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Henry II and Ganelon

Paul R. Hyams

Once upon a time, there was a king of Nantes, called Equitan, a good and courteous ruler, filled with a proper enthusiasm for princely things:

Equitan had a seneschal, a good knight, brave and loyal, who took care of his land for him, governed and administered it. Unless the king was making war, he would never, no matter what the emergency, neglect his hunting, his hawking or other amusements.1

In time Equitan fell in love with his seneschal's wife and seduced her, while the "seneschal sat in court, trying pleas and accusations."

Now these two illicit lovers came to a hot and sticky end. The wronged husband killed the couple by upending them in a tub of boiling water intended for himself. How this happened is, sadly, beside the present point. Readers interested in torrid love affairs must consult the original or one of the excellent translations available. A modern audience may indeed feel that the lovers received a deserved comeuppance.

But the tale's author, Marie de France, intended a good deal more than this. Contemporaries swiftly seized her thrust at the double standards demanded in public life. Castle society applauded chivalry at story time but in the real world valued stability at least as highly. People with much to lose required much of their kings, whom they expected both to cut a fine knightly figure and to manage daily business, however dull. Such genteel folk naturally tended to despise the boring task of justicing the lower orders in "pleas and accusations." They accepted that the job must be done but did not easily see functionaries who did so as potential stars of a story like this one. Marie reflected this miscalculation by never deigning to name the seneschal; yet he, not the king, discharged the burden of government in knightly society.

But law in the twelfth century could be a genteel activity too. Knights

1. Most of the translations are my own, quite often adapted from those easily available. The excellent verse translation by Robert Hanning and Joan Ferrante, The Lais of Marie de France (New York: E. P. Dutton, 1978), was unfortunately unavailable to me in England. I first met Equitan in the prose translation by Paul Briars, Bawdy Tales from the Courts of Medieval France (New York: Harper Torchbooks, 1972), and have used the edition of A. Ewart (Oxford: Basil Blackwell, 1944).
and ladies participated with skill and enthusiasm in the dramas of their own disputes and awaited crucial judgments with bated breath. In this essay I hope to glean something of the gentleman’s view of law from literary texts, and thus to illuminate the more forbidding and obscure texts of the lawyers themselves. I choose two works, one, the *The Song of Roland*, possibly the greatest and most readable of early medieval masterpieces, and the other, *Lanval*, a rather sophisticated courtier’s fairy tale. My goal is to use vernacular literature to study techniques for resolving disputes in Angevin England. A brief discussion of the legal reforms of Henry II will serve as background.

Henry II has generally been treated in the textbooks and monographs primarily as an English king. Yet he was married to Eleanor of Aquitaine and possessed more extensive and prestigious territories in France than in England. Happily, recent studies of twelfth-century England have begun to recognize these important links with the French mainland and to examine their influence on native institutions and development. To date, however, this revision has hardly touched the history of law. Thus a textbook view of Henry II’s legal reforms might still run something like this:

During the reign, disparate elements of legal potentiality (such as itinerant justices, the use of writs to indicate royal wishes in the conduct of litigation, and the use of juries to decide disputes on factual evidence) were brought together in a series of brilliant, centralizing reforms which created a novel system of law better than anything foreigners could manage at the time. Numerous discriminatory, competing, and irrationally functioning court systems were first dominated, and then replaced, by the king’s common law. After the Dark Ages justice could thus again approximate to the ancient ideal of neither fear nor favor, but right. And the guiding genius behind this crucial change may well have been Henry himself.

Behind such views lie, I think, two misleading premises. First, because much of the scholarship concentrates too narrowly on legal forms and the concomitant sources, concepts and patterns taken from the professional lawyer’s world of the thirteenth century have been extended backward to the twelfth. Therefore the static technical nature of later law has been exaggerated for the earlier period. Professor S. F. C. Milsom’s recent book, *The Legal Framework of English Feudalism*, a lawyerly analysis of legal materials, has repaired some of the damage; but a more just and enduring balance can be struck by use of the dynamic material provided by chronicles and contemporary literature. Twelfth-century law was quite central in the social life of the classes that mattered in twelfth-century society. This was seldom if ever later, when law had become professionalized and remote.

Second, British patriotism, still proud of its common law today, naturally leans toward a belief in the uniqueness of the English approach to problems of law and order. Just why this unique virtue should have been born from a twelfth-century empire centered on Anjou is rather obscure. In truth, Angevin England shared a common intellectual world with the rest of French-speaking Europe. Knightly mores and custom defined the social or legal limits of acceptable behavior all over northern Europe. Furthermore, the so-called feudal custom of Anglo-Norman England demonstrably belongs to one of the three regional groups

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2. R. Howard Bloch, *Medieval French Literature and Law* (Berkeley and Los Angeles: University of California Press, 1977), is the first attempt to survey the content of legal ideas in Old French literature. Bloch hoped to emphasize the “importance of the historical background of courtliness as against those who would ignore, deny, or simplify it” (p. 6).


into which French custom can be divided, that of the West from which most baronial families of twelfth-century England originally sprang. Differences of detail between the cross-Channel customs were hardly greater than those between continental areas within the western region of France—Normandy, Brittany, and Poitou. The language of custom should reflect this linkage. The common French words which eventually became common law terms of art, such as essoin (excuse, reason for nonappearance in court) and esgart (award, judgment) could not have been understood very differently in Angevin England than they were in continental France. 6

This leads to a point well put by Bishop Stubbs a century ago. "In truth," he said, "I would call your attention to ... the fact that the same age that originated the forms in which our national and constitutional life began to mould itself, was also an age of great literary activity; of very learned and acute men, and of culture enough to appreciate and conserve the fruits of their labours." 7 Even now the culture of Henry II’s glittering court has been little studied in the manner that Stubbs envisaged. For example, even Professor Warren’s admirable Henry II neglects the topic. To integrate literary culture with political or social history is difficult; medieval literature can seldom be accurately dated or attributed to a particular court or center. Yet, the Angevin court was demonstrably one of the great cultural centers of northern Europe. Peter Dronke has even asserted: "What is beyond doubt is that the Angevin and Norman court milieu harboured much of the most brilliant poetry of the century, and that especially in the two decades from Henry’s and Eleanor’s accession ... England was the highpoint of the ‘Renaissance of the Twelfth Century.’" 8

Certainly we ought not to draw sharp lines between law and culture in this period. The extraordinarily wide variety of literary works dedicated to the king or queen, Peter of Blois’s letter about the perpetual school maintained by the energetic, constantly enquiring king, the later tradition that the Assize of Novel Disseisin resulted from late-night sessions at court, and the existence of court administrative treatises like "Glanvill" and the "Dialogue of the Exchequer" were all part of the same world. The chevalier of romance and the miles, whose legal status entailed both rights and duties within the system of Angevin government, were one and the same person.

A famous discussion between the ecclesiastic Gerald of Wales, a product of the cathedral schools, and Ranulf de Glanvill, the lay Chief Justiciar, about the English lack of success in the French wars illustrates this point well. 9 Gerald refers to historiae to make his point about the experience of the past. Glanvill, less learned and more natural, speaks of the feuds which had until recently rent the Franks, with a fairly obvious reference to the chanson de geste, Raoul de Cambrai. The "schools" that formed Ranulf were those of life and literature. Another figure of interest in this context is William the Marshal, more the knight and less obviously a curialis and administrator than Glanvill. As he briefly filled the post of Chief Justiciar after King John’s death, this paragon of chivalry was from 1216 until his death in 1219 responsible, at least in theory, for the country’s financial and legal administration. A few years later his biographer recalled the days of William’s prime under Henry II in these words:

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It was the young king [Henry] who revived chivalry, for she was
dead or almost so. . . . In those days, magnates did nothing for
young men; he set an example and kept men of worth about him.
And . . . the men of high rank . . . copied his example, . . .
and so horses and arms, lands and money were distributed to
young men of valour. Nowadays the great have put chivalry and
largesse in prison once more; the life of knights-errant and
tourneys is abandoned in favour of law suits. 10

No doubt the great marshal would have concurred with his old re­
tainer's opinion. He had himself entered into his lawsuits as fearlessly
as he galloped into battle. The Histoire exalts the great knight's foren­
sic skills in action. He and his peers despised the emergent phenomenon
of the pleader available for hire. They rejected the petitfouging style
and dishonorabke aims of men seemingly out to win at any cost. They
were the last generation to retain the firm belief that a knight might
perform honorable knightly service to his lord in a court of law. When
twelfth-century writers mentioned an advocate, they often meant a
physical defender or champion, rather than a mere talker. Proficiency
in pleading, too, had been an accomplishment of which a gentleman
could be proud. But it consisted less in technical knowledge of rules,
unwritten and therefore still malleable, than in telling the story in a
way calculated to win the favor of the lord who presided over the court.
Conteurs were poets as well as pleaders.

Let me try to expand these points by examining two great French
literary trial scenes. For simplicity's sake, I select pieces with proved
English associations. I begin with the Song of Roland, an unques­
tioned masterpiece, which contains numerous echoes of continental Nor­
mandy at the beginning of the twelfth century. It was certainly known
in England later, when the famous Oxford manuscript was copied. 11
Audiences there as elsewhere recognized in the trial of the treacherous
Ganelon a culmination of the poem's many epic themes. My second
example is from the lay of Lanval, which is actually built around a trial
scene. Both works were probably heard and enjoyed by the Angevin
courtiers during the two decades (1160-80) which produced the main
legal reforms. 12 The same audiences at court also witnessed legal policy
discussions in the curia regis and, for that matter, many actual trials
of lawsuits between the great men of the realm. Our goal is to discover
what the literary trials reveal about the real ones.

First, a final digression is necessary on the conduct of trials in an
oral law like that which existed certainly in the early twelfth cen­
tury. Some rough equivalent of the modern judge presided over
each court, which he could manipulate in a quasi-political way if he
were capable of doing so. Court presidents naturally varied in their
managerial ability. Not they but the suitors pronounced or found
judgments, often on the basis of expert opinion from someone among
themselves as to the custom applicable. The suitors were the lord's
vassals, his baruns. Though manipulable, they could not often be
bludgeoned into unpopular decisions, for each feared that he might
suffer in his turn under any harsh new custom whose creation he had
negligently permitted. Moreover, the power of the judge (or lord) to
coerce his vassals depended in the last resort on their military support.
Thus some kind of democratic balance prevailed within the lord's court, at least until other factors intervened. The air of procedural formality found in textbooks and in some contemporary charters may be misleading. Undeniably, certain crucial stages of the trial were bound by very formal rules. Summons, defense, and final judgment, for example, were the fixed points around which revolved much less formal pleading and dealing, which written records rarely reveal. In my view, we must assume that such informal maneuvering explains how courts could function to the satisfaction of so many business-hardened lookers and participants. A vassal's complaint (plaint was probably handled orally in a flexible and informal manner, obviously with variations for particular cases) was conducted as follows:

1. **Formal accusations.** The court had to decide whether to hear the complaint or accusation. If so, a day had to be fixed for the hearing and the parties coerced to give security that they would then appear.
2. On the appointed day, the accusations were rehearsed and a formal defense received.
3. The trial then took place. Argument was oral and organized around quasi-political maneuvering toward three things:
   (a) **an issue.** This was the question to be put to God for judgment. 
   (b) **the form of proof.** For example, the court had to decide what kind of oath or ordeal was to be employed. In effect, they were choosing between methods of putting the question to God.
   (c) **the onus of proof.** The court had to decide whether one or both parties was to make proof.
4. When all was ready, a spokesman announced this [medial judgment], as it is sometimes called today; in Old French it is often called esgart. The common identification of the usual Latin equivalent judicium (= OFr. jweise) with the ordeal clearly indicated this divine decision (nos. 4-5) as the central point of the trial: The main human decision (no. 3) was about proof.
5. The performance of this proof followed after due preparations, e.g., ordeal, oath, or warranty.
6. The perception of the result of the proof. The court decided whether the litigant had succeeded in making his proof. This moment, often unnoticed by historians, was almost as important as the proof itself. The result was not always self-evident. The court's perception about what had happened was decisive and embodied in a final judgment or holding; namely, what was to be done. Very often this was a compromise agreement.

Earl in the *Song of Roland* (c. 1090?), Charlemagne and his Franks receive a peace offer from the Saracens of Spain. The war has been long and bloody, and many Franks favor acceptance of the terms. Others are suspicious (rightly, as it happens), and Charlemagne's favorite, Roland, routs the dove party and persuades the king to dispatch an embassy to Spain to assess the enemy's real intentions. Roland, a hawk, emphasizes the dangers involved, then nominates his own stepfather, Ganelon, a dove. Ganelon, furious at this "false judgment," accepts the job under protest. He then makes a formal defiance of Roland and the other magnates who imperil him: He will have his revenge in due course. In war, such tension is most
unfortunate, indeed ominous. Ganelon then goes off. Both on the em­
bassy and after his return, he manipulates the resumption of the war, and finally, during the Franks' retreat, arranges for Roland's isolation in command of a rear guard earmarked for ambush on a lonely moun­
tain pass. The ensuing battle, with its tragic heroic deaths, is the core of the poem and has become a prominent part of Western folklore. Now, at the end of the poem, comes the moment for Charlemagne's own vengeance. By the time Ganelon is brought to trial, readers have already seen him as the arch traitor at work throughout the poem. Thus the audience assumes that Ganelon is guilty before there is any ques­
tion of a trial. So insistent are the poet's hints that every reader knows that Ganelon the 

Having smashed the Saracens at Saragossa to avenge Roland and those betrayed with him, the distraught emperor returns to his capital at Aix. With him he brings Ganelon in chains to await his day in court. The matter is patently too important for settlement within the palace. Charlemagne therefore summons vassals from all over the empire—
the suitors—to afforce his court. At the trial's opening on St. Silvester's Day (31 January), Charlemagne admonishes his barons to do justice
for him on Ganelon. He then arraigns the accused in terms which make no attempt to conceal his feelings: Ganelon has betrayed him and his for money. Ganelon makes his defense. Yes, he had indeed sought Roland's death, because Roland had wronged him and had sought his own death. The anti-Ganelon party never denies the truth of this part of his defense. Both sides agree on the facts of the tragedy. They differ on whether Ganelon’s reasons for acting as he did were adequate. Ganelon avows that his deed was justified vengeance, not traisun, and that he had publicly “defied” Roland, the correct procedure to effect a formal rupture of the social bonds that had previously united him with his stepson. The argument possesses a very plausible ring.

After the formal arraignment and response, the baronial suitors move some distance away to consider their options and take counsel. Meanwhile Charlemagne sits alone. Ganelon too awaits their decision, with thirty kinsmen standing around him, also vassals and as such entitled to be suitors. Ganelon and his kinsmen have their own conference about the case, and he chooses one of them, Pinabel, as his advocate because he is a good knight and argues well: “Ben set parler e dreite riasun rendre” (“He speaks well and is nimble of wit”). Ganelon has wisely found a fellow vassal who can first argue on his behalf and then, if necessary, fight for him with the sword. The task demanded a combination of qualities, not unlike those of the lawmen from Norse sagas.

Eventually the baronial suitors lean toward a sensible restitution of consensus among Charlemagne’s vassals. Battle would be pointless, they say; “Roland is dead and will never return; Neither goods nor gold will bring him back” (lines 3802–3). Ganelon is a gentil hom, a man of standing, and no one is keen to fight the redoubtable Pinabel. It is best then to persuade the emperor to receive Ganelon back into his service, no doubt on some unstated terms which require a money payment. They return to Charlemagne with this soft judgment.

One modern literary critic has commented, “They avoid not only the issue at hand but the whole principle of disinterested law too.” 15 He is right in that their law was far from being disinterested; but the suitors do deal with what they see as the main issue. They wish to avoid trouble and to reintegrate Ganelon and his kin into the community. Charlemagne, however, remains intransigent. Equating his vengeance with the public interest, he rejects their draft judgment. Indeed he thinks its proponents traitors (viri feIan). From among the suitors emerges Thierry, who offers to become the emperor’s advocate, as befits a hereditary vassal. He proffers an alternative draft judgment for the court’s consideration. To take vengeance against Roland could not have been licit, argues Thierry, because whatever Roland did to Ganelon was on the king’s service and therefore exempt from private feuds. By betraying Roland, Ganelon has broken his oath of fealty to the emperor. This is a legal refutation of Ganelon’s proffered defense. In Thierry’s version of Charlemagne’s case, Ganelon’s actions did constitute traisun and felanie.

Pinabel denounces Thierry’s judgment as false. He now offers to fight in support of his plea. Thierry, too, is ready for battle. Each hands over his right glove, the traditional pledge (gage) that binds them ritually to fulfill their obligations at the proper moment. Charlemagne demands further security before Pinabel is allowed to duel.
so the thirty kinsmen also bind themselves as sureties. These acts constitute the wager of battle, whose usual point was to secure the litigant's appearance to make his proof at the time appointed. In the early Middle Ages judgments by default were frowned upon: God had to make the decision in a form that could be seen by those most closely concerned. On this occasion, however, Ganelon is allowed no option. Charlemagne keeps him and his kin under guard.

The poet now heightens the dramatic tension with lengthy descriptions of the familiar procedural detail of the wager and other preparations. Ogier the Dane shuttles between the two parties as a mediator to settle the rules. The four traditional benches are arranged around the battleground, and the two champions led through the customary round of religious ritual: confession, absolution, blessing with the sign of the Cross, Mass and the Eucharist, and finally the giving of alms. Genuine tension agitates the vassal community facing a trial of one of its own. The matter is now in God's hands. God alone knows how it will all end, says the poet, echoed soon after by Charlemagne and then Thierry. God will give forth *le dréit*.

Yet even during preparations for the battle, Pinabel still seeks compromise. If Thierry were to concede defeat and make peace for Ganelon with the emperor, Pinabel will become Thierry's vassal and surrender all his goods to him. Thierry declines but in his turn offers to intercede on Pinabel's behalf with Charlemagne if he concedes Ganelon's death. This time, honor allows neither party to accept the other's offer; on other occasions, such negotiations were frequently successful. In the end Thierry's prowess triumphs, to a great cry from the watching Franks, "God has shown his power." The message that this is God's judgment is very clear.

One problem remains. What is to happen to the thirty kinsmen who had "maintained" Ganelon's plea? They had also bound themselves more formally to act as security for Pinabel's wager of battle, when the emperor had demanded "good sureties" (*bons pieges*). The poet never clarifies the extent of this commitment. To understand it as a guarantee of the truth of Ganelon's plea, with the consequence that they must share his punishment, seems harsh by twelfth-century standards. The kinsmen might reasonably have thought their guarantee to cover only Pinabel's maintenance of the proper forms in his attempt to make proof by the duel. In normal circumstances there would be no likelihood of the death penalty for them. But these are not normal circumstances. Charlemagne consults his magnates. Their verdict comes with a single voice, "Not one of them should live!" and Ganelon's whole crew is led off to the gallows tree.

Thierry's brilliant victory in the duel, besides proving Ganelon's guilt, vindicates Charlemagne and enables him to reassert his sovereignty. Hence, no doubt, the alacrity with which the counts and dukes counsel the death penalty for Ganelon's wretched relatives. Their swift verdict recognizes a new reality; it is as much a political as a legal act. Law as a quasi-political activity seems to me the overall lesson of the trial episode, the more compelling because it was clearly no part of the poet's intention. Ganelon's trial invites the historian to speculate on the power balance within vassal communities and the political ability with which lords were able to manage courts in their own interest quite as much as in that of some abstract justice.

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16. Capital punishment was rare, anyway in the twelfth century, esp. for vassals.
The very different trial in *Lanval* is in its own way even more thought-provoking. The original was probably a simple fairy tale; certainly, the later versions are. But Marie de France’s lay undeniably derived much of its appeal from forensic detail; indeed, her *Lanval* compares with today’s television courtroom drama. Yet the general setting remains similar to that of her other lays.

*Lanval*, a foreigner at King Arthur’s court, has the fortune (good or bad) to have two different women fall for him. The first is a fairy, the most beautiful woman in the world, but he will lose her if he tells anyone else. The second is Queen Guinevere herself, who makes advances to him at a gathering of knights and ladies in an orchard. *Lanval* declines, protesting his loyalty to her husband, the king. The spurned queen retorts sharply that *Lanval’s* known preference for beautiful young men is already a stain on her husband’s honor. Stung by the jibe, *Lanval* overreacts out of spite in a way he later regrets.

I love and am loved
by one who should have the prize
over all the women I know

Any one of those who serve her,
the poorest girl of all,
is better than you my lady queen,
in body, face and beauty,
in breeding and goodness.

Guinevere angrily rushes off to her bedroom, protesting that she will never rise again from her sickbed unless the king gives her satisfaction for the insult.

On Arthur’s return from hunting, she tells him that *Lanval* has dishonored him. Her story, delicately framed to place *Lanval* firmly in the wrong, amounts to the first act of the lawsuit, albeit one played out in private. She ends with a plaint (*se pleindre*) and a demand (*dret*) which draw an immediate response from her gullible husband. As president of the royal court, King Arthur imposes on *Lanval* the onus of disproving Guinevere’s allegation. Failure will result in his death by burning or hanging, certainly a harsh judgment for a knight of noble birth. *Lanval* is all too conscious of his desperate situation when formally summoned by three barons to appear before the king to make his answer. He has to obey; refusal would constitute contumacy and justify immediate judgment. On arraignment,

*Lanval* denied that he’d dishonoured
or shamed his lord,
word for word, as the king spoke:
he had not made advances to the queen;
but what he had said,
he acknowledged the truth,
about the love he had boasted of . . .

This constitutes his formal defense, a total traverse of the allegations followed by an avowal of the part which was true about his exceptional fairy lover. He rightly takes the central weight of the case against him to concern the allegation that he has acted to his lord’s dishonor. The mutual obligations of lord and vassal engendered by the homage ritual
which establishes the bond rested in an almost religious sense on honor and shame. The new vassal customarily swore to his lord not merely to obey, but to conserve his lord’s earthly honor in all things, to love what he loved and shun what he shunned. In the twelfth century, lawsuits over alleged breaches of this duty were still as common as ones for more material offenses. The matter of his lord’s honor is, then, at the core of the case against Lanval and therefore also of his proffered defense. This he submits to the court in the customary fashion; he will perform whatever proof it might adjudge (esgarder). The poem’s language here follows closely the formulas of the reports and pleading of genuine contemporary law cases.

At this point, the king turns to his vassals and demands their judgment on how to proceed. After due deliberation, the suitors adjudge (juge esgarde) an adjournment with a named day in order to afforce the court before proceeding. They use the fact that only members of the immediate household are present as an excuse for delay in Lanval’s interest. Nevertheless the knight has to give security for his appearance and, being an outsider, begins to despair of finding the necessary sureties. Unexpectedly, his new friends Gawain and Ywain now offer themselves as his sureties (pleges). Possibly Arthur had hoped to end the case by exiling or imprisoning Lanval without the need for any trial. Furious, the king turns on the sureties to warn them that they too risk the loss of all their property—again, an unusually harsh judgment from the court president.

W

ith the arrival of the trial day, we reach the poem’s central scene, the crux of the action. Much has happened since the preliminary hearing. Informal discussion of the case has preoccupied Arthur’s household. As each baron has arrived to swell the court, the locals have told him all the facts in their own way and then canvassed his view. The poet Marie chooses to tell us nothing of this. She moves on to her dramatic climax, which would be unconvincing.

however, unless we assume, as her contemporary audience must have, that much discussion and maneuvering has taken place. By the time the trial opens, indeed, a majority of the barons seem to have decided that there is no real case to answer, and that Lanval ought to be released without further trial (sanz pleit, lines 421-22). They are already skeptical of the queen’s version of the story. Some courtiers, on the other hand, see an opportunity to gain royal favor by ruining Lanval, whose fate thus remains in the balance.

Arthur opens the proceedings with a formal demand for his verdict (recort) on the charge and Lanval’s defense. He calls on his court to declare that Lanval has not, on the basis of his plea at the earlier hearing, discharged his onus of proof, imposed of course by the king himself. The suitors depart to consider this royal judicial direction, to deliberate, and to take counsel. In a long speech the Earl of Cornwall drafts, as it were, an oral judgment for the consideration of his fellow suitors. He first appeals to them to ignore outside pressures. The law must take its course. He goes on:

\[
\text{The King spoke against his vassal} \\
\text{he accused him of felony,} \\
\text{charged him with misdemeanour [mesfait]} \\
\text{a love that he had boasted of,} \\
\text{which made the queen angry.} \\
\text{No one but the king accused him.} \quad \text{[lines 437-43]}
\]

This is the only time in the poem that Lanval’s offense is described as felumne, that most heinous of all medieval crimes of vassal against lord. The substitution of mesfait in the next line is surely intentional. The earl implies that, even if Lanval were guilty as charged, the affair has been exaggerated. He thus suggests the telling absence of a strong popular belief in Lanval’s guilt within the royal household and especially among the best informed knights. The earl, an outsider with his own
following (mesnie), must have gained this impression since his arrival at Arthur's court, which further indicates the crucial developments in the case between the two public hearings. The earl appears to doubt that, but for the honur due from vassals to their lord, the case would merit an answer at all. (Other barons too view the queen's story with some suspicion.) Nevertheless, the court must give its esgart. The earl suggests that the king should forgive Lanval if, and only if, Lanval can produce his fairy lover as his guarant. She has to come into court that day to confirm that the words complained of were not uttered out of pur vilé. If she defaults, Lanval loses his case. He then forfeits his service to the king and his right to remain in the realm, which he will have to leave in dishonor. This is no light judgment. At the earl's prompting, the court goes as far as possible to satisfy the vengeful royal couple, short of imposing the harsh physical punishment Arthur had originally proposed. As so often, the community of peers imposes its compromise solution. If Arthur had handled matters either with more subtlety or in the authoritative manner of Charlemagne at Ganelon's trial, the outcome might have been different. Here, however, the court adopts the earl's draft judgment without opposition.

What is the force of this decision? Early audiences understood the fairy's summons into court as a reference to the lovers' relationship in terms of a feudal analogy: Since the tenant's lord was the most usual warrantor, that is, guarantor of possession of one's property, Lanval, the lover-vassal, was being challenged to produce his lady in order to substantiate his plea. However, warranty had other, more precise connotations in customary law. The guarant (Latin warrantus) is best regarded as a surety, one who has personally bound himself to another, with the assurance that he will attest to the truth of their relationship or the central facts on which its rests. Normally, he would warrant his own grant of land to a vassal. Only when the underlying relationship or grant was challenged would the warrantor be required to carry out his promise. Since the natural outcome, in the absence of compromise, was trial by battle, the warrantor had much in common with an advocate or champion, although his commitment originated elsewhere, most usually in a lord's reception of homage. Warranty was, in effect, the mystical homage bond represented in terms of the lord's obligation to his man. Understandably, the onus of producing the lord to perform that obligation rested on the vassal, who had to 'vouch' (from the Latin vocare = to call), that is, to summon him to his aid. Often a special adjournment was granted for this purpose. On other occasions, this was unnecessary, since the prudent litigant arranged in advance that his warrantor would be at hand.19

The effect of the court's interim judgment is therefore to order Lanval to produce in court the fairy warrantor who alone can confirm his plea. His whole case rests on her testimony. But she, of course, is not to be seen; Lanval has no way to reach her and no expectation that she would come if he were able to do so. He sinks once again into despair, repeating his belief that he can never satisfy the court's requirements. Further concessions are impossible. The court has gone as far as it dares. The queen is now becoming very impatient. The king repeatedly demands a final jugement, while the indignant queen hovers behind him in expectation of her revenge. The poet pro-

longs the dramatic tension: First some damsels-in-waiting arrive, then finally, the fairy herself. She makes her warranty. The queen is wrong, she says badly (and the reader knows, of course, that the fairy is indeed the most beautiful!), and Lanval is therefore acquitted by her. He should be set free by the barons. Her statement is called an esgart, almost as if she (the accused’s lord) had been invited into the court from outside to propose a new and final judgment. At any rate, the final judgment follows. The king has no alternative but to yield to the suitors who have judged par dreit. All now give the same unanimous judgment. The desirability of a new, more or less happy consensus is obvious to all. Lanval has vindicated his claim, has made his proof, and has therefore been delivered free by the fairy’s esgart.

W hat have we learned from this reading of the Song of Roland and Lanval? Four things:

First, that the supposedly archaic form of oral trial proceedings continued in the king’s court, for his own vassals and great affairs of the royal honor. Other sources, such as narrative chronicles, had alerted me to this fact, but legal history textbooks talk little of such matters before the fourteenth century, when treason becomes a fashionable topic for historical discussion.

Second, that the nobility were accustomed to genteel forensic sport and enjoyed it, especially if the outcome was a good intellectual duel or an exciting judgment. Such law was an integral part of knightly life.

Third, medieval law was much more complex than surface appearances of court procedure in literary and historical works would indicate. In the twelfth century men were passionately interested in questions of intention, honor, and soul, how and why men acted. The products of the twelfth-century schools as well as much contemporary literature all attest to this fact. It was easy to know what to do with a thief caught in the act, but very difficult to know his intentions and motives. In the past, God was used as a procedural device to evade such difficulties, and some literary trials (e.g., that in Mort Artu) seem to show a wistfulness about this lost, simple method of proceeding. Certainly, literary trials indicate the points of flexibility in trial procedure that allowed real courts to make their choices, especially around the selection of an issue on which proof was invited.

Fourth, that a litigant’s social rank and standing, the support (maintenance) he could expect from his lord, or his kin, were still crucially important. Contemporaries thought this only right and proper. To seek to trace legal doctrine from twelfth-century cases without carefully noting who the parties were is pointless.

Perhaps Henry II’s legal reforms merely opened to a certain section of the lesser nobility and freeholders the facilities of his court and justices for certain purposes that suited him, on a basis that was never automatic. When the result mattered to him, he would very likely ensure that it came out his way. Therefore, and despite current accepted views of Henry II’s legal reforms, I doubt that a “common law” existed in his lifetime.20

20. This paper derives from a talk given in my Oxford College at the instigation of my friend, Dr. Nicholas Mann. I have learned much then and several times since from Dr. Mann’s critical suggestions.