way to make a claim was through a formal and correctly worded writ, so the document by which a claim was made contained all its hopes of success or failure. Since judges derived their authority from the King, whose authority was in turn contained in the written laws, judges naturally tended to aim for a strict application of those written laws, an approach described as 'formalism' or *rigor iuris*. This tendency towards a reliance on formalism inevitably led to many problems as situations unforeseen by the drafters of the statutes posed difficulties in exactly how the laws should be applied in a particular case. It was in cases of difficulties that a judge's legal philosophy or theory of law would be crucial in directing his approach to the case.

The difficulty in pinning down the precise meaning of reason in *Piers Plowman* reflects the problems that faced the fourteenth-century judges who found themselves needing a philosophy of law to balance the injustices they paradoxically found themselves perpetrating in attempting to uphold reason in the form of the law. At

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[46] S. F. C. Milsom, *Historical Foundations of the Common Law* (2nd edition, 1981): 39.

[47] This explains why the most commonly used text of the 13th century, *De legibus et consuetudinibus Angliae*, which bears the name of Henry de Bracton in some versions and is therefore most commonly known as *Bracton,* consists mostly of explanations of the writ system and selections of judicial practice from the plea rolls and contains only some theorizing of Roman and Canon law.

different parts of the poem, reason denotes good common sense, good order, the letter of the law i.e. *rigor iuris,* and also morality - precisely the same shifts of emphasis that we see in the legal theory over the foundations of the common law's authority; since the language itself was not providing a clarity as to which was the governing meaning or authority at any given time, a practitioner without a clear legal doctrine in mind would not know where to turn to enact justice.

### Reason as the conduit to natural law

Most importantly for our purposes, it was morality itself that was considered by legal theorists and practitioners alike as accessible to mankind through reason, revelation and instinct. Fortescue proposes that there are three means of access to natural law: Firstly, through human instinct through the idea that natural law is 'that which nature taught all animals' and so is a part of man's inherent understanding of the world; secondly, through human reason, '*ratio*'; and thirdly, through reading the bible and understanding the natural law as the law of the Old Testament and the gospels. Pecock did not limit natural law to those laws set out in the scriptures. Rather he argued that "[t]he more deel and party of Goddis hool lawe to man in erthe .. is grounded sufficiently out of Holi Scripture in the inward book of lawe of kinde and of moral philosophie, and not in the book of Holi Scripture clepid the Oold Testament and the Newe.'[48] By this view, natural law depends on reason for its revelation. Similarly although Gerson considered the *lex divina* to be revealed in many ways - partly through scripture, partly through revelation to private individuals and partly through deduction from other laws –

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[48] *Repressor* I, p39-40. Quoted by Doe, 65.

he considered natural law to be revealed through human reason not divine revelation. Nonetheless, he also considered natural law to be contained in the teachings of the Old and New Testaments.

The theorists' understanding of reason as the intellectual capacity to determine logically what is right and what is wrong naturally put it at the centre of their analysis of the moral law. How that moral law might work in practice when combined with the idea of *rigor iuris* in interpretation of the law did not trouble them. Since Pecock believed reason was the means by which men gained knowledge of the law he was naturally able to equate the rules of natural law with the requirements of reason.[49] Likewise Fortescue's '*ratio*' was the means by which natural law and therefore justice was known so it had an inbuilt moral function.[50] Both theorists take the non-contemporary legal uses of reason, meaning the intellectual faculty and good sense, and extend that with their theoretical use of reason, as the conduit by which the rules of moral law are known, so that reason itself becomes the moral law. Saint German said reason was the law of England's 'first ground' and that 'every law positive well made is somewhat of the law of reason'[51] while Pecock went a step further to say: 'As for the lawe of the kyng of englond, what is iugid bi iugis agens such constreyners, al is take to be law of resoun, which thei callen her common lawe.' It was an established part of Roman law that application of the letter of the law would lead to injustice so a judge must seek the logical

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[49] Pecock, *Donet*, pp15-16.

[50] Fortescue, *De Natura* I. cc31, 32.

[51] Saint German, *Dialogue* pp27-31 and Pecock, *Folower*, p143. They are both developing Aquinas's statement in the *Summa* that law is 'an ordinance of reason made for the common good by him who has charge of the community and promulgated.'

connection between rules in order to apply them equitably[52] so it is perhaps unsurprising to see reason regularly cited in the Year Books as the foundation of the law – for example per Fortescue CJKB: '[d]onq comon reason, qui est comon ley' i.e. 'common reason, which is common law.'[53]

While the theorists directly connect reason with divine and moral law, the practitioners of law do not define reason in expressly moral terms but as an abstract idea of right. Reason is appealed to in the sense of its being good sense that can be used to eliminate inconsistencies of result or overcome an impractical custom. While it has a sense of justice in its application, its common use is for the more mundane such as the allowance or disallowance of a particular plea, or control of delay or absurdity. Most importantly, it is linked to a concept of justice that corrects imbalances between a wrongdoing and its punishment, or between a loss and its compensation. Doe gives a host of examples of uses of the term in cases from the Year Books[54] from which it can be seen that in the law courts the term had two main strands of meaning: reason was an authority by which a judge might enact consistency; reason was the application of good sense. Practitioners do not therefore necessarily view reason as justice with an openly moral center, but the two do have overlapping territory. Aquinas argued that men mark 'the balance of justice according to the recompense of thing for thing'[55] i.e. justice's purpose was to redress imbalance. Fortescue and Pecock agreed that the role of justice

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[52] Stein, *Regulae Iuris*, p129.

[53] H35 Hen VI, 17.

[54] Doe, 113-115.

[55] Summa, 2a, 2ae, 62.

was to give to people what was owed to them, to apply a remedy for a loss.[56]  It was in these same circumstances that the practitioner applied reason, i.e. when there was some imbalance between the loss and the remedy, or the wrong and its punishment.

We can see that Langland is making the same argument for the basis of legal authority that the legal theologians would go on to make a few decades later, using the same terms and references that the judges and serjeants-at-law were making in the courtrooms.  Conscience tells the King that the first men to have 'mede / Of God at a gret need,' (B.III.244-5) will be those who 'han ywroght werkes with right and with reson' (B.III.239).  This is yet another instance where Langland shows his mastery and ease with the terms of current legal dialectics and adds his own voice to the debate coming down firmly on the side of 'naturalism.'

The need for right and reason working together comes from the natural law theory that natural law is developed from the reasonable man's intrinsic understanding of right and wrong, which would have been sufficient to order man's peaceful society had it not been for original sin.  St. Augustine incorporated the Stoic idea that it was sin that brought about the need for a further set of laws, known as positive law.  In theory, however, positive law was only valid for as long as it conformed to natural law.  As Augustine put it – and Martin Luther King famously took up in the 20th century – "an unjust law is no law at all."  Aquinas went a step further saying in his *Summa Theologiae*[57] that an unjust law was an abuse of law.  The influence of this idea perhaps explains why Fortescue is comfortable with a legal philosophy that emphasizes the

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[56] Fortescue, *De Natura* I.c.17;  Pecock, *Donet*, p110 and *Reule*, p254.

[57] Ed. and trans. Thomas Gilby, (London:  Blackfriars et all, 1966) 1a 2ae.qu.93, art.3; qu. 96, art. 4.

derivation of authority for the positivist law in the consent and will of the community, whilst simultaneously suggesting that it is nonetheless representing a divine order. As Chief Justice of the King's Bench Fortescue wants to put as much authority behind the law as he can, and does not want to admit his system has room for unjust laws.

The result of all of these ideas for practitioners was that although they professed to be working under a system of *rigor iuris*, the truth was that in reality most of them operated under a sense that the positivist law must be applied rigidly in so far as it conformed to their own instinctive or 'natural' sense of right and wrong. It is this that makes their understanding of *reson* so important – it is the conduit by which God's will shall be revealed to them in the form of the natural law. Though not claiming to be working with a divine authority, the practitioners are effectively working under the doctrine expressed by Cicero a thousand years before when he said in his *De legibus* that "Law is the primal and ultimate mind of God, whose reason (*ratio*) directs all things either by compulsion or restraint' (II.4.8).[58]

The MED tells us that to have justice was to '*haven (right and) resoun.*' What did 'right' add to the phrase?

## The meaning of 'right'

The main meaning of 'right' is that which is morally right or in accordance with a moral code but its secondary meaning is that which is just, justice or equity. It is in this meaning that it is most commonly combined with reason. On its own 'right' can also

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[58] *De legibus* trans. Clinton Walker Keyes, Loeb Classical Library (1928; Cambridge, Mass., 1970), II.4.8. quoted by Alford, John, 'The Idea of Reason in *Piers Plowman*', *Medieval English Studies Presented to George Kane*, p201.

mean a rule of conduct or a law; a judgment; what someone deserves; a due reward or punishment. It can be a just claim or entitlement and also a prerogative or privilege or a duty or obligation. Furthermore – and importantly for the purposes of this project, right can also mean truth, accuracy or correctness so the phrase 'of right and resoun' also means 'truly' or 'in truth.'

For lawyers, the use of the term 'right' to denote morality is itself not without confusion. Just as Christians were dealing with the ways in which the biblical law of the Old Testament could be made consistent with the New Testament teachings of Christ, so too, the fourteenth-century judges were trying to negotiate their way through the conflicting authorities of custom, 'old law' and the newly enacted Statutory law to find what was truly a right: to which customary rights did a man have a right? Each authority brought with it additional, and sometimes conflicting, rights for a plaintiff which further might, or might not, conflict with the judges understanding of moral right. What was a judge to do in the case of a new common law which apparently overrode a local custom that had been effectively enforced through years of usage? Both might be considered a 'riht.' There is evidence that Shareshull understood that both the common law and general custom might be superseded by local custom if claimed by prescription, the 'highest possible title.'[59] After all, what could be more reasonable than a custom effectively consented to for hundreds of years? As a judge, he often referred respectfully to 'old law', [60] 'custom in old times,'[61] and 'old usage' while recognizing that old customs may have been modified by recent laws.

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[59] H.L.S. MS. 3, Eyre Northants, pl.303 and also pl. 355.

[60] R.S. Y.B. 12 Edw III, Pasch. p438. This is also an example of Hillary, J holding the same opinion.

Nonetheless, that local custom still had to pass Shareshull's own test of 'reasonableness'. That he held this belief on both sides of the bench is apparent in two cases from the textile centers of Hereford and Gloucester, where the issue was the legality of a local custom of determining the age at which a person had the capacity to alienate land. Local custom dictated that this was at the point that he could count up to twelve pence and measure an ell of cloth. Shareshull successfully argued as pleader that there would be nothing specific to present to a jury such as the specific age[62]; his argument was accepted by the Chief Justice of Common Pleas, then Herle, who added that the custom was inconclusive since a forty year old man might not know how to measure an ell while a boy of six might. Later, in deciding a Gloucester case[63], Shareshull repeated Herle's reasoning from the bench.

As detailed above, both Hillary and Shareshull were apprenticed for 'instruction' under Bereford so it is perhaps unsurprising that they held many similar views. Thus where Bereford can be seen, years previously, arguing "We must maintain ancient, as contrasted with modern, writs, whenever it is possible,'[64] we later see Hillary asserting, 'We will not and can not change the ancient usages,'[65] and Shareshull adding, 'we do not wish to change our ancient course.'[66] That said, there was no doctrine of precedence of the sort that modern lawyers would recognize, but rather a desire for consistency and

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[61] *Ibid*. Trin. p606.

[62] Y.B. 6 Edw III, Mich. pl. 45.

[63] R.S. Y.B. 13 Edw III, Pasch. pl. 28.

[64] Y.B. 3 Edw. II, 1309-1310, Pasch. pl. 14 (p92).

[65] R.S. Y.B. 16 Edw III, Hil. pl26. The reporter goes on to comment 'And in this [i.e. the specific form of writ on recognizance] Hillary erred, as I think.'

[66] Y.B. 22 Edw III, Mich. pl. 39.

guidance. It appears from the paltry evidence of citation that can be found in the fourteenth-century year books that both judges and counsel simply quoted past cases from memory and without precision. Puttnam gives many examples of references made in both general and what she terms 'specific'[67] terms but none of these would be considered accurate enough to the modern practitioner. It is true that identification of the case referenced has sometimes been possible[68] but more often the reference is general such as 'I have heard a count for the king challenged on just this point..'[69] or 'the former practice of the Court has always been ….'[70] An interesting note on judicial independence can be seen when Shareshull, acting as serjeant, comments in an action: 'We have seen such a fine levied and accepted' and is met with Herle's rejoinder from the bench that that may be so but it had never happened before him![71] Puttnam's research identifies 'twenty-five or more 'old' statutes quoted by Shareshull as revealed in accessible year books and reports of eyres, and points out that given the paucity of record keeping at this time this was undoubtedly not the total number that were referred to by him in the course of his judicial work. Although Putnam shows that this does not reveal the wide range of Shareshull's knowledge for which she finds evidence, this does correspond roughly to the list compiled by Richardson and Sayles from the year books and plea rolls of Edward I as essential to contemporary lawyers. By way of example of the breadth of Shareshull's

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[67] Putnam, 116.

[68] Putnam uses as an example for her belief that the citation is specific Pike's note to R.S. Y.B. 13 Edw III. Mich. pl 51 (p90) when Shareshull comments "In the king's bench there was not long ago a *Scire facias* brought.." and later says:'One has been by judgment forejudged of joinder in this case, witness the case of Richard de Alaysdon in the fifth year' (R.S. Y.B. 15 Edw III, Pasch. pl.45 (p126))

[69] Y.B. 6 Edw III, Mich. pl. 31.

[70] R.S. Y.B. 13 Edw III, Mich. pl.15 (p24).

[71] Y.B. 6 Edw III, Hil. pl.16.

reading, he refers to over a dozen of the fifty chapters of Westminster II, and he cites chapter 1, *De Donis*, in at least twenty different instances, probably far more. Often too, without a direct quotation himself, Shareshull takes part as judge in detailed discussions by other judges and by pleaders of the implications of statutes or of documents like *De Prerogative Regis*. On the other hand, 'not more than half a dozen citations by Shareshull have turned up of the 'new' statutes, i.e. those enacted since 1326, many of which he had helped to draft' (p117). The overall inference from this is that although the records do not accurately reveal the extent of Shareshull's knowledge and referents, there is enough evidence to show that he took pains to act in accordance with a general precedent where possible, however imprecise or vague his methods might seem to modern scholars. Shareshull was attempting to keep his judgments in line with the laws created by precedent before him.

That said, Shareshull's discussions of the usage of custom and prescription usually do not outweigh the force of his belief that the most important element of the law is 'right:' as noted at the beginning of this chapter, he overwhelmingly favored the practical approach that 'no precedent is of such force as that which is right.'[72] Throughout the next two centuries when the importance and permanence of statutes and precedent was being debated, this principle would be often repeated. It lead directly to its famous use in 1610 when Sir Edmund Coke considered the issue brought about by 'Bonham's case' as to whether an act of Parliament could be overridden by 'right.'[73] Coke said:

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[72] R.S. Y.B. 19 Edw. III. Hil. pl.3 (p376); The reporter uses the phrase 'nulle ensaumple'

[73] Thomas Bonham was convicted and imprisoned by the Royal College of Physicians for practicing medicine without a licence. Coke ruled that the College lacked the authority both under its charter and by

And it appears in our books, that in many cases, the common law will control acts of parliament, and sometimes adjudge them to be utterly void: for when an act of parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void; and, therefore, in ... Thomas Tregor's case [Judge] Herle said, some statutes are made against law and right, which those who made them perceiving, would not put them in execution....[74]

When James I questioned Coke about this in October of 1616, Coke responded that his decision did not 'import any new opinion' but rather followed precedent.[75] Herle had argued in common pleas when Shareshull was one of his colleagues: 'It was law before we were born, we do not wish to change it'; 'Sues donque en Parliament de faire novel Ley,'[76] but all the judges are dancing around the fact that they use their sense of justice, of moral right, to tip the balance against customary rights if those rights are at odds with their personal moral code.

The important thing for the scope of this project is that the practitioners seem to be agreed that custom and the new common law might jockey for position, but that both were subject to the judges' own test of right and reasonableness. The effect of this was

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act of parliament to imprison without a licence noting that the College could not act as judge in a case to which it was a party and that 'reason requireth that same be taken strictly for the liberty of the subject,' i.e. that the provisions of the charter must be read strictly to prevent the loss of liberty.

[74] Sir Edward Coke, The Selected Writings and Speeches of Sir Edward Coke, ed. Steve Sheppard (Indianapolis: Liberty Fund, 2003). Vol. 1. Chapter: Dr. Bonham's Case. Accessed on 05/06/2008 via The Online Library of Liberty.

[75] Plucknett, Theodore. *Studies in English Legal History*, (1983):50. However, legal scholarship seems to agree with Plucknett's assertion that at best Coke was 'shamelessly misquoting' Herle since Tregor's case upon which he relied proved nothing of the sort and did not "bear out Coke's conclusions.' Scholars of both Herle and Coke agree that it is far more likely that Coke was simply "reading his own particular opinion into the authorities on which he professed to rely." Whether Coke was going so far as to claim the power to declare statutes void is still the subject of debate. Since Coke explained that he was interpreting the statute simply for the liberty of the subject, we cannot know whether he was intending to use that power in Bonham's case and for this reason his opinion on the point is often considered *obiter dicta* rather than something carrying the weight of decision. From Herle's other decisions it seems unlikely that he was claiming that the common law could control acts of Parliament.

[76] Y.B. 8 Edw III, Mich. pl.35.

that reason, in either the form of the letter of the law, of good order or custom, must be acting in concert with conscience, in the form of right or an overriding sense of 'natural' justice.  At the linguistic level, both right and reason can be used to denote the law itself.  The one, the given rights under a moral law, and the other, the law it theoretically revealed.  This leaves the question of why we can only have justice if we have 'right and reson' not just one or the other.

**Justice demands 'right and reson' acting in consort together**

In Christ's harrowing of hell, Langland shows that the answer lies in a combination of legal and religious theory.   In the poem, Langland bypasses questions of authority with the quote from Matthew 5.17, Jesus's words to the Pharisees at the temple telling them not to be afraid of the apparent change he is bringing: *nolite putare quonian veni solvere legem aut prophetas non veni solvere* (Vulgate) [Do not think that I am come to destroy the law, or the prophets.  I am not come to destroy, but to fulfil.] Christ's argument is that the new order is based on old terms so combining the laws of the New Testament with those of the Old.  In Langland's poem, Christ uses this to answer the argument that Lucifer has given to his followers just a few lines previously when he is rallying his troops in the same terms:

If he reve me of my right, he robbeth me by maistrie;

For by right and by reson the renkes that ben here

Body and soule beth myne, bothe goode and ille.

For hymself seide, þat Sire is of heuene,

If Adam ete þe Appul alle sholde deye

And dwelle wiþ vu deueles; þis þretynge dri3ten made.        (B.XVIII: l276-281)

His argument is that since the law that God set down to Adam and Eve was that if Adam were to eat the apple then all people would die and he, Lucifer, would have possession of their souls, then a strict adherence to God's own decree will not permit him from taking back those souls by force alone (ll B.XVIII.283-4).  It is no accident that it is Lucifer who should be reliant on an argument whose merits are based solely on an adherence to the sort of formalistic approach to the law that troubled the fourteenth century judges as a regular source of miscarriages of justice; furthermore, such an approach allows no room for the Mercy that has been emphasized by Peace as the key to true justice and salvation.

Lucifer's second strand of legal argument is that he has had possession of man's soul for seven thousand winters:

'And siþen I was seised seuene þousand winter

I leeue þat lawe nyl no3t lete hym þe leeste.' (B.XVIII.1283-4)

Still treating man as property, Lucifer is relying on the tenet of land law that since he is in 'seisin,' or possession, of the souls, and has been for seven thousand years, he has a proprietary right to them that no-one will be able to defeat.  The letter of the law might say this is so, but even a character such as Gobelyn is capable of seeing that his reliance on the strict form of the law will be undermined by the trickery with which he originally tempted Adam to the Fall.  Gobelyn points out to Lucifer that 'God wol noght be bigiled … ne byjaped. / We have no trewe title to hem [the souls], for thorugh treson were thei dampned.' (B.XVIII.292).  This is the realm of canon law which had at its heart the concept of 'good faith,' i.e. that no-one should benefit from fraud, but it also falls into the Anselmian formulation of the redemption in suggesting that the devils have no true title

to mankind since the Devil negated the agreement with God when he deceived Man into the original sin.  Legally, therefore, the only way for Christ to claim title to man's soul is for him to temper the strict formalism of the Old law, the order or 'reason' denoted by custom with the overriding principle of the New law of love and good faith and justice.  Only in this way can he do what is 'right.'     Anselm's treaty *De veritate* (ca. 1080) proposed that the fact that the word *veritas* applies equally well to both words and moral actions was not mere coincidence but rather determined by the fact that both are true by virtue of the same principle i.e. that they are both displays of *rectitudo* or truth which comes from God.  Alford explains this:

> When a proposition corresponds *recte* to the nature of things, or when the individual will corresponds *recte* to the divine will, both are said to display rectitude or truth.  In essence, to do a morally right action is to tell the truth; to do a morally wrong action is to tell a lie.  Scriptural support for this view appears in John 8.44, where the two meanings of "truth" come together:  the Devil "stood not in the truth; because truth is not in him …, for he is a liar, and the father thereof.""[77]

It is important therefore that Christ is able to speak with right on his side since it contrasts with the fact that Satan cannot.

Langland's text puts at the heart of Christ's triumph the 'Old lawe" of the Bible (both Old and New Testaments) and the power of right and reason in complementary union.  Thus Christ repeats Gobelyn's argument back to Satan:

Although reson recorde, and right of myselve,

That if thei ete the appul, alle sholde deye,

I bihighte hem noght here helle for evere.

For the dede that thei dide, thi deceite it made;

With gile thow hem gete, ageyn alle reson.  (B.XVIII.331-335)

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[77] John Alford, "The Grammatical Metaphor*." Speculum*, Vol. 57, No. 4 (Oct., 1982):746.

Satan cannot rely on 'reson' in the form of a strict adherence to the law since he has himself shown no respect for its premises. Christ is righting the wrong the done to man by Satan and bringing justice for those who have died in faith. He relies on the Old Testament teaching of Exodus 21:24 ('*Dentem pro dente et oculum pro oculo*') 'a tooth for a tooth, an eye for an eye,' 'the Olde Lawe,' contrasting this good law with the tainted bargain he is not respecting by saying that for 'gilours' to be themselves 'bigiled' is 'good reson.' Reason in the form of the letter of the law should only be upheld if it has right at its foundation; it requires more than mere adherence to its terms but rather a moral judgment. Christ uses the law of the Old Testament when it allows for justice and therefore should be upheld, but Langland emphasizes that it is Christ's Mercy and desire for true justice that allow him to uphold a law that is truly just and not fall foul of harsh formalism:

> And I that am kyng of kynges shal come swich a tyme
>
> There doom to the deeth dampneth alle wikked;
>
> And if lawe wole I loke on hem, it lith in my grace
>
> Whether thei deye or deye noght for that thei diden ille.
>
> Be it any thing abought, the boldnesse of hir synnes,
>
> I may do mercy thorugh rightwisnesse, and alle my wordes trewe. (B.XVIII.390)

Mercy is a part of justice that still allows the truth of the law to be upheld. By incorporating Mercy, Christ can both defeat Satan's formalist argument and uphold justice, and is therefore able to claim that it is both 'by right and by reson' (B.XVIII.351) that he can free men's souls. Through the concept of Mercy, Langland addresses the problems of governing both equitably and according to the letter of the law. In Passus V,

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Repentance explains that God's 'Mercy is moore than alle his othere werkes'[78] and goes on to back this up with a quote from Psalm 144 and another from St. Augustine, so invoking the authority of both the bible and one of its most revered explicators. Later, Piers explains that Mercy is the key by which the sinful might enter Paradise. 'Mercy is a maiden there, hath might over hem alle; / And she is sib to alle synfulle, and hire sone also.'[79] Scripture repeats this in Passus XI after Will has shown how both civil and canon law would follow the man who turned away from his debts as detailed above. Scripture shows that salvation is nonetheless possible under both jurisdictions by adding that: 'may no synne lette / Mercy al to amende, and mekenesse hir folwe.'[80] The implication is that whatever the situation, humility before God and a reliance on his Mercy can bring about justice.

The next Passus addresses directly the apparent conflict of laws between the 'Olde Lawe, as the letter telleth, that was the lawe of Jewes' with the account of the stoning of the adulterous woman in chapter 8 of the Gospel of John. Langland acknowledges that the letter of the law clearly commands the Jewes to stone her, but explains that Christ's 'curteisie' enabled him to save her. As Schmidt comments, 'Mercy is not being represented as an arbitrary *deflection* of (strict) justice, rather justice is to be seen as 'law administered with Christian goodness.''[81] It is only with the meeting of Truth with Mercy in Passus XVIII (just before Christ harrows hell) that holy law can

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[78] B.V.282.

[79] B.V.635.

[80] B.XI.137-8.

[81] A.V. C. Schmidt, p306: note to prologue lines 132-8.

truly be fulfilled.  Mercy teaches Truth how Christ will save those in hell and proves it 'by reson.'  It is Pees and Mercy together that are man's surety.:

> And that God hath forgiven and graunted me, Pees, and Mercy

> To be mannes meynpernour for evermore after.' (B.XVIII.183-4)

Thus, by choosing to frame his portrayal of the harrowing of hell in the language of the courtroom, Langland illustrates how justice can move from the spiritual arena to the earthly courtroom.  He enters firmly into the courtroom debate on the side of the 'naturalist' approach to law, showing that only when the religious ideas of Mercy and Truth are brought into the decision-making process, when 'right' and 'reason' are working together, will true justice be done on earth.

### *Chapter 4:  Christ's 'liges':*

> '… by right and by reson raunsone here my liges:
> *Non veni solvere legem set adimplere*.'  (B.XVIII.349-351)

When Christ harrows hell at the climax of Passus XVIII of *Piers Plowman*,
Langland finally provides an answer to Will's search to find out who will be saved.  It
is Christ's 'liges' who will be 'raunsoned.'   It is significant that Christ uses the
language of civil property disputes to assert his rights over the people he calls his
'liges,' while at the same time asserting that he will be fulfilling the law.  As this
chapter and the next illustrate, Christ's approach to the freeing of his 'liges' presents
a two-pronged argument to Lucifer, arguing both through the Roman law idea of
personal status that the faithful are effectively unfree and his property, and also
through the contemporary idea of subjecthood, that his followers are by choice and
faith within a relationship of allegiance with him, and therefore owed the rights and
privileges that come with allegiance to a sovereign, in the form of his protection.
Christ is arguing not only that he is upholding the law in terms of fulfilling the
biblical prophecy of the conquering of death and doing justice as detailed in chapters
two and three, but also that he is keeping to his part of the social relationship that
makes him king and worthy of allegiance.  Langland uses these terms at the most
important moment in the poem in order to emphasize the responsibilities of kingship:
Christ owes his 'liges' this battle with Lucifer to fulfill his part of their social
contract.

The responsibilities owed by both parties in that contract are an important part
of Langland's theory about kingship.  Central to Langland's approach to kingship is
his understanding that the king was anointed by God as part of a divine plan to

achieve justice on earth.  His power comes from the allegiance of his people and in return he guides and protects them.  There is no room in this model of kingship for slaves or bondship, only a mutual responsibility between parties that mirrors the relationship between the divinity and the faithful.  At the heart of the relationship is faith, a human relationship rather than an economic one.

The previous chapters aimed to show how the state of English law inflects the literature even when the issue presented appears to be covenantal theology.  They also illustrated how the questions of the basis of legal authority being faced in the courtroom were so enmeshed in the language of the poem that it is impossible to say which influenced the other more.  This chapter and the next look at the influence of the literature on the law, and demonstrate that Langland's views on the nature of kingship promoted ideas that played an integral part in the legal development of the idea of citizenship and the role of the king.

## Langland's model of kingship

Langland's first introduction of the king and his court in the poem is not through the figure of the king himself, but rather of the corrupt clergy who 'serven the King and his silver tellen' (B.Prol.92).  These are the clergy who work in the chancery and exchequer courts, claiming the dues that arise to the king from guardianship cases, lost property, and straying animals, or acting as stewards in manorial households.  His argument is that these men are not looking after the spiritual health of their parishioners as they should, but rather pursuing opportunities for their own worldly advancement in London.  There is an inference of weakness on

the part of a king who enables their behavior by allowing corrupt officials to appropriate his authority for their own gain. Langland extends the idea of corruption to the church as an institution by suggesting that the cardinals responsible for the election of the pope, the head of the earthly spiritual court, have lost sight of the virtues of prudence, temperance, justice and fortitude set out by St. Peter. Having laid out the reasons to doubt the spiritual court's good faith, he falls short of accusing the cardinals and the Pope of sin through the poetic sleight of hand of pretending that he cannot comment on their behavior because he is not learned enough. Nonetheless, the accusation stands. The constant shifting of position and layering of ambiguity is, of course, consistent within the framework of a vision, itself within the frame of a dream, and Langland uses it frequently in the poem to enable himself blamelessly to explore multiple perspectives simultaneously.[1]

Having shown the corruption of the papal court and introduced the ways in which the king's court corrupts the clergy, Langland provides more hope for earthly justice in his description of the king himself. The king enters the vision leading the knights, so emphasizing that his place in the social hierarchy depends on his leadership of the nobility. The King and his retinue are followed by the source of his power: the might of the communes. Whether this is truly the power of the parliamentary Commons, as Giancarlo asserts,[2] or Donaldson's more general 'community,'[3] the important point for the purpose of this project is that in both cases

[1] See chapter 1.

[2] Matthew Giancarlo, "*Piers Plowman,* Parliament, and the Public Voice*." YLS* 17: 135-173. See also, his *Literature and Parliament in late Medieval England.* Cambridge, Cambridge UP, 2007.

[3] E. Talbot Donaldson, "*Piers Plowman:* The C-text and its Poet*." Yale Studies in English* 113. (New Haven, 1949).

the assent of the community is paramount for the king to hold his position with authority:

> "Thanne kam ther a Kyng: Knyghthod hym ladde;
>
> Might of the communes made hym to regne.
>
> And thane cam Kynde Wit and clerkes he made,
>
> For to counseillen the Kyng and the Commune to save.
>
> The Kyng and Knyghthod and Clergie bothe
>
> Casten that the Commune sholde hem [communes] fynde.
>
> The Commune contrived of Kynde wit craftes,
>
> And for profit of al the peple plowmen ordeyned
>
> To tilie and to travaille as trewe life asketh.
>
> The Kyng and the Commune and Kynde Wit the thridde
>
> Shopen lawe and leaute – ech lif to know his owene"
>
> [B.Prol.112-122]

The King's role as guardian of his people is emphasized in the fact that the first duty of Kynde Wit (native intelligence) and the clerkly advisors is to use their knowledge to guide the King and protect the people. After protection, the King's next obligation to his people is to find food for them.[4] None of this is revolutionary but it is significant that Langland is neither emphasizing the divinity nor power of the king, nor the people's duty to obey his laws, but rather he focuses on the responsibilities

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[4] T.P. Dunning, *Piers Plowman: an Interpretation of the A-text* (Dublin,1937): 54-57 details passages illustrating the idea that man has a right to those things needed to satisfy his basic needs but to no more than this.

that come to the king along with his position. These were responsibilities of particular significance in the contemporary climate of discontent about the treatment of laborers, and the raising of taxes to finance overseas wars, which all centered on the relationship between the King and the people.[5] Langland emphasizes that it is the community working together from King to plowman that creates a harmonious society of law and justice with each person given due measure, 'ech lif to know his owene,' within that stratification. Robertson and Huppé's equating of 'ech lif to know his owene,' with 1 Cor. x. 24: '*Nemo quod suum est quaerat*' and St. Augustine's '*amor sui,*' the opposite of true charity, which in turn led them to interpret the lines that follow as flattery or satire,[6] was extensively countered by Kean's explanation of how Langland is setting out 'a straightforward statement of ideas which are essential to the plan of his poem'[7] by repeating conventional formulas that echo the work of Aquinas and Justinian's *Digest* of Roman law. Langland is not promoting social change but rather the importance of king and commune working together at every level for a strong society. The king provides law and order and, in return, the people, represented by the plowmen in this passage, work together to provide for everyone's needs. The role of the king and his lords is to divide those provisions justly. Donaldson's reading of the phrase 'ech lif to know his

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[5] For details of the peasants' discontents see *The English Rising of 1381*. Ed. R.H. Hilton and T.H. Aston. Cambridge, 1984 and the work of Anthony Musson, *Medieval Law in context. The Growth of legal consciousness from Magna Carta to the Peasants' Revolt.* Manchester, 2001; also with W.M. Ormond, *The Evolution of English Justice: Law, Politics and Society in the Fourteenth Century.* London, 1999.

[6] D. W. Robertson and B.F. Huppé, *Piers Plowman and Scriptural Tradition* (Princeton, 1951): 27.

[7] P.M. Kean, "Love, Law & *Lewte* in *Piers Plowman*." *The Review of English Studies* 15. No.59 (Aug, 1964) (Oxford, UP): 241-261.

owene' as 'so that each man might know his place' is not incompatible with a reading of the passage that sees this idea not as one of oppression but as one of support and right, i.e. not that each man is forced to remain in his place in society but that each man can be assured of his right to that place in society along with the protections that come with it. Kean's understanding of 'his owne' as referring to the material things that are 'his own property' is equally possible within this idea of rights and protections. In a peaceful society of law and order, a man can feel confident that his material possessions are safe or that he will be reimbursed if they are not. As Aquinas illustrated in his *Summa*,[8] a peaceful society is built on man's contentment with his lot, an idea that Langland is emphasizing here as the proper result of the king's work.

The king and the people together with their natural reasoning shape the law. As detailed in chapter three, the law is considered a product of divine justice revealed to all men through reason, not simply the arbitrary whims of a powerful man. King and commune are equal partners in the relationship; there is no suggestion that there should be any form of bondage involved. Quite the contrary, since the king leads the knighthood about whom there were distinct contemporary ideals of behavior as being constantly protective of their charges, both in terms of their physical and moral well-being. Again, there is nothing new here: examples of these ideas can be found in the numerous chivalric biographies and handbooks of chivalry from the medieval period, which range in focus from Riamon Llull's thirteenth-century emphasis on the importance of a knight's religious life to enable him to uphold a Christian society, to

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[8] *Summa Theologica* II.II, q.66 a. 2. 'per hoc magis pacificus status hominum conservatur, dum unusquisque re sua contentus est.'

the more practical advice of Geoffroi de Charny who details the knightly way of life and its practical difficulties, for example cautioning against entering tournaments before gaining sufficient skill in horsemanship![9]   Langland is placing his king squarely at the head of a group who should be actively involved in the social relief of the people.

Langland introduces ambiguity and a different perspective after this positive introduction of the king by moving immediately to the 'leene' 'lunatik.' who kneels to speak 'clergially' to the king and praises his rule thus:

Crist kepe thee, sire Kyng, and thi kyngryche,

And lene thee lede thi lond so leaute thee lovye,

And for thi rightful ruling be rewarded in hevene! (B.Pro.125-8)

The lunatic firmly defines the King's role as leading the kingdom to justice, for which he will be rewarded in heaven.  Again, his emphasis is on the King's responsibilities. However, should 'leene' alert the reader that the lunatic's words are equally empty and thin on truth or is the lunatic simply an ascetic who does not indulge himself?  If the clergy are not to be trusted should no attention be paid to a man who speaks 'clergially' or does it indicate that he is learned?  After all, as Kean has noted, his speech mirrors Aquinas' discussion on the proper rewards of kingship and the following fable concludes with the ideas of Aquinas' *De Regimine*.[10]  Is this madman who speaks like a spiritual advisor really a holy fool, the only one left speaking the truth in a dystopic 'feeld of folk' where the other clergy are too busy working for

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[9] Cf Richard Barber, *The Knight and Chivalry* (London, 1970): 146.

[10] Kean, 241-61.

their own benefit to trouble about the community?  As a clergyman, he is allowed to address the King with the term 'thou.'  Does that mean he is of equal standing as this king?  It seems unlikely that Langland should reference Aquinas so frequently in his poem and not be aware that he is echoing his words now, and there is no suggestion that Aquinas was anything less than earnest.  Nonetheless, Langland leaves open both the possibility that the lunatic is speaking the truth or that he is simply mad, perhaps backing away from any criticism that may be implied by a real King who is not governing according to these principles.

However, the lunatik's message is backed up by an 'aungel of hevene,' who descends to expand his message in learned Latin.  The Angel quotes anonymous Leonine verses from an early fourteenth-century sermon which warn the King that he will not always be king and should bear in mind that his true reward will be in heaven.  To do justice on earth therefore he must act religiously by interpreting the naked letter of the law in divine terms.[11]  To be just is to be godly:

> *"Sum Rex, sum Princeps"; neutrum fortasse deinceps!*
>
> *O qui iura regis Christi specialia regis,*
>
> *Hoc quod agas melius – iustus es, esto pius!*
>
> *Nudum ius a te vestiri vult pietate.*
>
> *Qualia vis metere, tali grana sere:*
>
> *Si ius nudatur, nudo de iure metatur;*

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[11] For the significance of the inclusion of mercy in the administration of the law, see chapter three above.

*Si seritur pietas, de pietate metas.* (B.Prologue: 132-138)[12]

Again the emphasis in this passage is on the King's responsibilities, on his duty, not only to his people to effect justice, but also, to God himself: as a good Christian, the King must show mercy and rule religiously, but he must also have a sense of what is owed to God by his earthly deputy.

It is only a 'goliardeis, a gloton of wordes' who counters this, 'gloton' underlining the contrast with the 'leene' lunatic. Like the angel, he too speaks in Latin, but his emphasis is not on the King's spiritual duties but on his earthly ones to uphold the civil law. He angrily answers the angel saying: *'Dum 'rex' a 'regere' dicatur nomen habere, / Nomen habet sinere nisi studet iura tenere.'* [Inasmuch as a king has his name from (the fact of ) being a ruler [ultimately the word rex is from *regere* 'to rule'], he possesses the name (alone) without the reality unless he is zealous in maintaining the laws.] His argument suggests that the responsibility of the King is to the civil law, but the argument's limitations are revealed in the commune's interjection of the absolutist Roman law that they advocate out of fear: *"Precepta Regis sunt nobis vincula legis!"* (B.Prol.153) [The King's bidding has for us the binding force of law].[13] A King who limits himself to the letter of the civil law and

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[12]'(You say) 'I am King, I am Ruler'; you may perhaps be neither in future. O you who administer the sublime laws of Christ the King, in order to do better what you do, as you are just, be godly! Naked law requires to be clothed by you with a sense of your duty to God. Sow such grain as you wish to reap. If the law is nakedly administered by you, then let [judgment] be measured out [to you] according to the letter. If goodness is sown [by you], may you reap goodness.'

[13] This is a paraphrase of the *Digest*: 'Quod principi placuit legis habet vigorem' (I. iv. I, Ulpianus)

its inevitable inconsistencies and injustices may create an ordered society but not one of justice but rather of repression.[14]

Langland illustrates this with an example from a 1376 sermon by Bishop Brinton of a troop of rats and small mice who are in the thrall of a cat. They plan to put a warning bell around its neck but though they get the bell there is no-one brave enough to attach it. A wise mouse suggests that they should just leave the cat alone since even if they were to have killed it, another would come and take its place, and the problem would begin again. Better to leave the cat his freedom to seek bigger prey than to turn his attention to them. Furthermore, he comments, better that they deal with the predictable cat than have the whims of a kitten to deal with:

For I herde my sire seyn, is seven yeer ypassed,

"Ther the cat is a kitoun, the court is ful elenge."

That witnessth Holy Writ, whoso wole it rede –

*Ve terre ubi puer rex est, &c.*   (B.Prol. 193-6)

This last reference to Ecclesiastes 10:16, "Woe to the land where the king is a child" is generally agreed to refer to the death of Edward III and accession of Richard II at the age of ten - though typically Langland removes himself from the implied criticism firstly by having it spoken by a mouse, secondly by placing it in a dream and finally by disingenously telling others to interpret it because he dare not "(What this metels

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[14] Roman lawyers accepted that the law itself could not encapsulate justice which was why they placed so much emphasis on the intent of the law and the underlying logic that tied the law together.

bymeneth, ye men that ben murye, / Devyne ye – for I ne dar, by deere God in heven)!" (B.Prol.209-210)[15]

For the wise mouse, the important thing is order.  He does not want to disrupt the status quo because men, cat, rats and mice currently all have their place in the social order:

> For may no renk ther reste have for ratons by nyghte.
>
> For many mennes malt we mees wolde destruye,
>
> And also ye route of ratons rende mennes clothes,
>
> Nere the cat of the court that kan you overlepe;
>
> For hadde ye rattes your [raik] ye kouthe noght rule yowselve.
>
> (B.Prol.197-201)

The rats cannot rule themselves, so without the tyranny of the cat there would be the worse state of chaos; the king would have failed to keep his peace, one of his first duties as the people's protector.  Langland moves from there to describe the corruption of lawyers detailed in chapter one so there is no doubt from the Prologue that responsibility for the just and peaceful ordering of society rests firmly with the King:  the clergy cannot be relied upon to protect the people spiritually nor can the sergeants at the Barre be relied on to enact justice.  The people's protection rests with the king alone, for good or bad.

Langland is no revolutionary.  His poem advocates the central importance of order over violent action, stressing the role of the law and that the King should be a leader in love.  Kean noted that the Lunatic's use of the idea of the King being 'the

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[15] Samantha Rayner points out (in *Images of Kingship in Chaucer and his Ricardian contemporaries.* D.S Brewer, Cambridge, 2008: 39) that sermons on the accession of Richard II usually used the verses of Isaiah 11:6 "and a little child shall lead them."

'leader' in relation to Love and Law'[16] echoes Aquinas' use of the idea of the King directing or steering the kingdom in the right direction with the image of king as helmsman.  He goes on to illustrate that the idea that the King should administer the laws rightly and voluntarily accept to be bound by the Law, despite the fact that legally no-one could restrain him, was a commonplace, both in the writings of Aquinas and in popular literature of the time such as the *Secreta Secretorum.* Furthermore, it was a part of the coronation oath both in the Latin form:  *'concedis iustas leges et consuetudinis esse tenendas....?'* and in the French:  'Sire, graunte vous a tenir et garder le Loys, et les custumes droitureles, les quiels la Communaute de vostre roiaume aura esleu?'[17]  But the need for strong leadership extends to more than the upholding of the law but also to making sound decisions and it is this that will be emphasized in the ensuing passages.    The C-text sets out the duties of the King in order at lines 381-2:

> So comune cleymeth of a kyng thre kynne thynges,

> Lawe, loue, and leaute, and hym lord antecedent.

The people have a claim and right to their king upholding the law, keeping the peace and ensuring earthly justice.  Thus, Langland's initial vision of kingship ends with hope for a just society in the promise of a good king, but it is a hope tempered with realism through Langland's description of the corrupt clergy undermining the people's hopes of spiritual health, and corrupt lawyers disabling earthly systems of

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[16] Kean, 244.

[17] *Ibid.*, 246.  Kean is quoting from a discussion by E.T. Donaldson in *Piers Plowman:  the C-Text and its Poet,* (New Haven, 1949):106 where Donaldson discusses the oath but not the speech of the Goliardeis in relation to it.

justice, while oblique references to real kings of the last century highlight their very real shortcomings.

Langland then uses the trial of Lady Mede in Passus II to explore the principles by which a king should be guided in forming an administration. When the dreamer describes his first sight of Lady Mede, he details the richness of her attire and describes her crown as equal to the King's own. The dreamer comments that 'Hire array me ravysshed, swich richesses saugh I nevere' (B.II.17), illustrating through the transporting idea of 'ravysshed' how easy it is to be distracted from a goal on a personal level through fascination with Mede. In contrast, Holy Church describes Mede as someone who 'hath noyed me ful ofte' (B.II.20) because of the ways in which she has corrupted not only her followers but also those who administer both the secular and spiritual laws. Holy Church is not carried away; she leaves no doubt that Mede is anything but a negative influence. The dreamer is on a search for Truth, and Holy Church quickly warns that Mede is 'manered after' her father, False, who has never spoken the truth. The dreamer is warned that Mede is fickle and treacherous, and though he may learn all about men from watching her, he must guard himself from her temptations. It is the alliance of Fals with Cyvylle and Symonye that allows for the marriage of Mede to Fals-Fikel tonge, but after the false documents have been prepared they must still be witnessed in Westminster; ultimate earthly authority still resides in the King's name, however much that name might have been appropriated by others. The King is warned of the impending arrival of so many miscreants by Truth and angrily summons all of these characters to his court. Langland then gives his most extended example of leadership and governance in the

poem by assembling characters representing the various administrative departments of the court, and peopling it further with personifications of sins and virtues and abstract moral principles. This allows him to put forward an array of perspectives on a multitude of often conflicting ideas, from wealth to greed, just and unjust reward, Civil Law and Simony, Fals and Truth.

Langland's King shows his instant mastery of the obvious villains, immediately threatening Fals, Favel, Falsnesse, Gyle, and Lyere with hanging. However, he emphasizes that their punishment shall be based on the law: "right as the lawe loke[th], lat falle on hem alle!' (B.II.198) so that even in his retribution he is acting justly. Furthermore, when Lady Mede is brought before him, he is courteous to his prisoner, calling a clerk and asking him 'To take Mede the maide and maken hire at ease.' (B.III.4) It is hard to see any criticism of the King's behavior here, since there is no evidence that the King has been fascinated by Mede, but rather it should be noted that he is acting chivalrously and ensuring that her rights as an accused but not convicted noblewoman are respected. This is a King in charge.

However, the dangers of giving Mede any quarter become instantly apparent in the description of the small court she forms around herself in her chamber:

'Ac ther was murthe and mynstralcie Mede to plese;

That wonyeth at Westmynstre worshipeth hire all.

Gentilliche with joye the justices somme

Busked hem to the bour there the burde dwellede,

Conforted hyre kyndely by Clergies leve,

And seiden, "Mourne noght, Mede, ne make thow no sorwe,

149

For we wol wisse the Kyng and thi wey shape

To be wedded at thi wille and wher thee leef liketh.' (B.III.11-18)

Mede thanks the lawyers who come to her aid, and promises them all social advancement to go with the gold, silver and jewelry that she distributes. She then goes about corrupting the confessor with the suggestion that he overlook her sins in exchange for a stained glass window, and persuades the mayor to allow merchants to sell at unreasonable prices. By the time that Mede meets the King therefore, the reader is prepared to see her manipulate him also. However, although the King forgives her for her attempted marriage to Fals, he wisely recognizes the dangers she poses and insists that instead she should marry Conscience, a suggestion to which Conscience objects vehemently before listing the many ways in which she has corrupted all levels of society, from Kings and Popes to widows and monks. The warning is both general and personal, for Conscience tells the King: 'Youre fader she felled through false biheste.' Since Edward III was probably on the throne at the date of Langland's writing, this could refer to the murder of Edward II but more probably refers to the bankruptcy of the Black Prince who supported Pedro of Castile's campaign to regain his kingdom from Henry of Trastamara at his own expense only to find that Pedro would not pay him the money promised for that support. Langland makes the point that one of the responsibilities of a good king is to use sound judgment in leadership, while giving an example that could be a specific king or any one.

The contemporary references continue, as outlined in Chapter 1,[18] in the many ways in which the example of Lady Mede make most sense in the parliamentary setting if interpreted as a reference to Alice Perrers, the mistress of Edward III. After detailing the ways in which many levels of society can be corrupted by Mede, Conscience warns the king that she spreads woes around her:

Ther she is wel with the kyng, wo is the reaume –

For she is favorable to Fals and defouleth truthe ofte. (B.III.153-4)

In particular, she corrupts the workings of the law with her bribes and payoffs on settlement days, so that honest men have no chance of reparation through litigation, the only system in place for earthly justice. The result is that 'povere men may have no power to pleyne though thei smerte, / Swich a maister is Mede among men of goode.' (B.III.169). The emphasis of this passage is therefore both that the king should avoid Mede for the danger that she can lead him into personally – as she did his father – but also for the danger that she poses to his ability to carry out his role as king i.e. to protect and guide his people.

Mede tries to sway the king by answering in her defence that rather than being a danger to good government, she is essential to it for she ensures the smooth running of the social order by providing the king with gifts to give his people:

It bicometh to a kyng that kepeth a reaume

To yeve [men mede] that mekely hym serveth –

To aliens and to alle men, to honouren hem with yiftes;

Mede maketh hym beloved and for a man holden.

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[18] See pp 44-45 referencing Matthew Giancarlo's argument in "*Piers Plowman,* Parliament, and the Public Voice*." YLS* 17: 135-173.

Emperours and erles and alle manere lordes

Thorugh yiftes han yonge men to yerne and to ryde.

The Pope and alle prelates presents underfongen

And medeth men hemselven to mayntene hir lawes,

Servaunts for hire service, we seeth wel the soth,

Taken mede of hir maistres, as thei mowe acorde. (B.III.209-218)

Although the king is moved by Mede's defence – 'By Crist, as me thynketh / Mede is worthi the maistrie to have!' (B.III.228-9) – Conscience is not.  Again Langland adopts an ambiguous position:  since conscience is obviously a personification and Reason has yet to be summoned, which part of the King's mind is swayed by her argument?  If it is Kynde Wit, the inference must be that all men, even kings, are essentially material creatures.  Whatever the inference, the importance of Conscience in guiding the King is emphasized.

Conscience points out that God has created two types of meed:  the one that is given by God as a reward for living a righteous life, and the other that is simply an earthly temptation.  Doing justice to each man means that an honest wage is fair payment; as detailed above, 'it is no manere mede but a mesurable hire' (B.III.266), just as commerce is not Mede but rather should be an honest exchange.  Conscience's first speech has already listed the ways in which bribery and corruption prevent these honest exchanges.  The implication is that it is for the king to establish a regimen whereby men are encouraged to live a just life, not because it will bring them earthly riches but because it will bring with it a just reward.  Conscience then describes an ideal state when:

.. love and lowenesse and leautee togideres –

Thise shul ben maistres on moolde [trewe men] to save.

And whoso trespaseth ayein truthe or taketh ayein his wille,

Leaute shal don hym lawe, and no life ellis.

Shal no sergeant for his service were a silk howve

Ne no pelure in his [pavilioun] for pledynge at the barre. [B.III.291-296]

which fits in with the idea that justice is for the humble as much as for the mighty,
and is not to be regulated by the administrators of the common law but rather by an
abstract, conceptual idea of justice based on the divine law.  In such a scenario, the
good King becomes analogous to the Messiah in that his work's natural conclusion is
the end of the administrative state of the temporal government when all men are
judged on a divine scale.  Conscience imagines an ideal state where:

Shal neither kyng ne knight, constable ne meire

Over[carke] the commune ne to the court sompne,

Ne putte hem in panel to doon hem plighte hir truthe;

But after the dede that is doon oon doom shal rewarde

Mercy or no mercy as Truth [moste] acorde.

'Kynges court and commune court, consistorie and chapitle –

Al shal be but oon court, and oon b[ur]n be justice. [B.IV.315-321]

Although it appears extreme and apocalyptic to the modern ear, this tone was a
common part of contemporary sermons.  Most importantly for our purposes, it is the
actions of the king that lead the people to a state of peaceful justice but he is as bound

by its rules as they are. Langland makes it clear that no man in the current social hierarchy, be he 'kyng' or 'meire', can escape the constraints of true justice.

Mede attempts to answer Conscience by quoting a line from Proverbs that appears to illustrate that the giving of gifts is good, but Conscience quickly points out that she has dishonestly quoted only half of the scriptural line to bend it to her purposes; she has overlooked that part of the passage which warns that the taking of gifts (i.e. bribes) leads to corruption. In the reference to scripture, Langland is emphasizing the importance of being guided by a moral code and also of understanding the whole of a law not just part of it, perhaps suggesting that a wise King must be sure of both the learning and the judgment of his advisors. By implication he is also endorsing the Roman idea that justice is only to be found in the ways in which laws fit together, by an understanding of a complete moral code rather than in the letter of an individual law.

The King of the first vision does not know how to reconcile the two opposing voices of Conscience and Mede, despite the fact that Langland has presented Mede's arguments as indefensible positions. The only rational interpretation of this is that the fascination of Mede is so great that conscience alone is not enough to overcome it, however much more objectively compelling his arguments may be. Despite the implied criticism, the king should at least be commended for being wise enough to recognize his own shortcomings and for turning to Reson for help, symbolically placing Reson right by his side. As detailed in chapter two, since reason is the faculty by which the king shall know natural justice, this is a hopeful sign. Waryn Wisdom and Witty her fere – Worldly Knowledge and Intelligence – hope to sidetrack him,

but Conscience warns Reason of their self-serving motivations and Reason ignores them. However, rather than dealing with Mede, Reason is now sought to arbitrate in the dispute between Wrong and Peace.

As explained in chapters two and three, this is a poem that emphasizes the importance of the tempering of law and justice with Mercy. However in this episode, even though Peace is willing to accept monetary compensation from Wrong and 'forgyve hym that gilt with a good wille' (B.IV.101), the King refuses to drop his desire for Wrong to be punished in a way that makes him suffer, arguing that 'Lope he so lightly, laughen he wolde / And eft the boldere be to bete myne hewen.' (B.IV.107) The King stands firm against the easy solution that Mede offers to the problem on the principle that Wrong must be prevented from acting in the same way again. Since neither Conscience nor the King can be persuaded differently, Reason is approached to ask for mercy. However, Reason takes an even firmer tone demanding that no-one should ask him for Mercy until society as a whole is virtuous and just, 'Til the Kynges counseil be the commune profit' (B.IV.123) or 'While Mede hath the maistrie in this moot-halle.'(B.IV.135) Reason takes the emphatic absolutist doctrine of Innocent III's just judge of *De Contemptu Mundi* who leaves no evil man unpunished and no good man unrewarded to reject Mede's influence decisively and give the King's decision additional moral force:

> That I were kyng with coroune to kepen a reaume,
>
> Sholde never Wrong in this world that I wite myghte
>
> Ben unpunysshed in my power, for peril of my soule,
>
> Ne get my grace thorugh giftes, so me God save!

> Ne for no medehave mercy, but mekeness it made;
>
> For "*Nullum malum* the man meet with *inpunitum*
>
> And bad *Nullum bonum* be *irremuneratum.*" (B.IV. 138-144)

In addition, Reason promises that if his argument is followed then "Lawe shal ben a laborer and lede afeld donge / And Love shal lede thi lond as the leef liketh.' (B.IV.145-146). The relegating of Law to a laborer illustrates not only how both the biblical, canon and civil laws should be working to establish justice but also how these laws should be useful tools when effected properly. The striking image that they 'lede afeld donge' contains both the idea that they can disperse the lowest forms of nature and also that they can put that baseness to good use by disposing of it effectively, here by reference to its common use as fertilizer. The reference again to Love leading the land further enforces the idea of a society working for the benefit of all.

Reson speaks powerfully here and it is hard to see how there might be criticism of his idealism except that it is exactly that, i.e. an ideal only, which Langland illustrates in the way that the speech is received:

> Clerkes that were confessours coupled hem togideres
>
> Al to construe this clause, and for the Kynges profit,
>
> Ac noght for confort of the commune, ne for the Kynges soule,
>
> For I seigh Mede in the moot-halle on men of lawe wynke,'
>
> And they laughynge lope to hire and lefte Reson manye.
>
> Waryn Wisdom wynked upon Mede
>
> And seide, 'Madame, I am youre man, what so my mouth jangle;

(B.IV.149-155)

Man's weakness of nature and propensity to sin means that Reason's ideal state will always be fighting against corrupt officials, who seek to bend whatever rules might be in place for their own good. The law here is a tool for corruption rather than for good and, worse still, corruption in the King's name. Langland is clear that when the law is not being used to benefit 'the commune,' although the King may profit from it, his soul is the poorer for it. The strong implication is that when the King allows those in administration to be influenced by Mede instead of encouraged to work for the common good, he has failed to live up to the responsibilities of his position and his soul will bear the burden of that. The politician's argument that might be offered in the King's defence, that he is doing what necessity or compromise demands, is neatly cut off by the admission of Wordly-Wise that he is Mede's man, whatever he may say to the contrary.

Nonetheless, Langland provides hope with the description of 'mooste peple in the halle and manye of the grete' (B.IV.159) agreeing with Reason and damning Mede while the commoners in the hall join in with a more colorful epithet. Given the contemporary backdrop of the Peasant's Revolt and the tumultuous parliaments of the fourteenth century, it is important that Langland includes amongst the righteous 'many of the grete;' it is not the authority of the upper classes, *per se*, that makes them unjust, only the way in which they choose to exercise that authority, and their damning of Mede in their terms puts them on an equal moral footing with the commoners who damn her in theirs.

Now the King agrees with Conscience and Reason, and appears to be about to provide an example of good leadership. However, his anger that Mede has almost destroyed the law is diverted to focus on the law itself, which he criticizes emphatically, but ironically not because it has been a source of injustice but rather because it has caused him to lose money. Even at this stage, the King cannot be said to have understood the lessons of Conscience and Reason since he is now doing the right thing but for the wrong reason. He is being guided by his desire for the wrong meed but it nonetheless leads him to the right conclusion: he ends the Mede episode by saying 'I wole have leaute in lawe' (B.IV.180) so fulfilling the coronation oath and finally taking the advice of the lunatic of the Prologue. Is the implication that actions the King takes to advance himself inevitably advance the good of the people as a whole in a sort of medieval version of modern Republicans' 'trickle down' economic argument?

Langland does not elaborate but puts the emphasis instead on 'leaute' as the starting point of good governance. Kean has examined the literary and popular use of *lewte* in detail[19] to show that earlier critics' reading of *lewte* as 'scrupulous regard for law' or 'strict adherence to the letter of the law' does not make sense in the context of Love and *lewte* being the two forces needed to defeat the work of Lady Mede and her followers. Instead, he proposes two most useful contexts in which to view Langland's usage of the word: firstly, the idea of 'loyalty' or 'fidelity' (such as shown by Noah in the *Cursor Mundi*[20] when God promises to save him 'for 3our true leute,'

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[19] Kean, 241-61.

[20] *Ibid.,* 255. Kean quotes from MS. Go (umlaut)ttingen 1655 and notes that Cotton and Trinity omit 'treu' while Fairfax reads 'for thi ri3twisnes and thi lewte.'

and in Barbour's *Bruce* where the list of Douglas' faithkeeping virtues ends with a praise of 'leawte' itself);[21] and, secondly, the idea of 'living righteously,' of living well. Both the example of Noah and the Barbour include both of these ideas, which leads Kean to conclude that the most important reading of *lewte* is to signify the Aristotelian virtue of Justice - defined in the *Nicomachean Ethics* as 'complete virtue, but not absolutely, but in relation to our neighbour.'[22] Kean summarizes this concept of justice as follows:

> The main points which Aristotle makes concerning this 'justice in a wide sense', and which St. Thomas reproduces, may be summed up as follows: it is coextensive with virtue (*Ethics*, v.i, ii; *Summa*, II.II. q.58 a. 5-6); it is virtue directed towards one's neighbour (*Ethics*, V.I; Summa, *ibid*., a.12); it is linked to law because practically the majority of the acts commanded by the law are those which are prescribed from the point of view of virtue taken as a whole; for the law bids us practice every virtue and forbids us to practice any vice. (*Ethics*, v. II. 1130b)

If we accept Aristotle's idea of justice as the aim, the King's promise to have 'leaute in lawe' is a promise to make the law serve the community as a whole, to have justice for every man in relation to his neighbor. Reason and Conscience support him emphatically so that the episode ends with an upbeat sense of a new society governed by moral principles that allows for communal hope. When the King says, at the end of the Passus, 'Als longe as oure lyf lasteth, lyve we togideres!' it seems that he is not only addressing Conscience and Reason, who have agreed to be bound to him, but rather the community as a whole, in the hope that good governance will enable them to live peacefully together.

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[21] Kean quotes from Barbour (i. 365-74): Leavte to luff is gretumly; / Throuch leavte liffis men rychtwisly: / With A wertu [of] leavte / A man may 3eit sufficyand be: / And but leawte may nane haiff price, / Quhethir he be wycht or he be wys; / For quhar It fail3eys, na wertu / May be off price, na off valu, / To mak A Man sa gud, that he / May simply gud man callyt be.

[22] V. I. 1129-1130 (translated W.D.Ross, Oxford, 1925).

The second vision begins with Reason preaching to the 'feld of folk,' heavy handedly listing in detail the varied number of ways in which they are sinful. Most importantly, for the purposes of this project, his counsel to the King is to love his common subjects since 'It is thi tresor, if treson ne were, and tryacle at thy nede.' (B.V.49) The C-text, written after the 1381 Peasant's Revolt, omits this reference to popular treason making the image even more powerful. The people are the King's earthly treasure in that they are ultimately the source of all his temporal wealth, but they are also a source of spiritual wealth in that the way he fulfills his obligations to them now will have direct consequence for him in the afterlife. The obligations are not limited to the King however. By surrounding him with the people and their manifold shortcomings, Langland is suggesting that they play a part in governance too. It is not for the King to manage their sins but for them to take responsibility for their own actions and fulfill their part of the social contract. To do this, like the dreamer, they too must look for Truth in their own lives.

It is the plowman, the epitome of the honest laborer, who is the only one able to lead the people to Truth. Theologie has introduced the figure of the laborer worth his hire – 'dignus est operarius his hire to have' - in Passus II (B.II.123) when he quotes from Luke 10:7 to show the link between reward and the "Truthe" of a good life. We know that Langland does not object to payment for good work done since the dreamer comments that minstrels entertain 'And geten gold with hire glee – [gilt]less, I leeve,' (B.Prol.34) and he does not object to the honest trade of merchants and workers since Conscience explains in Passus III that the money:

That laborers and lewede [leodes] taken of hire maistres,

It is no manere mede but a mesurable hire.

In marchaundise is no mede, I may it wel avowe:

It is a permutacion apertly – a pennyworth for another.  (B.III.255-258)

The key is that there is a fair exchange since all men are bound to do justice by their

neighbor.  Piers explains that true satisfaction comes from having 'that I wan with

truthe, and namoore' (B.VI.96), a position which contrasts dramatically with that of

the examples of the corrupt officials surrounding Mede.

The mutuality of the relationship between the nobility and the people is the

focus of the episode at the beginning of Passus VI when the knight offers to help

Piers plow the half acre for him.  The knight recognizes that Piers has wisdom to

offer him and is not so attached to his position and dignity that he cannot seek help

from him.  Rather, he regards Piers as an equal, and shows his willingness to do

Piers' work for him despite the fact that he has never been shown how to lead a

plough-team.  In turn, Piers recognizes the graciousness of the spirit of the knight's

offer, but turns it down, equally politely, on the grounds that he needs the protection

that comes from the knight actively taking care of the responsibilities of his own

degree in order to complete his work in peace:

…I shal swynke and swete and sowe for us bothe,

And [ek] labour[e] for thi love al my life tyme,

In covenaunt that thow kepe Holy Kirke and myselve

Fro wastours and fro wikked men that this world destruyeth;

And go hunte hardiliche to hares and foxes,

To bores and to bukkes that breken down myne hegges;

And go affaite thi faucons wilde foweles to kille,

For thei cometh to my croft and croppeth my whete.'

Curteisly the knyght thanne co[nseyved] thise wordes:

'By my power, Piers, I plighte thee my trouthe

To fulfille this forward, though I fighte sholde;

Als longe as I lyve I shal thee mayntene.' (B.VI.25-36)

The knight's duties are to protect the Church and the people from the actions of the wicked and idle, and to enable the people to do their work without fear of attack. Importantly, it is only as a last resort, when the people are threatened, that the knight will be forced to resort to fighting. Piers agrees to this bargain but adds one more condition, that in dealing with his tenants, the knight only demand what is justly owed to him and, in cases when he would be fully justified in fining them, 'lat mercy be taxour / And mekenesse thi maister, maugree Medes chekes.' (B.VI.39-40) The emphasis on Mercy is part of this image of mutuality, an understanding of the common humanity that binds men and the need for compassion in the administration of a just society. The work of the one estate affects the condition of the other, and vice versa. Giving an example of the people righting their own wrongs, when the work begins it is Piers who first admonishes the lazy and wasteful. However, he is unsuccessful and turns to the knight for his promised protection. The knight in turn warns Wastour that he must change his ways 'Or thow shalt abigge by the lawe, by the ordre that I bere!' (B.VI. 166) The knight does not threaten him with force but with the power of the law, and this too is ineffectual. It is only Hunger, a force of necessity, that compels everyone to work so that Piers is able to 'yaf hem mete as he

myghte aforthe and mesurable hyre.' (B.VI.198)  Again, each man gets what is due to him in return for his 'mesurable hyre.'

Langland uses this episode to comment on the duties of leadership.  He suggests that there is a point of ease at which men will not respond to the usual tools used to maintain order, i.e. social custom/pressure and the law because they are so comfortable in their lot.  Their energies then are directed not towards honest work but towards complaints and laziness.  Piers is a harsh taskmaster in calling in Hunger to motivate them to work again, but his method is effective for so long as it lasts, and he then gives them the benefit that comes as a result of that work.  Piers' authority lies in his independent moral certainty, which would be a dangerous tool if it were not moderated by moral principles.  Once again, Langland's message is ambiguous:  is it justifiable for a leader to put his people through suffering for the greater good?  This episode would suggest so, except that Langland ends the Hunger passage with the people once more eating well and complaining of 'the Kyng and his Counseil after / Swich lawes to loke, laborers to greve.' (B.VI.315-6)  The overall message of the passage is the benefits of all things in moderation but it also suggests that a virtuous king can impose hard measures on his people for their greater good.  The important point, of course, is that it must be for the people's good, not his own.

In terms of leadership however, the model of Piers and the second vision as a whole foregrounds the importance of all levels of society working together in a relationship of respect and harmony for the common good.  Piers is a decisive leader who delegates efficiently, and both asks for the help that he needs and knows when to decline it.  His profound moral center and faith give him the certainty he needs to

pursue aggressive tactics to achieve his goals. Although his authority is limited on earth through his equivocal position as lowly plowman, Piers is a model of the sort of leadership a King should display. Since the ultimate goal is a place in the heavenly Kingdom, and Piers is the one who knows the way, the message of this vision is that all men, of whatever degree, can achieve salvation if they take a moral approach to the duties that come with their station in life.

In contrast to the second vision's emphasis on community, the third vision (the so-called '*vita*') of the dreamer focuses on the individual's responsibilities to lead a virtuous life rather than the importance of a co-operative community. However, the same leveling of all stations in the social hierarchy underpins the advice the dreamer receives. In Passus X, Scripture tells Will that he is no further off than the nobility in his attempts to find salvation:

> Kynghod ne knyghthold, by noght I kan awayte,
>
> Helpeth noght to heveneward oone heeris ende,
>
> Ne richesse right noght, ne reautee of lordes.

Will is also reassured through the example of the just pagan emperor Trajan that it is not only those who have had the opportunity to study Christian teachings who can be saved. The eponymous character of this medieval legend was the epitome of justice but since he was damned as a pagan, St. Gregory interceded with God to save to his soul. However, Trajan is not given as an example because he was a good emperor, but because he was a good man. Like Scripture, Trajan emphasizes the irrelevance of status in whether or not a man might be redeemed by pointing out that God could have made all men rich if he so chose:

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Ac for the beste ben som riche and some beggeres and povere,

For alle are we Cristes creatures, and of his cofres riche,

And bretheren as of oo blood, as wel beggeres as erles. (B.XI.277-9)

In this argument, all men are brothers before Christ and should work together within their various estates for the good of the community. Each man must work according to his station towards a good life with the skills and gifts that God has given him.

Kingship is not a focus of the poem again until the harrowing of hell in Passus XVIII when Christ answers the Devil's question of who wants to enter hell by saying:

Rex glorie,

The lord of myght and of mayn and alle manere virtues –

Dominus virtutum.

Dukes of this dymme place, anoon undo thise yates,

That Crist may come in, the Kynges sone of Hevene! (B.XVIII 316-21)

At the moment of redemption, Christ's answer emphasizes his part in the Trinity as both King of glory and the son of Heaven's King. The effect of the listing of these titles is to emphasize Christ's power, and that is taken up in the next Passus when Conscience explains to Will why he calls Christ "Crist" rather than "Jesus:"

.. thow konne reson,

That knight, kyng, conqueror may be o persone.

To be called a knyght is fair, for men shul knele to hym;

To be called a kyng is fairer, for he may knyghtes make;

Ac to be conqueror called, that cometh of special grace,

And of hardynesse of herte and of hendenesse –

To make lordes of laddes, of lond that he wynneth,

And fre men foule thralls, that folwen noght hise lawes." (B.XIX.26 – 33)

By making these distinctions of rank, Conscience emphasizes both the grace of God in the redemption, and God's victory over death, and also the limitations of an earthly King who can offer only earthly distinction. When Piers returns, he is accompanied by *Spiritus Paraclitus,* the Holy Spirit, who Conscience explains is called Grace. Grace explains the importance of each position in the social hierarchy fulfilling their role to the best of their ability for the benefit of their fellow man, their 'bretheren':

Thynketh [that alle craftes,' quod Grace], 'cometh of my yifte;

Loketh that noon lakke oother, but loveth alle as bretheren.

'And who that moost maistries kan, be mildest of berynge;

And crouneth Conscience kyng, and maketh Craft youre stiward, (B.XIX.255-259)

Each person has their own role and different gifts and talents which should be used for the common good within the hierarchies created by God. By crowning Conscience king, Grace calls for everyone to work together according to their Conscience.[23] Conscience then calls for everyone to take communion together but this causes only objection from the people who do not want to give up their vices for holiness. The vision comes to an end with the last image of a lord and a king, both explaining that they are going to continue taking from the people, the former because he is following the directions of his accountant and steward, the latter because he must take what he needs to defend the church and the land. Conscience agrees with

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[23] Sarah Wood finds parallels with medieval sermons for a full theological explication of this passage in "Ecce Rex": *Piers Plowman* B.19.1 – 212 and its contexts." *YLS* 21 (2007): 31-56.

the King but reminds him of the most important condition, that what he asks is truly

what is needed for protection of the kingdom:

'In condicion,' quod Conscience, 'that thow [the commune] defende,

And rule thi reaume in reson, right wol and truthe

That thow [have thyn asking], as the lawe asketh:

*Omnia sunt tua ad defendendum set non ad deprehendendum.*' (B.XIX.480-4)

After this Will wakes, so nothing is resolved because although his visions have

revealed the way to salvation they have also revealed that the path involves the

people, commoner and king alike, having to make sacrifices they are unwilling to

make.

So far as the depiction of kingship is concerned, the poem suggests that the

peaceful and just ordering of society depends upon the working of Aristotle's concept

of each man doing justice to his neighbor, of men of every estate working together for

the common good.  Langland is not advocating revolution or any form of new social

order but rather the just working of each man within his capabilities and capacities.

The king is to lead the people towards living a life of 'truth' in the general sense of

living a good life, but his position carries great responsibilities in that his power

comes from the will of the people to be led by him, and in return they have a right to

his protection and good guidance.  Conscience will only allow him to take from the

people what is needed for their good, not for his own.  The relationship is one of

mutual faith and benefit, a hierarchical partnership.  Thus, when Christ, the self-

proclaimed King of Glory and son of the King of Heaven, tells the Devil

by right and by reson raunsone here my liges:

*Non veni solvere legem set adimplere*.'  (B.XVIII.349-351)

he is explaining that it is not only the laws of the Old and New Testament that he is

fulfilling - not simply that he is doing justice by acting mercifully towards Mankind-,

but also that he is fulfilling his part of the kingly contract created by Mankind's faith

in him.  By taking on the role of their King, he has implicitly agreed to play his part

in their salvation, since Mankind's service of faith in him demands his reciprocity,

that he act to protect them.

## Chapter 5:  The influence of Langland's view of kingship on the contemporary courts

### Seeking an explanation for a paradigm shift in the law

In looking at the development of the concept of citizenship as the basis for divisions between people and the most significant factor in determining a person's legal status, Kim concludes that "the beginning itself cannot be explained by precedents or their judicial interpretation.  It lies outside."[1]  Kim is explaining that the move from an understanding of the divisions of personal status being between the 'free' and the 'unfree' to a division based on a person's nationality "does not form part of the textual contents of legal discourse."  He is trying to understand how the law can have moved from one, ancient, much used and clearly defined distinction, to another that has an utterly different concept at its heart.  Since it cannot be explained through examination of the usual ways in which laws develop, Kim is forced to the understanding that the use of a completely different legal platform by which to divide people must have begun in the public sphere in which the law was practiced, moved from there into the courtroom, and thence statute and case law.

It is my contention that it is texts such as *Piers Plowman* that explain that conceptual shift.  Langland understands his poem to be a part of the public discourse, to be read by the very people developing the institutions he is discussing, and from the beginning of the poem, discussions of the legal constructs of institutions are foregrounded.  In the Prologue, an angel of heaven first reminds the community of the distinction between the human institution of the law and the idealization of law as a

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[1] Keechang Kim, *Aliens in Medieval Law:  The Origins of Modern Citizenship.*  (Cambridge, UK: Cambridge University Press, 2000): 380.

reflection of divine justice.  It is significant that the angel chooses to use Latin, the language of the educated elite, because it suggests that his message is directed at them alone; certainly, the mice, the lowest in the social order, do not understand his message but are simply afraid for their immediate safety.  Only the 'goliardeis, a gloton of wordes' and the surrogate for Will in this example, is able both to understand and to respond, also in Latin.  The debate about the authority of earthly institutions is prominently located in the poem, directed squarely at the educated reader and mediated by the narrator poet.

As detailed in chapter 1, from their school work and clerical studies, the educated elite had an understanding of the importance of texts to comment and reframe the language itself and to help them see their contemporary world in a new light through that process of refashioning.  When Will is looking for knowledge in Passus XV, Anima, his guide, comments that grammar is 'the ground of al' (B.XV.370), and notes that a sign of the current social decay is that rather than enlightening children, language is perplexing to them because 'noon of thise newe clerkes … kan versifye faire ne formaliche enditen.' (B.XV.371-372).  Anima's argument is based on the assumption that a good poet teaches by making poetry 'formaliche,' according to the rules.  In this way, he is the keeper of tradition and truth.   In his own role of poet, Langland is using the accepted methods of learning in the grammar schools and universities (such as the framing and reframing, visioning and revisioning detailed in chapter 2) to show how he 'kan versifye' and illuminate his contemporary world.  It is my contention that what Kim finds in his examination of the development of the law of alien status is the real world effect of that illumination.

In order to show the way in which *Piers Plowman* can be shown to have played a part in the legal paradigm shift from 'free'/'unfree' to a division based on citizenship, I will first explain the history of the 'free'/'unfree' construct, and then show how the platform of citizenship to which the law shifted was profoundly different, but rooted firmly in Langland's understanding of the ideal role of the monarchy demonstrated in chapter 4.

## The position in the courts: 'Free' or 'unfree'?

The relationship of mutual benefit and respect illustrated in chapter four was very different from the order imposed in the king's name in the contemporary courts. At the beginning of the fourteenth century, the law did not codify the relationship between the king and his people in terms of mutual benefit and respect. Unlike the personal divisions in contemporary society, the basis for the distinctions of personal status in the Middle Ages was not nationality. The Roman concept of slavery was enshrined in the early common law because of the common law's basis in Roman law. When the writer known as Bracton discusses the law of the thirteenth century in his *De legibus et consuetudinibus Angliae* (c.1220-50) he explains that "*Est autem prima divisio personarum haec et brevissima, quod omnes homines aut liberi sunt aut serui*" ["the primary division of the law of personal status is simply that all men are either free or unfree"].[2] His phrase is almost identical to that of Gaius' found in a fifth-century manuscript of his *Institutes*

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[2] Henri de Bracton, *Bracton on the laws and customs of England*, trans. Samuel Thorne, 4 vols. (Cambridge, Mass., 1968-77): II, 29.

despite the fact that Gaius was teaching law a millenium earlier in the second century.[3]

The principle is found in Justinian's sixth century compilation of Roman law, *Corpus Iuris,* (where it is credited to Gaius) and, later, the author of the late twelfth century (c.1187) *Glanvill* spends a lot of time discussing the distinctions between the free and the unfree which he describes as "*natiui*" or "*aliqui in uilenagio*"[4]. The writer of the thirteenth century *Fleta* (c.1290) considers this distinction so important that his first chapter is entirely given over to it, and the contemporaneous *Britton* (c.1292) similarly distinguishes those villeins who are free from those in "servage". Perhaps the strongest description of this position is found in *The Mirror of Justices*[5] (also c. 1290) where it is argued that the unfree status was ordained from time immemorial by divine law, accepted by human law and confirmed by canon law. Likewise the principle seems to have been equally important in France during this period. *Li livres de jostice et de plet* written in the late thirteenth century also claims that "*La bone devise de droit des persones, des gens, est tele que tot homes ou il son franc ou serf*"[The good division of the law of persons is that all men are either free or servile].[6]

It would appear that a thousand years had made little difference to this central understanding of personal status; however, the truth can be seen hidden in the translation from Gaius' Latin to the French of *Li livres de jostice et de plet*. Gaius' *"serui"* is easily translated to "serf" despite the fact that slavery was not a part of the economy of either

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[3] *The Institutes of Gaius*, Eds. E Seckel and B Kuebler, trans. W M Gordon and O F Robinson (Ithaca, NY, 1988), 1, 9 : "Et quidem summa diuisio de iure personarum haec est, quod omnes homines aut liberi sunt aut serui"

[4] *The treatise on the laws and customs of the realm of England commonly called Glanvill*, Ed. G. D. G. Hall, reprinted with a guide to further reading by M. T. Clanchy, (Oxford, 1993), lib. 5.

[5] 7 Seldon Society (1893), 77.

[6] *Li livres de jostice et de plet*, Ed. Pierre N. Rapetti (Paris, 1850): 54.

late medieval England or northern France.  Similarly the thirteenth century "*serui*" of *Bracton* and *Fleta* were not the same as the "*serui*" Gaius had in mind.  A lot of work has been done by legal scholars to answer the questions as to what exactly were the legal rights and restrictions applying to the "*liberi*", "*serui*" and "*libertini*" (freed men) during this thousand year period, and whatever their differing opinions it is clear that "the primary tool for analyzing legal relationships among human beings was the varying amount of privileges and franchises a person was allowed to enjoy."[7]  However, it is equally clear that by the time Fortescue wrote *De laudibus legum Anglie* in the fifteenth century (c.1468-70), the idea of servitude was not viewed as part of the divine law envisaged by the writer of *The Mirror of Justices*.  Fortescue wrote:

> *Crudelis etiam necessario judicabitur lex, quae servitutem augmentat, et minuit libertatem; nam pro ea Natura semper implorat humana.  Quia ab homine, et pro vicio, introducta est servitus; sed libertas a Deo hominis est indita nature.* [Hard and unjust, we must say, is the law which increases servitude and diminishes freedom, for which human nature always craves; for servitude was introduced by man on account of his own sin and folly, whereas freedom is instilled into human nature by God.[8]]

His contemporary, Thomas Littleton exhibits this same approach in his *Tenures* (c1450-60).  In the passage explaining tenure in villeinage, Littleton lists six categories of people who are *not* allowed to bring real or personal actions:  where legal disability used to be the rule, he now views it as the exception.  This marks a clear change from the time of

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[7] Kim, 4.

[8] Sir John Fortescue, *De laudibus legum Anglie,* ed. and trans.  S.B. Chrimes (Cambridge, 1942): 104-5.

*Bracton* in what was considered a basic tenet of the law of personal status. Indeed, by the time of William Blackstone's *Commentaries on the law of England* in the eighteenth century, the basic framework of legal reasoning had shifted completely; he starts his discussion on the laws of personal status with the statement that "the first and most obvious division of the people is into aliens and natural-born subjects."[9] By then, although there had been ownership of foreign born slaves allowed in England, the judges were following a clear line of reasoning that English common law made no provision for slavery. In <u>Shanley v Harvey</u> (1763),[10] Lord Henley LC stated that as "soon as a man sets foot on English ground he is free," and, nine years later, the case of <u>R v Knowles, ex parte Somersett</u> (1772)[11] resulted in the Lord Chief Justice, Lord Mansfield, stating that whatever the precedents might say, and however inconvenient his decision might be to slave owners:

> The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political, but only by positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory. It is so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from the decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged.[12]

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[9] William Blackstone, *Commentaries on the laws of England*, 4 vols. (Oxford, 1765-69) I, 354

[10] 2 Eden 126, 127.

[11] 20 State Tr 1.

[12] Somersett was the slave of a Boston customs officer who escaped when the ship was in England. The ship's captain (Knowles) recaptured him and took him back to his boat but three abolitionists claimed to be his godparents and applied for a writ of *habeas corpus*. Since the decision was given orally, no formal written record was given by the court and various different reports of the decision circulated. Abolitionists celebrated that slavery did not exist under English law but Mansfield himself later commented that he was deciding the narrower issue of whether or not a slave could forcibly be removed from England against his will. Since there was no positive law of slavery, this constituted false imprisonment and/or assault under the English common law.

It is worth noting that in the twenty-first century, international conventions on human rights routinely provide the basis on which legal discrimination cannot be based in terms similar to Article 2 of the Universal Declaration of Human Rights (1948) which states:

> Everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, [sic.] sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Nationality (which is not the same as national or social origin) is not included in this list. On the contrary, the only discrimination now commonly held to be acceptable is that based on nationality: see for example Article 16 of the Council of the Europe Convention for the Protection of Human Rights and Fundamental Freedoms regarding the non-discrimination articles 10, 11, and 14 before it: 'Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.' Even in the twenty-first century, discrimination on the basis of nationality is enshrined in law. The question then for legal historians is what was it that bought about this change?

## From slave to subject, property to partner

Until recently, legal historians have generally followed F. W. Maitland's explanation of the beginning of the English law of alien status. Maitland explains:

> Feudalism is opposed to tribalism and even to nationalism: we become a lord's subjects by doing homage to him, and this done, the nationality.. and the place of our birth are insignificant. In England, however, a yet mightier force than feudalism came into play. A foreigner .. conquered England, became king of the English, endowed his followers with English lands. For a long time after there could be little law against aliens, there could hardly be such thing as English

nationality … It is, we believe, in the loss of Normandy that our law of aliens finds its starting point. [13]

Maitland argues that the beginning of the law of alien status came with the loss of Normandy because the seizure of the Normans' lands by John in 1204 provided the momentum for the later development of "an exaggerated generalization of the crown prerogative"[14]. However, the seizure of the lands was not itself based on questions of the Normans' alien status but rather on the legal feudal relationship between a lord and tenant[15]. Those Normans doing fealty to Philippe Auguste became "*inimici*"[16] of John.[17] Indeed, the very fact that the Normans were able to hold land in the first place indicates their subject status.[18]

Scholars of the 20th and 21st centuries have tended to assume with Maitland that the origin of the distinction between citizens and non-citizens came with the demise of feudalism in medieval Europe and its replacement with the State structure that exists today, because it was only then that the personal legal divisions of the State were important and in need of clear definition. They are following Maitland's proposal that when the Normans became rulers of the English, the legal distinction between citizens

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[13] F. Pollock, and F.W. Maitland, *The History of English Law before the time of Edward 1.* 2nd edn, reissued with an introduction by S.F.C. Milsom, 2 vols. (Cambridge, 1968).

[14] *Ibid.*, 463.

[15] Seizure of Norman lands in and around 1204 is recorded in *Rotuli de oblatis et finibus in Turri Londiniensi asservati….*, ed T.D. Hardy, Records Commission (1835) p335 and *Rotuli Normanniae in Turri Londiniensi asservati….,* ed. T.D. Hardy, Records Commission (1835) pp122-37.

[16] Kim notes that "the seizure *occasione Normannorum* was ..mentioned in a case brought to the king's court where payment of money to Norman monks was described as payment 'ad inimicos domini regis ultra mare.' *Curia regis rolls,* vol VI, pp85-6 (1210)." Kim, 91.

[17] This was the same legal basis as that used by Henry III for seizure of the lands of Norman religious houses in 1244.

[18] As Sir Edward Coke argued in Calvin's case (1608) four centuries later; see below p192.

and non-citizens inevitably lost its significance. He believes it did so until the Norman kings were driven out of Normandy and forced to settle in England permanently and then to adopt the identification of being English. He argues that it was at this point that the distinctions between citizen and non-citizen became important again. However, this model does not fit well onto our current knowledge of medieval Europe, and particularly post-Conquest England, which was already a unified kingdom – in theory at least - with a relatively strong central government. Furthermore, there is now a great deal of critical debate as to whether or not feudalism in fact worked against the establishment of a central government, and had to disappear in order for the state structure to take hold.

Nonetheless, scholars do seem to be in agreement that the oath of fidelity to the political rulers, as distinct from the feudal rite of homage, was a widespread practice in France and England throughout the Middle Ages. Giordanengo summarizes historical studies on feudalism in France and concludes: "No-one believes any more that the existence of feudal relationships would necessarily lead to the destruction of public authority or that its establishment would at least be hampered by those relationships."[19] Looking at the position in England at this time, Kim notes: "all medieval English law tracts …. contain passages which suggest the unstinted importance of the relationship of fidelity between the king and his subjects, as distinct from the personal feudal relationship between the king and his tenants."[20] He goes on to highlight a passage in *Glanvill* that states that the rite of homage to mesne lords must be accompanied by a

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[19] Giordanengo, Gérard. "Etat et droit féodal en France (XIIe-XIVe siècles)." *L'Etat moderne: Le droit, l'espace et les formes de l'état,* ed. N. Coutle and J.-P Genet (Paris, 1990): 64-5. See also, Jean Barbey, *Etre roi: le roi et son gouvernement en France de Clovis a Louis XVI* (Paris, 1992):111-112; Eric Bournazel and Jean-Pierre Poly, *La mutation féodale,* 1st edn. (Paris, 1980): 276; Jacques Le Goff ed., *L'Etat et les pouvoirs, historie de la France*, vol. II (Paris, 1989): 101.

[20] Kim, 13.

proviso saving the fidelity to the king (*salua fide debita domino regi et heredibus suis*). The main point in both arguments is that homage to a feudal lord did not necessarily weaken the bond between a king and his subjects. As explained above, this was not a problem after the Norman Conquest in any event because of the Norman kings' claim to be the legitimate successors of the English kings. It is interesting to note that those Normans who did not come to England were no different in status from other Frenchmen ruled by the princes of medieval France and did not become English simply because their duke was now King of England. Quite the contrary - as subjects of the duke they were still subject to the French king's rule over Normandy.

Evidence of the relationship of homage and fidelity to the king being unaffected by duties owed to a liege-lord can be seen in the evidence of the "Record and Process" of the *Rotuli Parliamentorum* at the time of Richard II's deposition in 1399. The last act listed in the process of deposition was the estates' request that members of the deposition committee return to Richard and renounce all homage and fidelity to him "*ut nichil desit quod valeat aut debeat circa premissa requiri*"[21] ["so that nothing that ought to be done should be left undone"].

Kim convincingly argues against Maitland's contention that it was the Norman Conquest that brought about the change for the legal basis for personal status by pointing out that there are no records of distinctions being made between citizens and non-citizens until much later, in fact, not until the fourteenth century with the passing of the statute *De natis ultra mare* (1351). It was only then that there was a real shift in outlook from this fundamental division in the law of personal status between the free and the unfree. From then on, faith and allegiance brings with it legal rights and benefits within the realm and,

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[21] Rotuli Parliamentorum, p422.

correspondingly, lack of this faith and allegiance disqualified a person from this advantage within the realm.  The division in the law of personal status thus moved to distinctions between those within the faith and allegiance of the king and those outside it.  The expression *"alien ne hors la ligeance"* now denotes a personal status that it did not connote before.

An example of this principle in action can be seen in the case of foreign merchants wishing to trade in the cities[22].  By the end of the thirteenth century, cities had become the most important centers of commercial activity, and any unenfranchised outsider attempting to do business within the city walls had to overcome great legal discrimination to trade there as the burgesses of the city enjoyed monopolistic control of the city's commercial activity.  For example, the *Liber albus*[23] (c.1285) of London explains that merchants who were not of the liberty of London (*mercatores qui non sunt de libertate)* were prohibited from selling wine or other wares by retail within the city.  So far as this law was concerned there was no difference between the merchants of Norwich and the merchants of Antwerp as neither of them had the liberty of London.  The question of their rights would not involve their nationality but the comprehensiveness of the privileges they might have acquired by charters.  Thus, in 1373 when the burgesses of Beverley had their goods seized on refusal to pay tolls in order to do business in York, they had to defend themselves on the basis of a charter with a

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[22] It is important to note that the trading conditions in the cities were very different from those in the travelling fairs which were governed by their own courts, "piepowder courts," and which issued charters of safe conduct to the merchants trading there.  Again, however, there is no evidence of distinctions being made between merchants on the basis of their alien status.  In fact, the evidence is to the contrary showing that the piepowder courts were specifically set up to create a fair trading environment for foreign merchants and local tradesmen alike, most likely because a fixed portion of the fair's profits went to the landowner who held the fair on his land so landowners were keen to attract as much trade as possible.

[23] *Borough customs*, vol.I, 18 Selden Society (1904): lii.

provision exempting them from tolls in all of Yorkshire.[24]   Whether or not they were

English was irrelevant.  The only question was whether or not they could prove that they

had specifically acquired the necessary liberty of the city.  A Norwich customs document

from 1340 sums up this activity:

> *Item nullus mercandizet in ciuitate qui in eadem facit residentiam nisi sit ad*
> *lottum et scottum illius civitatis et ad communia eiusdem auxilia contribuat et*
> *quia omnes qui recipientur in parem ciuitatis sint liberi et non servi alicuius* [ No-
> one who resides in the city shall conduct mercantile activities unless he is in scot
> and lot of the said city and contributes to the communal aid because all those who
> are received into the citizenry are *liberi* and no *serui* of anybody."[25]

The only distinction of importance is that between *liberi* and *serui*; alien status plays no

part.

In many books attempting to outline the history of the development of the

common law, questions of personal status and liberty are addressed after those of

property rights and actions.  Although personal status had an enormous influence on

those rights or even a person's capacity to enter into a contract or to have access to the

common law system, this generality reflects the relative lack of prominence given to the

question of status in contemporary legal sources.  It is in the light of the importance of

property rights and actions that we should look at what led Edward III to pass the 1351

statute *De natis ultra mare* which began a process that would fundamentally alter the

structure of society into today's international divisions.

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[24] The clause stated:  "Et sciatis quod sint liberi et quieti ab omni theloneo per totam schiram Eboraci sicut
illi de Eboraco."  "*Beverley town documents",* 14 Seldon Society (1900): 44.

[25] *Leet jurisdiction in the city of Norwich,* p. lxxxvi.   Quoted and translated by Kim, 34.

## The statute that enabled allegiance to become the platform for legal status:  *De natis ultra mare (1351)*

As demonstrated in chapter 4, *Piers Plowman* suggests that only a two-way relationship can effect a meaningful allegiance.  It is because they value the protection and guidance of the King that his subjects offer him their allegiance, and because his authority is founded in their consent to his rule that he protects and guides them in return. Although it was not articulated in these terms at the time, the two-way relationship can be seen at work in practice in the drafting of the 1351 statute *De natis ultra mare* which was passed to solve a practical problem of how the King might repay his subjects for their service in the Hundred Years War.

The start of The Hundred Years War between England and France in 1337 brought into focus a practical problem of inheritance for those fighting for England overseas.  In the latter half of the twelfth century, Henry II had introduced four petty assizes which had led to the use of inquest to solve regional land disputes.[26]  Since it was primarily through their lands that men gained power, whether in the aristocracy or lesser social ranks, one of the most important issues covered by these assizes was the question of descent and inheritance of land rights.  As Kim points out[27], the inquests (whether grand or petty assizes) moved the conditions for judicial truth beyond their customary realm of oath, ordeal or battle which all theoretically required some involvement of a

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[26] See R.C. Van Caenegem, *The birth of the English common law*, 2nd edn (Cambridge, 1988):40-50 which attributes the development of petty assizes to the Assize of Clarendon (c. 1166) and Northampton (c.1176).

[27] Kim, 105-113.

supernatural divinatory force[28] into the arena of earthly proof that could be required to be seen by a judge before the grant of official remedy. Since the fourth Lateran Council of 1215 had abolished recourse to trail by ordeal and proof by oath had by then fallen mostly into disuse, the only other recourse available was judicial combat - and even this could be avoided in a writ of right if the tenant chose the grand assize instead. This meant that in practical terms the grand assize or inquest was the most common method of settling disputes and the only way to begin such an assize was by writ.

That writ would state the proof necessary for the inquest to find in favor of the commencing party. For example, the writ for the assize of *mort d'ancestor* had to specify the location of the land and to summon twelve free and lawful men (*duodecim liberos et legales homines*) who were from the vicinity of that vill (*de uisneto de illa uilla*) to hear their evidence that the deceased was seised of his demesne as of his fee one virgate of land in that vill on the day he died and that the party bringing the suit was his next heir.[29]

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[28] Supernatural forces were believed to take an active role in worldly matters, especially on occasions that it did not appear that the systems in place would provide justice. For examples of charms see G. Storms, *Anglo-Saxon Magic* (The Hague, 1948):202-5. The mystic and Christian elements are clear in a charm such as this (quoted in J. Hudson, *The Formation of the English Common Law,* (1996):13): 'O Lord, master of all, we beseech you who love all justice, avenge the wrong done to your servants and be with us in our present tribulation … Thou also holy Mary, perpetual virgin, be with us in our need and tear from our enemy's hand the possession offered to this your holy church… See to it, Lady, that the enemy who did not fear to invade your possession does not enjoy it.' Hudson points to the reports of Lawsuits nos 5 and 9 in van Caenegem. R.C., ed. *English Lawsuits from William I to Richard I* (2 vols,) Selden Soc., 106, 107, (1990 – 91) as illustrations of the sort of remedy hoped for. The report states that although the King refused to act decisively in a long dispute between Bury and the bishop of Thetford, St Edmund 'who had been patient for a long time, at last took revenge for his people. As the bishop was riding through a wood and talking wrongfully with his following [about the dispute], a branch hit his eye – clearly the effect of the saint's revenge – causing that man, whose eyes were both bleeding copiously, sudden and awful pain. The inside of his eyes was seen to be full of putrid flesh….' Hudson goes on to note that 'the proportion of recorded cases involving divine or saintly intervention seems to have been high in William I's reign relative to those of his sons' (p12, n52) but it should be born in mind that the supernatural was still considered an active part of legal proceedings. This tradition is reflected later in the belief that the King was administering God's justice as his chief agent on earth.

[29] Glanvill, lib. 13, c.3.

Given the importance of rights of tenancy these proceedings were not undertaken lightly, and the death of a tenant brought about careful scrutiny of his circumstances in order to determine the legal distribution of his assets and rights. Glanvill states[30] that in the event of questions arising as to who was the rightful heir, a lord could take the deceased tenant's fief into his own hands until those questions were lawfully resolved. That resolution had to take place through adversarial trial proceedings initiated by the heir claiming to be the rightful descendant. Fiefs held in-chief (i.e. directly) from the King automatically fell back into the King's hands regardless of whether or not there might be doubt as to the identity of the rightful heir. As a matter of course, the King's escheators would then investigate the claims to inheritance, again through inquest of the neighbors.[31] The result was that whether in an adversarial trial proceeding or in the non-adversarial sessions of the king's escheators, the sworn evidence of neighbors was the key to establishing rights of inheritance.[32]

Evidence from the year books also shows that those jurors deciding the matter at inquest must be relying on first hand knowledge. As Belknap CJ explained: 'In an assize in a county, if the court does not see six or at least five men of the hundred where the tenements are, to inform the others who are further away, the assize will not be taken. *A*

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[30] Glanvill, lib. 7, c.17;lib. 9, c.6

[31] Glanvill, lib. 9, c.6; Calendar of inquisitions miscellaneous, passim. *Select cases in the court of King's Bench under Edward I*, vol. 1, 55 Seldon Society (1936) p139-140.

[32] For examples of the different procedures to be commenced in various circumstances of birth and proximity of birth to the land being claimed see Kim, 108-109 and *Glanvill*. Lib.2.

*multo fortiori*, those of one county cannot try a thing which is in another county.'[33] The punishment of attaint was available to the jurors of an inquest that presumed to accept knowledge of an event that transpired in another county.'[34] Given that another county in England was considered too far away for a jury to have first-hand knowledge of the claimaint, clearly a foreign-born defendant would have even greater difficulty in establishing his proof before a judge and jury. The *Coram rege roll* of 1285 records a case in which the defendants successfully argued that the King's escheator should not have conducted an inquest to prove the age of a foreign-born person[35] and the jurors were summoned to appear back before the King to explain how they might lawfully have come to their decision. Langland refers to the common reluctance to serve on a jury because it was such an onerous task in Passus III when Conscience says that after the Day of Judgment, no-one shall: 'Over[carke] the commune ne to the court sompne / Ne putte hem in panel to doon hem plighte hir truthe' (B.III.316-317). Since the King's writ could not run overseas, Kim argues persuasively that 'a foreign-born person was left with no adequate means to defend himself from allegations regarding under-age or proximity of blood.'[36] By way of example he quotes Herle J in a 1321 case asking a defendant: 'Your father was not from England. How could this court be apprised of whether he was a

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[33] Le livre des assises et pleas del Corone (Liber assisarum) (London, 1679) 48 Edward III, pl.5 quoted from Kim, 110, in turn quoting from James Thayer, *A preliminary treatise on evidence at the common law* (London, 1898): 91.

[34] Kim (110) points to the list of cases that dealt with such attaints in the *Tabula libri magni abbreviamenti librorum legume Anglorum* of 1517 compiled by John Rastell under the heading, 'Ou enquest prend conusance de chose fait en auter counte sur peyn de attaint ou des chose espirituelz et ou de record.'

[35] '*Nec videtur eis quod inquisicio debet fieri de etate alicuius probanda nati in transmarinis partibus*' from *Select cases in the court of King's Bench, I*, p139 quoted by Kim, p111.

[36] Kim, 111.

brother or the uncle or the son since he was not born in this land?'[37]  A foreign born heir

would have no common law remedy against a lord who would refuse to allow

inheritance, and this would be worth the lord's while to do since without a rightful heir

the fief would fall back to him as his escheat.

Similarly, the canon law also provided no recourse for the foreign-born heir since

it too was based upon the evidence of neighbors with first-hand knowledge.  To combat

the question of bastardy alleged against a party, certification by the archbishop or bishop

of the place of birth had to be obtained.  But under the canon law, a person's status was

determined mainly by their domicile[38] so if the person facing an accusation of bastardy

did not have domicile within a diocese controlled by a bishop bound to execute the

command of a writ of the English king, he had no means of gaining that certification.

Even within an English domicile, the bishop's inquest would depend on the common

knowledge of neighbors.

Many of the magnates and soldiers accompanying the King overseas were

accompanied by their wives and naturally concerned that offspring born outside of the

jurisdiction, and hence outside English territory and the jurisdiction of English law,

would be unable to inherit their lands in England.  Therefore, at the 1343 Parliament,

three questions were raised:  (i) could the King's children born beyond the sea inherit?;

(ii) could children born abroad 'in the King's service' inherit?; and (iii) could foreign-

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[37] The translation is quoted from Kim's translation of 'vostre pier ne fut de la ligaunce dengleterre.  Coment purra cest court ester apris lequel il fut frer ou uncle ou fuyz, depus qil ne fut pas neeen cest terre?' from *The Eyre of London, 14 Edward II, 1321,* vol. II, 86 Selden Society (1969) p.214.

[38] W. Onlin, 'Le Statut des etrangers dans la doctrine canonique medievale' in *L'Etranger*, part 2 (Brussels, 1958): 42-7.

born children in general inherit?[39]  The first two questions were answered immediately in the affirmative:  '*les enfantz nostre seignor le Roi, queu part q'ils soient neez ...porteront leritage*' [the children of our lord the King, wherever they may be born .. shall have the inheritance];[40]  '*accordez est en ce Parlement, q'ils soint aussint enheritez queu part q'ils soient neez en las service le Roi*' [it is granted in this Parliament that they shall also inherit wherever they shall be born in the service of the King.]  The service referred to was knight service so it did not apply to women and carries the implication that it applied mainly to the King's tenants-in-chief; the answer was effectively granting them the right not to have their lands reclaimed by the King on their deaths.  Kim argues that since the King could not demand feudal services in the form of an overseas expedition, Edward III had to grant his soldiers many favors to gain their participation and this promise to allow their foreign-born children to inherit 'was just another example of these special deals which were liberally offered during the war.'[41]

The last question posed more problems and the reply from the lawyers, the '*gentz de lei*,' was simply that it needed '*grant advisement et bone deliberation*'.[42]  The problems were procedural.  The lawyers could not find an acceptable way around the '*diverse doutes et difficulteez q purront avenir de prover q tieux soient verrois hes si debatz our empeschementz soient mys en lour leritages*'.[43]  How could they draft a law

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[39] *Rotuli Parliamentorum*, 6 vols. (London, 1767-77) II, p139.

[40] Whether that inheritance would include the crown itself would be a matter of great debate in the reign of Elizabeth I.

[41] Kim, 119.

[42] [great advice and good deliberation]. *Rotuli Parliamentorum*, II:139.

[43] [diverse doubts and difficulties which can arise in proving whether they shall be true heirs as claimed or dishonestly put in place in order to claim the inheritance] *Ibid*.  quoted and translated by Kim p120.

justly bypassing the proofs demanded by an inquest in the event of a dispute? It took

eight years for the lawyers to solve the problem with the 1351 passing of the statute *De

natis ultra mare*[44] which neatly redefined inheritance law so that English law would now

consider children born to English parents ('*de la ligeance du Roi*') outside the boundaries

of English lands ('*dehors la ligeance le Roi*') nonetheless within the 'ligeance' of the

King ('*deinz la dite ligeance*'). They were therefore able to be protected by English law

and claim their inheritance. The procedural problems of the common law proofs needed

to establish descent and inheritance were simply bypassed by the concept of faith and

allegiance to the King.[45] An Englishwoman giving birth overseas was therefore in the

interesting semantic position of being simultaneously both *dehors la ligeance* and *de la

ligeance* of the same King.

There is no evidence that at the time of its passing, the statute was intended to

have any greater significance than the practical effect of solving a problem caused by the

realities of extended warfare. However, the statute marks the first time in English legal

history that the reach of the law was based not upon land and feudal relationships and

responsibilities surrounding its management but rather on the temporal personal

relationship between a King and his subject. Kim argues that this statute enshrined into

law the movement of 'the question of political subjection into the arena of private law

discussion' and so set the course for the birth of the modern state. A common law is

territorial in that it applies to people within a specific geographic territory. What we are

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[44] Statute 25 Edw III. For its terms cf: *Statutes of the realm,* Records commission, 9 vols. (1816-28), I,
p310.

[45] For examples of the statute's practical effect and the procedural methods demanded by an inquest cf
Kim,121-3.

seeing here is the first move to a 'personal' form of the law that is based on people's allegiances and interpersonal relationships instead of relationships based on land ownership.

Although the statute was framed in the language of feudal vassals to their lord, the shift of emphasis comes through the statute's use of the term 'ligeance,' with its emphasis now solely on the rights and privileges that came with allegiance to the sovereign. Again, we are back to the duties that fall on a King as part of his relationship with his liges, the same relationship with which Langland framed the harrowing of hell. The Middle English Dictionary entry for 'ligeance' gives:  Ligeance :(a) Allegiance of a feudal vassal to a lord or of a subject to a sovereign; the total of obligations, services, privileges, etc., entailed by such allegiance; (b) don (maken) ~, don oth of ~, to swear allegiance; (c) *fig.* fidelity to God.  The importance for our purposes is the link in (a) between allegiance and the obligations that are entailed by such an allegiance; the MED quotes the C-text of Piers – 'Ac looke þow leyue hit leelly al þy lyf-tyme, that þe by-longeþ to on lorde that lygaunce cleymeþ' (C.19.2002).  The link in (c) of the term's figurative use of fidelity to God is extremely important in Langland as he uses Christ's behaviour as a model of good kingship, and as a balance to the idea of men being free or unfree in asserting that the king owes his power and position to his subjects.  The quotes from the MED make it clear what is owed in return to a good king:  from Gower's *Confessio Amantis* Prol. 25: "A bok for king Richardes sake, / To whom belongeth er my ligeance /With al myn hertes obeisance" and also at 8.3058:  "To him [a king] belongeth the leiance of Clerk, of knyght, of man of lawe."

The legal theorists point to different interpretations of the term: Maitland posits that the term 'ligeance' was originally used to refer to a piece of land before its usage to denote the interpersonal relationship of allegiance.[46] However, Kim counters that 'this may be true but not entirely true' by pointing out that 'Glanvill, for instance, used the term to explain the pre-eminent relationship between a tenant and his 'liege' lord,'[47] that the Treaty of Falaise of 1174 (between Henry II and William, King of Scots) used the term to refer to the relationship rather than the land,[48] and that Bracton also used the term to refer to something other than land.[49] From Kim's evidence it seems that for both Glanvill and Bracton, land was land but ligeance was a personal relationship. However, by the end of the thirteenth century, this is not the case; when ligeance was used it could denote the territorial extent of the king's power, as reflected in the commonplace usage of the terms '*hors de la ligeance*' to mean 'out of England' and '*deinz la ligeance'* to mean 'in England' in early fourteenth-century cases.

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[46] Pollock and Maitland, *The History of English Law, I:*459.

[47] Kim, p138, when looking at Glanvill, lib.9, c.1: 'Potest autem quis plura homagia diversis dominis facere de feodis diversorum dominorum, sed unum eorum oportet esser precipuum et cum ligeancia factum'.

[48] Kim's n.24 on p138 points to the work of E.L.G.Stones in *Anglo-Scottish relations 1174-1328,*2nd ed (Oxford, 1970) in showing that the terms 'homo ligius' and 'dominus ligius' formed part of the common legal terminology of the time though with various spellings. He points particularly to the passage in the Treaty of Falaise on p4 of Stones' text: '*Similiter heredes Regis Scottorum et baronum et hominum suorum homagium et ligancium facient heredibus domini regis contra omnem hominem.*' [Likewise the heirs of the king of Scots, and of the barons, and of their men, shall do homage and swear allegiance to the heirs of the king [of England] against all men.']

[49] Kim, 138. Kim looks to the use of 'ligeantium' meaning liege homage to bolster his argument in translating Bracton, IV, p329 (f.427 b). In explaining that there were many men faithful to both kings during the conflict between John and Philippe Auguste, Bracton says: 'et ita tamen si contigat querram moveri inter reges, remaneat personaliter quilibet eorum cum eo cui fecerit ligeantiam, et faciat servitium debitum ei cum quo non steterit in persona.' ['if war occurs between kings, each of them remains personally with the king to whom he has done liege homage and has his *servitium debitum* done to him with whom he does not stand in person.' (Kim's translation)]

This ambiguity of meaning can be seen at work in the interesting report of the case of <u>Rex v Philip de Beauvais</u> brought before the eyre of London in 1321.[50] The case was about the inheritance of a franchise which the defendant was trying to prove was passed to him from his grandfather. The hurdle he faced was that his father was born outside England, so Geoffrey Scrope, then acting on behalf of the king as his serjeant, argued that he could not establish the necessary descent because '*vostre piere ne fut nient de la ligaunce dengleterre.*' For the defendant, Shardlow responded that 'the grandfather was married to his wife in London, and the father was held and reputed as their son, and did homage to the king of England and died in his homage, and therefore the father was of the ligaunce of the king of England.'[51] The judges seem to have accepted this use of the term since they found for the defendant on this point with Herle J commenting that if a person were in the king's ligaunce '*il serra mult fort en tiel cas destrangere le*' ['it would be very hard in this case to exclude him']. Hard indeed, but cases often had harsh effects, and the judges were not usually inclined to make decisions on that basis alone. What it does example is the contemporary changes in the way that the concept of allegiance was being used. In any event, the reality was that the defendant was excluded from justice, since on the day assigned for judgment, Shardlow did not appear, so the franchise was taken into the king's hands and the defendant fined. Kim posits that this might have been because 'it must have been difficult to find jurors who would ignore the threat of attaint and give a verdict in favour of the defendant without firsthand knowledge of the circumstances of the father's foreign birth.' Shardlow may have won the battle but it would take the statute *De natis ultra mare* of 1351 to win the war by superseding the

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[50] For a thorough analysis of this case see Kim, 139-141.

[51] *The eyre of London*, 14 Edward II, 1321, vol. I, 86 Selden Society (1969) pp213ff.

procedural problem by enshrining in statute that same manipulation of the concept of ligeance.  The term itself carried broad enough meaning to overcome the legal disability of a person born '*hors la ligeance*' and bring them '*deinz la dite ligeance*.'  To see how quickly the idea was taken up, it is worth noting that in 1368 Parliament granted a petition extending equal legal inheritance rights to children born in Calais, Guines, Gascony and the other overseas lands and seignories of 'our lord the King' without any worries about a jury trial or certification of bastardy.[52]

Under the Roman laws men were divided into free and unfree.  Now they were divided into those 'within' and those 'without' the body politic.  The legal status of those 'within the ligeance' is homogenized as the individual receives all the rights and liberties associated with those within the group just as those outside the group are denied them.  Now, faith and allegiance are the first steps towards a place in both the mystic body politic and the mystic body spiritual, a commonly understood idea in a Christian society; see, for example, Langland's use of the body metaphor when the Samaritan explains the concept of the Trinity in terms of a body at B.XVII.140 – 167.  Both have the effect of putting faith and allegiance to the King at the center of all hopes for advancement, whether spiritual or temporal, the one with the King as Christ's deputy on earth, and the other with the King as the source of earthly justice and social order.  A new regime is underway as villeins now have the opportunity to advance themselves and seek legal redress as part of the group of insiders united within their faith and allegiance to the King.  The bonds of faith and loyalty between the King and his subjects, his '*fideles*' or faithfuls, intertwined ideas of subjection and loyalty with the idea of faith in a higher power that was naturally guiding the King as the head of the body politic.  Langland

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[52] Statute 42 Edward III. C.10.

explains this interrelationship in Passus XIX when Conscience reminds the King that he has his position:

> 'In condicion' quod Conscience, 'that thow [the commune] defende
>
> And rule thi reaume in reson, right wol and truthe
>
> That thow [have thyn asking], as the lawe asketh:
>
> *Omnia sunt tua ad defendendum set non ad deprehendendum.'* B.XIX.480-482a.

Since the king is placing himself at the head of the political body temporal he is also accepting a responsibility to dispense justice to those under his protection through the two-way spiritual relationship denoted by 'ligeaunce'. Given the understanding of the 'natural' or 'divine' nature of the common law headed by the King as detailed in chapter three, this responsibility to dispense earthly justice was naturally linked to the dispensing of divine justice.

 Once the principle had been established that it was faith and allegiance to the King that brought one into the group of those with legal rights and advantages, there was little legal discussion about personal status until the vigorous debates about the succession to the English throne that came to a head with the death of Elizabeth I in 1603. The accession of James I marked the first real testing of the mystic body politic as he attempted to unite England and Scotland. The uniting of the Christian ideas and the legal theory of the mystic body politic is apparent in his speech to the English Parliament:

> 'What God hath conioyned then, let no man separate. I am the Husband, and all the whole Isle is my lawfull Wife; I am the Head, and it is my Body; I am the Shepard, and it is my flocke: I hope therefore no man will be so vnreasonable as to thinke that … I being the Head, should have a divided and monstrous Body'.

Whatever James might have hoped, however, a practical union of the two body politics of which he was the head was not so easily effected and, some 250 years after it had been written, the statute *De natis ultra mare* was once again at the center of the discussion of personal status: what is interesting for the scope of this project are the assumptions from which the court started in interpreting the statute, because they reflect the contemporary understanding of the terms and illustrate the remarkable shift that had taken place in society.

In 1607, two civil suits were initiated in the King's Bench and Chancery Courts effectively over the same issue. The initiators of the suits, John and William Parkinson, were the guardians of a Scottish child, named as Robert Calvin in the pleadings[53] to whom two estates in England had been conveyed.[54] On Robert's behalf, the Parkinsons claimed that he had been forcibly dispossessed of both estates[55] In both cases, the defendants argued "in disability of Robert Calvin's person"[56] saying that under English law Robert could not be seised of a freehold in England because he was an alien: therefore the writs were inadmissible. Robert was born in Scotland after 1603, the year in which the English throne descended to James I, but the defendants argued that he was an alien because he had been born. "within [James's] kingdom of Scotland, and out of the

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[53] Though evidence suggests he was actually one Robert Colville.

[54] Bruce Galloway, *The Union of England and Scotland, 1603-1608*, (1986):148

[55] In the King's Bench, the defendants were Nicholas and Robert Smith who, according to the plea had "unjustly, and without judgment, … disseised him of his freehold in Haggard" [Haggerston, in the Shoreditch parish of St. Leonard] (Calvin v. Smith, 77 Eng. Rep. 377, 378 (K.B. 1608); in the Chancery division, the defendant was named as Bingley on a writ over an estate in Bishopsgate, St. Buttolph's. Bruce Galloway, *The Union of England and Scotland*, 1603-1608, (1986): 148.

[56] 77 Eng. Rep. at 379.

allegiance of the said lord the King of his kingdom of England."[57] The point at issue therefore was the status of those people born in Scotland after the accession of James I to the English crown. In their decision, the judges divided persons born in Scotland into two groups: the *postnati* who were born after the accession of James to the English throne in 1603, and the *antenati* who were born before that date. The *postnati* were to be regarded in England as natural born subjects since they were born into the allegiance of James when he was King of England and Scotland, effectively giving them dual nationality; since the *antenati* were born into the allegiance of a King who had no authority in England they were to be treated as aliens unless naturalized by statute.[58] In arguing Calvin's case, both parties agreed that the starting point for personal status was that "every man is either an alien born or a subject born." It was allegiance to the King that was regarded as the essential element for the granting of the privileges that came with being considered within the citizenry.

Since there is no legal explanation for this paradigm shift, the cause must lie elsewhere in the culture of the late fourteenth and early fifteenth century. I believe that literature such as *Piers Plowman* must have been one of those causes since it was indubitably a major part of the cultural backdrop of the time, a part intricately intertwined with the discourse of Christianity. There is sufficient extant evidence of the widespread reading and distribution of Langland's poem – not least the fact of there being 50 – 56 surviving manuscripts – to suggest that the poem was a significant part of the contemporary cultural landscape. Obviously, it would be foolish to say with certainty

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[57] *Ibid.,* 380.
[58] 77 Eng. Rep., 399.

that any correlations apparent between a version of the poem and a contemporary event are directly connected. However, there are enough correlations for us to see the influence of the poem at work, whether directly or indirectly. That is not to say that there were not other forces also at play - perhaps most significantly, the economic and social turmoil caused by the Black Death and the resulting labor shortages and the costs of the Hundred Years War – but it can be argued that the discourse and language directing how the changes these forces wrought would be dealt with was, at the very least, in part provided by the literature of their time.

It is certainly not hard to see parallels between the ideas of kingship put forth in Langland's poem, ideas of the king providing justice and protection across all stations in society, reflected in the discourses surrounding the major events of the period. In discussing the Peasant Revolt or English Rising of 1381, Rodney Hilton[59] argues that the evidence produced by Rosamond Faith[60] of a widespread ideology of freedom from the southern and south-western counties in the 1370s (such as court rolls being burnt as an anti-seigneurial gesture in tenurially free Kent) shows that the freedom conceived was in 'much more general terms than freedom of tenure.' Hilton goes on to say:

> 'No doubt preachers like John Ball helped to knit together strand of popular demand into something approaching a coherent programme, but their moral doctrine of the freedom and equality of the descendants of Adam and Eve would not have been so readily received had it not fitted into an old demand for freedom expressed in many conflicts at law between lord and tenants.'

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[59] R.H. Hilton and T.H. Aston, Eds. *The English Rising of 1381.* (Cambridge UP, 1984): p5. For more on the Peasants Revolt, see also Dan Jones. *Summer of Blood: the peasant revolt of 1381.* (London, Harper Press, 2009); Caroline Barron, "1381: Peasants rise in revolt." *The Great Turning Points in British History: the 20 events that made the nation.* (London: Constable, 2009): 77-85.

[60] 'The 'Great Rumor' of 1377 and Peasant Ideology' in Hilton and Aston Eds., 43-73.

What the peasants were hoping for was justice, not solely in the terms of economic trends in rents, wages and prices but in 'the jurisdictional domination by the lord over the tenant, whether at the manorial, county or national level.' If we accept the argument that it was the strengths and weaknesses of manorial jurisdiction that provided the crucial element in decisions over rent levels, either because it was the basis for the real power of individual lords over their tenants or because of the more general weakening of legal powers through the attenuation of the terms of full servile villeinage, then it is clear that shifts of the balance of legal power between landlord and tenant were 'as important as purely economic factors in shaping the conditions of the late medieval peasantry.' There was a fundamental understanding in the community that the law could and should provide justice for men at every level of society. The fact that Dyer's sampling of those involved in the revolt shows that those involved 'seem to represent a wide spectrum of rural society with a slight bias towards the better off'[61] suggests that this was not simply an economic dispute but rather a demand for justice and recognition of personal status in a larger sense. Dyer finds that the 'most striking common characteristic of our sample of rebels is their prominence in the government of their manor, village or hundred'[62] suggesting that they were aware that the current system of justice was inadequate and that they could expect more. As the head of the legal system, the King should be the embodiment of justice. It is worth noting that during the Peasants' Revolt the peasants made direct appeals to the King which suggests that despite the animosity with which they viewed the courts, there was nonetheless a widespread belief that he was still a figure representing justice. Examples such as the St Albans crowd marching under the

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[61] Dyer, 17.

[62] *Ibid.*

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banner of St. George,[63] and the London rebels using 'With King Richard and the true commons' as their password, suggest that there was a general belief, particularly in East Anglia, that the rebels even had the King's blessing.

Hilton criticizes the view of scholars and non-scholars that medieval peasants naively and blindly revered the King himself but thought that he was surrounded by evil counselors by pointing out that 'a commonplace of medieval politics' was the criticism and indeed execution of those same 'evil counselors.'[64]  This is certainly a part of Langland's poem when the dreaming Will sees the King initially act justly in arresting Mede's train: 'the kyng comaunded constables and sergeaunts / Falsnesse and his felawship to fettren and bynden' (B.II.207-208) and in wanting to wed Mede with Conscience.  However, the King is led astray at the trial of Lady Mede and even at one point gets angry with Lawe, not because it is failing to provide justice but rather because through its application he has lost land:  [The Kyng] gan wexe wroth with Lawe, for Mede almost hadde shent it, / And seide, 'Thorugh youre lawe, as I leve, I lese manye chetes.' (B.IV.174-175)  Langland's is a rather more complete depiction of a King who is full of good intent but easily led astray.  At its heart, the peasants' belief showed a lack of understanding of the true nature of monarchy and the practicalities of its hold on power. They saw the monarchy as "an institution standing above individuals and classes, capable of dispensing even-handed justice'[65] without considering their simultaneous judgment that the systems of justice were not only vulnerable to corruption but inherently corrupt.

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[63] see *Gesta Abbatum Monasterii Sancti Albani*,iii, p304.

[64] Rodney Hilton, *Bond Men Made Free*, (Routledge, 1973): 225.

[65] *Ibid.*

Langland had no such blindness. The many frames for his poem, the narrator/dreamer, the visions, the allegories, all allowed him to include the corrupt realities of contemporary society, accusing all while accusing none, and presenting a vision of the whole 'feeld' of 'folk' for his contemporaries to make of what they would. What is clear from the development of the law of alien status is that they did exactly that. Langland's ideas of the duties of kingship and the personal relationship that resulted between a King and his liges became a part of the cultural landscape as they affected how statutes were interpreted in the courts of law. Ironically, I believe that it was the appreciation and consent of his community, the forces of populist authority, that were the means by which Langland's ideas of natural or divine justice would eventually be written into statutory authority for the courtroom.

## CONCLUSION:

*What we call the beginning is often the end*
*And to make an end is to make a beginning.*
*The end is where we start from.*

T.S.Eliot, Little Gidding, V

This project began with my determination to make sense of 'the fair feeld' of this extraordinary work. I soon discovered that the implications of *Piers Plowman*'s links with Lollardy have been investigated fully after Wendy Scase had led the way. Andrew Cole's recent work seemed to me to bring to fruition modern discussion of *Piers* and the intellectual atmosphere, and the non-political but religious implications of the text have also been exhaustively examined. This left scholars merely with arguments about the details of salvation which have since been beautifully elucidated by David Aers' thoughtful work. However, when I looked for scholarship on the legal implications of the poem, it was immediately clear that there was much to be done. John Alford made great strides in opening up the legal language; Richard Firth Green followed after; and the more recent work of Emily Steiner, Candace Barrington and Andrew Galloway is showing how much work there remains to be done on the implications of Langland's use of terms so very much at the heart of the great legal questions of his time. My goal in this project, as one originally trained in law, was to begin some of that necessary work by examining in detail the legal implications of the salvation and the linguistic choices that Langland makes in presenting it.

Crediting Langland with poetic authority, and accepting Middleton's argument that puts Langland's text as a parallel discourse to that of the state's administrative machinery, allow us to view his poem as offering a third way for the law to progress. It is clear that Langland has not used the terms 'right' and

'reson' lightly. It is only when the two legal traditions of equity and formalism work together with the authority of positivism and naturalism that Christ will be able to fulfill the promise of the law. This is not just the law of the Bible but the 'natural' law representing the divine will of God as revealed to man through reason. I believe that in the repeated references to the importance of the inclusion of mercy in the establishment of true justice, and the rejection of an approach based on the letter of law that is articulated first by the angel of heaven in the prologue and then taken up repeatedly throughout the poem, the early courtroom approach of *rigor iuris* is being rejected by Langland as both unjust and impractical.

Piers Plowman is both a literary document and also, because of its content, a legal authority. It is a document that is part of a documentary culture that holds that justice can only occur when documents can be trusted to hold a complete record. What better document to rely on than a literary text that contains all the ambiguities of life and a host of conflicting voices and perspectives? Langland's inclusive poem becomes the only sort of document that can be trusted, a place for all the competing contemporary voices to be heard.

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18 & 19 Edw III (R.S.)
20 Edw III
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25 Edw III
27 Edw III
30 Edw III
16 Ric II
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