JOHN GOWER

and the Limits of the Law

CONRAD VAN DIJK

Publications of the John Gower Society

VIII

John Gower and the Limits of the Law

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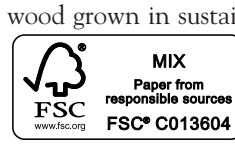

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This book started as a fascination with John Gower's vengeance narratives, but quickly changed into an introduction to the legal elements of his works. I am deeply grateful for the insight and inspiration of those who have steered this project along. In particular, I would like to thank Russell Poole, Andy Galloway, and Bob Yeager for their kindness and support. I would also like to thank my colleagues at Concordia University College of Alberta for making me feel at home, and the institution for granting teaching relief and financial support. Research for this project has also been supported by the Canadian funding agency SSHRC, and the University of Illinois Press has allowed me to reuse part of an article for *JEGP* in chapter four of this book. Finally, I thank my wife, Suzanne, for all her love and support.

ABBREVIATIONS

CA	*Confessio Amantis*
EETS	Early English Text Society
EHR	*English Historical Review*
ELH	*English Literary History*
ELN	*English Language Notes*
ES	*English Studies*
JEGP	*Journal of English and Germanic Philology*
LQR	*Law Quarterly Review*
MÆ	*Medium Ævum*
MED	*Middle English Dictionary*
MLR	*Modern Language Review*
MO	*Mirour de l'Omme*
N&Q	*Notes and Queries*
Peck, *Confessio*	*Kingship and Common Profit in Gower's "Confessio Amantis*.
PIMS	Pontifical Institute of Mediaeval Studies
PMLA	*Publications of the Modern Language Association*
PQ	*Philological Quarterly*
SAC	*Studies in the Age of Chaucer*
SP	*Studies in Philology*
Stockton, *Major Latin Works*	*The Major Latin Works of John Gower*
TRHS	*Transactions of the Royal Historical Society*
VC	*Vox Clamantis*
Works	*The Complete Works of John Gower* (Macaulay edition)
YLS	*The Yearbook of Langland Studies*

INTRODUCTION

The poet John Gower has long been associated with the law. From John Leland's speculation in the sixteenth century that Gower and Chaucer met at the Inns of Court, to John Fisher's more robust argument in the twentieth that Gower "had some sort of legal connection,"[1] the association has gradually hardened into something closer to fact.[2] The biographical detail fits nicely with the legal texture of Gower's works. Yet the connection between the biography and Gower's poetry is a troubled one, and while I will review some of the difficulties involved in the first part of this introduction, my own argument will focus more on the presence of law in Gower's works. In fact, the gaps in the biography may help us appreciate the ways in which Gower takes a more distanced view of the law, first of all by exploring the generic similarities between the exemplum and the legal case, and secondly by focusing on jurisprudential questions that test the limits of the law.

Gower's Black Eye

John Fisher, who did most to demonstrate Gower's possible involvement in the law, seemed ambivalent about whether the biographical evidence truly mattered.[3] Part of the problem is that the most prominent legal case Gower was involved in casts a shadow on Gower's "moral" character. This is the notorious "Septvauns Affair."[4] In September 1364, a certain William de Septvauns, a ward of the Crown, claimed in escheat proceedings that he was of age and so in a position to make use of his properties. The next year, John Gower purchased part of William's Aldington property, as William rapidly

1 John Hurt Fisher, *John Gower: Moral Philosopher and Friend of Chaucer* (New York: New York Univ. Press, 1964), 58. Fisher also writes, "Leland's tradition that Chaucer and Gower met at the Inns of Court cannot be substantiated since no records of the Inns survive from before 1422" (57).

2 See especially John Hines, Nathalie Cohen, and Simon Roffey, "*Iohannes Gower, Armiger, Poeta*: Records and Memorials of his Life and Death," in *A Companion to Gower*, ed. Siân Echard (Cambridge: Brewer, 2004), 25. Compare also Candace Barrington, "John Gower's Legal Advocacy and 'In Praise of Peace,'" in *John Gower, Trilingual Poet: Language, Translation, and Tradition*, ed. Elisabeth Dutton (Cambridge: Brewer, 2010), 113.

3 Fisher, *John Gower*, 58, 154.

4 Comprehensive analysis is provided by Fisher (cited above), and Matthew Giancarlo, "The Septvauns Affair, Purchase and Parliament in John Gower's *Mirour de L'Omme*," *Viator* 36 (2005): 435–64.

sold much of his estate to pay back debts (£1000 to Nicholas de Loveyne and £60 to John Gower). In 1366, however, the case appeared before Parliament when it was proven that William had lied about his age and so had sold his lands illegally and to the detriment of the Crown. According to the records of Parliament, Gower was among those who had counseled William to make the sale. Yet Gower, apparently anticipating such an investigation, had taken legal precautions: he had made a Chancery inquisition to check on the legality of his purchase and he had retained adequate documentation of the sale. As a result, when the dust settled, he retained his purchase and was eventually able to sell his part of Aldington Septvauns.

Just as the alleged *raptus* of Cecily Champain has affected the Chaucer biography, so the "Septvauns Affair" has been a stain on Gower's reputation. G. C. Macaulay, Gower's most influential editor, felt that it was simply not possible that this John Gower, "a villainous misleader of youth," was the same person as the poet.[5] John Fisher confirmed that there was only one Gower, but he exonerated the poet because of the apparent legality of Gower's dealings and because the other individuals involved in this case were "eminently respectable."[6] More recently, Matthew Giancarlo has been more circumspect in putting aside the question of blame and focusing instead on how the language of purchasing (with its fraudulent exploiters and misled victims) influences issues such as voice and representation in Gower's literary works.[7]

If Gower's actions in the "Septvauns Affair" are open to interpretation, understanding their impact on his writing is even more difficult. In the light of the biography, Gower's frequent criticism of the legal profession appears rather hypocritical. This is especially true for the *Mirour de l'Omme*, where Gower writes, "nuls est ore pire / Des tous les seculers estatz / Qe n'est la loy" ("none of all the secular estates is now worse than the estate of the law"; 24806–08). The clergy – members of the spiritual estate – might still outdo them, but otherwise lawyers, judges, and jurors are at the bottom of the heap. Their lust for lucre threatens to destroy society, and God will surely punish them in the end. It strikes us as strange that a lawyer would condemn his colleagues with such vehemence.

There are a number of possible explanations, none of them entirely satisfactory. First of all, Gower is writing estates satire and the satirist often saves the sharpest barbs for himself. Yet Gower does not clearly indicate that this

5 See Macaulay's introduction to the Latin Works (xv), the fourth volume of *The Complete Works of John Gower*, 4 vols. (Oxford: Clarendon, 1901); hereafter Macaulay, *Works*. Quotations from the *Confessio* are from Macaulay's edition, but translations of Latin glosses and notes are by Andrew Galloway, and can be found in Russell Peck's *John Gower: "Confessio Amantis,"* 3 vols. (Kalamazoo: Medieval Institute Publications, 2001–04); hereafter Peck, *Confessio*. For Gower's foreign language works I have used the most recent translations cited in the bibliography, unless otherwise indicated.

6 Fisher, *John Gower*, 54.

7 Giancarlo, "Septvauns Affair."

is an ironic gesture. He also has at least some positive things to say about other professions. Merchants, for instance, are told that making a modest profit is a laudable goal (MO 25177–212). Fisher suggested that the *Mirour* may have been "composed for the legal-mercantile society" in which Gower moved before he retired to St. Mary Overeys.[8] If this is true then he may have satirized the legal community in order to ingratiate himself with the merchants.

Two other possibilities present themselves. Fisher pointed out a tradition of using an attack on the legal profession as a pretext for compiling a commentary on the law. A prime example of such a practice is the fourteenth-century *Mirour of Justices*, which ends with a long list of "abuses" and is said to be written by a falsely imprisoned author.[9] Yet for this argument to have any force it should then be applied to Gower's entire *Mirour*, for why should only the legal satire be a pretext for commentary? An alternate explanation is that Gower felt a need for penance. The lawyer became a poet to make up for past offences. It would be somewhat as if Charles Dickens's *Bleak House* were narrated by the lawyer Tulkinghorn, eager to expose his own nefarious schemes.

None of these explanations truly convinces, and there is also the added complication of Chaucer's Man of Law, often seen as a parody of Gower. The Man of Law is noted for his purchasing powers, and his outrage at Gower's immoral stories (especially the ones about incest) would suggest that here Gower the hypocrite receives his comeuppance. Gower is criticized by his alter ego, and by a member of an estate that he once belonged to himself but then sought to condemn. Such poetic justice manufactured by Chaucer would have impressed even Gower.

If all of this seems speculation, then we might end up agreeing with Macaulay that Gower was a litigant, but never a lawyer.[10] As a member of the gentry he dealt in property but did not actively practice law himself. Indeed, his use of lawyers made him both knowledgeable about law and suspicious of the profession. From there it was an easy step for Gower to join the chorus proclaiming the evils of lawyers. In the Middle Ages, popular opinion regularly suggested that the souls of men of law were in danger of hellfire. Lawyers were like prostitutes, selling themselves for material gain.[11] That too appears to be the opinion of Gower in the *Mirour*.

Yet despite the gaps in the record, and despite Macaulay's efforts to the contrary, the legal connection has persisted. The rest of the evidence for this view is easily summarized: Gower acted as attorney for Chaucer in 1378,

8 Ibid., 156.

9 Ibid., 356n45.

10 See G. C. Macaulay's introductions to the *Mirour de l'Omme* (lxii) and the *Vox Clamantis* (ix–x), vols. 1 and 4 of *The Complete Works*.

11 James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago: Univ. of Chicago Press, 2008), 480.

his reference to wearing a garment with striped sleeves ("Ainz ai vestu la raye mance"; *MO* 21774) suggests professional involvement in the law,[12] and his technical descriptions of the law suggest that he had some sort of legal connection.[13] None of these arguments is convincing by itself, but cumulatively they carry significant weight. The odds also seem to increase when we remember the close connections Gower's contemporaries had with the law. Usk, Hoccleve, and Chaucer were all variously involved in the legal or administrative side of government.[14]

As strong as the case may be, the evidence is largely circumstantial. This applies especially to the idea that Gower may have been a lawyer because he persistently uses technical legal jargon or explores legal themes. Such an argument fails on at least two counts. First of all, it is a non sequitur that a lawyer's primary interest when he writes fiction is to meditate on legal issues.[15] Secondly, one need not be in the legal profession to gain some basic awareness of jurisprudential issues, even if precise points of procedure remain opaque. Indeed, many of the legal aspects of Gower's texts can certainly be explained by a culture "saturated with the commonplaces of civil and canon law"[16] and by a growing legal consciousness at all levels of society.[17]

It is fascinating that in the *Mirour de l'Omme* Gower himself makes the point that a lay understanding of the law is sufficient for understanding what constitutes justice. He writes, "Ne puet savoir qui n'ad apris / Du loy les termes ne les ditz, / Tout porrons nous le droit savoir" ("No one can understand the terms and expressions of the law unless he has studied them, but we can all know the right"; 24493–95). Is this Gower the lawyer speaking, hinting

12 Fisher concludes that "striped garments connoted a civil livery of some sort" (*John Gower*, 56). Cf. Hines, Cohen, and Roffey, "*Iohannes Gower, Armiger, Poeta*," 25. For a skeptical view, see Mary Flowers Braswell, *Chaucer's "Legal Fiction": Reading the Records* (Madison: Fairleigh Dickinson Univ. Press, 2001), 122–23.

13 Fisher, *John Gower*, 57–58. Gower acted as Chaucer's attorney when the latter left for Italy. However, Gower's stint as attorney does not mean that he was specifically a lawyer; after all, Chaucer also acted as attorney in 1396 for Gregory Ballard. See Braswell, *Chaucer's "Legal Fiction*," 123.

14 See John A. Alford, "Literature and Law in Medieval England," *PMLA* 92 (1977): 941–51.

15 Richard A. Posner, *Law and Literature: A Misunderstood Relation* (Cambridge, MA: Harvard Univ. Press, 1988), 179.

16 Fisher, *John Gower*, 154. Compare also Bruce Holsinger's argument that in literary works (especially in the vernacular) "the law can be claimed as a powerful discursive weapon even by those possessing only a rudimentary knowledge of its technicalities and procedural intricacies." Holsinger, "The English Jurisdictions of *The Owl and the Nightingale*," in *The Letter of the Law: Legal Practice and Literary Production in Medieval England*, ed. Emily Steiner and Candace Barrington (Ithaca: Cornell Univ. Press, 2002), 158.

17 See Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants' Revolt* (Manchester: Manchester Univ. Press, 2001), and Cynthia J. Neville, "Common Knowledge of the Common Law in Later Medieval England," *Canadian Journal of History* 29 (1994): 461–78.

that he is in the know, and telling his fellow countrymen to hold men of law accountable, or do we hear instead a layman's voice, justifying meddling in the profession of others? There is no easy answer to this question, and part of the difficulty lies in deciding what might make an "expression of the law" arcane to, say, a fourteenth-century landowner who interacted with the law on a regular basis. In addition, does Gower's "studied" mean something like attending England's third university, the Inns of Court, or might it also include private reading?

A conclusive link between Gower's literary reflections on law and his own life experiences thus remains tantalizingly elusive. At a minimum, the evidence points to an extensive *knowledge* of legal terminology and judicial business. Yet, whether such knowledge means that Gower regularly practiced law remains uncertain.[18] There are, I believe, two things to take away from the Gower biography. First of all, there is a frequent tension in Gower's writing between a sweeping didacticism and a shrewd realism and attention to detail, and here some general idea of Gower's connections with the legal profession, with members of the gentry, and with the courts of Richard II and Henry IV provides us with a socio-political context that explains much of Gower's careful maneuvering around difficult legal questions. The *Confessio Amantis*, after all, was written in the wake of one of the major state trials of the fourteenth century: the Merciless Parliament orchestrated by the Lords Appellant. Similarly, the *Cronica Tripertita* provides a kind of legal defense of the deposition of Richard II. Throughout this book, I will connect Gower's interest in legal questions to the shifting legal and political landscape of Richard II's reign.

The second lesson of the biography is that the ambiguity of Gower's legal connection becomes most productive when we see Gower as exploring precisely the dividing line between law and culture. By not placing Gower solely inside a specific legal discourse, we are able to see how his works explore and complicate the limits of the law. We can see this already in the *Mirour de l'Omme*, where Gower argues that the people he criticizes are not worthy of the name "men of law" ("gent … du loy"; 24185). Since they are not fulfilling their professional obligations, they have lost the right to their title. By asking *what's in a name?* Gower is implicitly asking the primary question of jurisprudence: *what is law?* It is to this larger question that we turn next.

[18] I thank R. F. Yeager for sharing some of his current research on the Gower biography in which he comes to the same conclusion.

A Just Law or Just a Law?

Gratian famously writes in the *Decretum*, "Ius autem est dictum, quia iustum est" ("Law is so called because it is just").[19] The Ordinary Gloss, however, reminds us that what is legal is often not the same as what is just or equitable.[20] For Gower, this relationship between law and justice is also of fundamental concern, and he returns to it in each of his major works. For instance, in Book 6 of the *Vox Clamantis*, Gower criticizes the legal estate which produces "lex sine iure" ("a law without justice"; 19), and he longs for the day when law might be "iuris amica" ("a friend to justice"; 285). Similarly, in one of the Latin glosses to the *Confessio*'s treatment of justice, Gower praises the lawgivers who aim for just laws: "Hic ad eorum laudem, qui iusticie causa leges primo statuerunt" ("Here in praise of those who for the sake of justice first established laws"; gloss at 3031). Law and justice ought to be the same, but reality often proves otherwise. This jurisprudential problem is therefore emblematic of Gower's peculiar mix of utopian idealism (his dream of social harmony and his attempt at encyclopedic knowledge) and his surprising sense of pragmatism, especially on a political level.

The difficulty of matching up justice and law is not only a recurring theme in Gower's writings, but also explains his constant focus on the limits of the law. We can readily see Gower's interest in the potential shortcomings of the law in those legal issues that have received most critical attention in the past, namely Gower's understandings of natural law, marriage, and the legality of warfare. What is to be done in cases where the law does not give clear direction, as when there are mitigating circumstances for incest? Yet we also discover a searching attitude towards law and justice in subjects that have received less discussion and that form the main focus of this book: jurisdiction, the constitutional authority of the law, and private enmity.

These topics may initially seem somewhat unrelated, but they all highlight the difficulty of establishing conclusively the authority and power of the law. In addition, they raise the question of how the concept of law might be broadened to encapsulate alternate forms of justice, particularly extralegal judgment (vengeance), foreign intervention, divine overruling, or royal discretion. If the law is inadequate, how might it be supplemented and further regulated?

Yet while Gower often seeks to anchor the authority of law in some other current of authority, the opposite is also true. When it comes to the king's

[19] D.1.C.2. Gratian's *Decretum* is available online at the Münchener Digitalisierungszentrum at the Bayerische Staatsbibliothek (2009), http://geschichte.digitale-sammlungen.de/decretum-gratiani/online/.

[20] See *The Treatise on Laws (Decretum DD. 1–20) with the Ordinary Gloss*, translated by Augustine Thompson, OP, and James Gordley, introduction by Katherine Christensen (Washington: Catholic University of America Press, 1993).

right to be *legibus solutus*, or "free from the law," Gower expresses serious doubts about equitable jurisdiction. The result is that Gower can seem at once liberal in his interpretation of the law and strict in the enforcement of the *rigor iuris*. The paradox that emerges is that as Gower works hard to define the limits of the law and suggest ways to fill in the gaps, he also comes to depend on the law to define and curtail the authority of such extrajudicial justice. This complex two-way process is what makes Gower's writings a fascinating commentary on late medieval attitudes to law.

Every Example is Lame

Since Gower writes poetry, and not a legal treatise, the question *what is law?* should be complemented by a further inquiry into how law and literature might interact. In Gower's case, it is crucial that his masterpiece, the *Confessio Amantis*, uses the exemplum form for its numerous stories. The exemplum's combination of narrative and lesson provides both the opportunity to explore legal questions and the chance to provide some tentative answers. The exemplum in fact has much in common with the legal case, and Gower's work allows us to trace the parallel development of these two genres. In chapter one, I will discuss the hybrid form that emerges – a "judicial exemplum" – even though such generic morphing can be hard to pin down.

The question of genre cannot be ignored, in part because the exemplum and the legal case already have some shared history. It has been argued that the Renaissance experienced a crisis of exemplarity that resulted in a generic shift from the dogmatic exemplum to the open-ended case.[21] In this historical narrative, the case is the more progressive, emancipated cousin, whereas the moribund exemplum is simply a useful tool and an obedient fool. Fortunately, such black-and-white claims are not substantiated by individual studies of the exemplum, which provide a more complex picture.[22] Nevertheless, a closer examination of the overlap of case and exemplum does provide an opportunity to reflect on the parallel development of legal and literary forms.

A possible end point of such an inquiry is the kind of skepticism that we discover in the essayist Michel de Montaigne, who famously linked the exemplum and the law in his essay on "Experience." Montaigne observed that exempla are fundamentally flawed in their operation:

> Toutes choses se tiennent par quelque similitude, tout exemple cloche, et la relation qui se tire de l'experience est tousjours defaillante et

[21] See chapter one for further discussion.

[22] To give but one example, see J. Allan Mitchell, *Ethics and Exemplary Narrative in Chaucer and Gower* (Cambridge: Brewer, 2004).

> imparfaicte; on joinct toutesfois les comparaisons par quelque coin. Ainsi servent les loix, et s'assortissent ainsin à chacun de nos affaires, par quelque interpretation destournée, contrainte et biaise.
>
> All things are connected by some similarity, yet every example limps and any correspondence which we draw from experience is always feeble and imperfect; we can nevertheless find some corner or other by which to link our comparisons. And that is how laws serve us: they can be adapted to each one of our concerns by means of some twisted, forced or oblique interpretation.[23]

Montaigne's model of exemplarity and law is one of partial failure. Every example (and indeed any analogy) is lame because it hinges only on a corner of similarity. Montaigne privileges the exception to the rule, the particular case, which is unique, individual, and, above all, experiential.

There is a certain irony in the fact that as the "case" becomes individualized, exemplarity limps along arm in arm with the law. Law and case go their separate ways. When we move back in time to Gower, or perhaps forward to Gower criticism, this departure does not strike us as quite as radical. Current Gower criticism emphasizes the ways in which the meaning of an individual exemplum spills over, to the point where the ethical lesson (the law, the exemplary meaning) is muddled. Indeed, the figure of Genius, Gower's narrator in the *Confessio Amantis*, is often said to be somewhat myopic in his application of morals and lessons. Kathryn Lynch, for example, writes, "Genius guides Amans obliquely. He does not speak directly for Gower, but rather for a point of view that is ultimately exposed in the work as limited, even seriously misdirected."[24] The *Confessio* must be read ironically, and Gower becomes a perfect example of Montaigne's adage that "every example limps."

It may seem facetious to speak of a "perfect example" in this context, but such ironic language usefully brings out the fact that the aporias of exemplarity have long constituted the hallmark of deconstructionist discourse. From this perspective, Montaigne becomes a precursor of Derrida, and the difficulty of signification undercuts the original "medieval" faith in exemplary meaning. The more radical aspects of deconstructionism seem to have fallen out of fashion of late, but the association nevertheless indicates the ways in

[23] For the French text, see Michel de Montaigne, *Les Essais de Michel de Montaigne*, ed. Pierre Villey and V.-L. Saulnier (Paris: Presses Universitaires de France, 1965), 1070. The translation is from M. A. Screech, ed. and trans., *The Essays of Michel de Montaigne* (London: Allen Lane, 1991).

[24] Kathryn Lynch, *The High Medieval Dream Vision: Poetry, Philosophy, and Literary Form* (Stanford: Stanford Univ. Press, 1988), 168–69. I agree, however, with Peter Nicholson that on the whole Genius is a reliable authority figure and that "there is simply no possibility of constructing a single consistent pattern either of misreading or misunderstanding on Genius' part." Peter Nicholson, *Love and Ethics in Gower's "Confessio Amantis"* (Ann Arbor: Univ. of Michigan Press, 2005), 36.

which the relationship of exemplum and case connect with contemporary theory.

I mention theory in part because our assumptions about narrative greatly influence our reading of Gower. In particular, readers like to find in Gower a sense of open-endedness, a distrust of dogmatism, and plenty of irony. Such a conclusion certainly allows us to feel that Gower is as interesting and complex as Chaucer. Gower too can be read as morally ambiguous. And yet the very same line of argument can be used for opposite effect. The apparent contradictions and tensions in Gower's exempla can also be smoothed over (as part of intentional irony) and seen as proof that Gower has created a unified poetic masterpiece in the *Confessio* that shows off his moral empathy, humanism, and sophisticated poetic wit. Both approaches are appreciative of Gower's achievement, but the second is somewhat suspicious of free play and relies more on the idea that the competent reader can discern a well-ordered set of meanings behind the many exempla. By contrast, a minority view denies both approaches and suggests that Gower's work is simply marred by ethical and political inconsistency. As David Aers suggests, the *Confessio* "tends to be compiled in units that are paratactically sealed off from each other *rather than* brought into dialogue."[25] Gower is neither a postmodern reader nor a humanist scholar: he is simply ethically challenged.

Each of these approaches is beneficial, but the range of interpretations makes it difficult to situate Gower within the larger historical development of exemplarity. Gower easily seems stuck between two eras as his insistence on didacticism seems medieval, while his sympathy for mitigating circumstances in individual cases strikes us as somehow modern. Yet neither this trajectory, nor the parallel movement from exemplum to case, is ever that simple. Indeed, Gower himself (like many later humanists) would have taken issue with the idea that didacticism is somehow less progressive or evolved. Gower is not interested only in difficult cases, and unlike Montaigne he does not assume that every example is lame. Yet he does realize that the movement from case to law is fundamentally bound up with the workings of exemplarity, and so the limits of the law are closely connected with the limits of genre.

[25] David Aers, "Reflections on Gower as '*Sapiens* in Ethics and Politics,'" in *Faith, Ethics, and Church: Writing in England, 1360–1409* (Cambridge: Brewer, 2000), 110 (original emphasis). Diane Watt agrees with Aers, but turns the argument on its head by suggesting that Gower is intentionally contradictory, and even amoral. She thus shares more with the first position described. Watt, *Amoral Gower: Language, Sex, and Politics* (Minneapolis: Univ. of Minnesota Press, 2003), 157.

The Shifting Boundaries of Law and Literature

Gower's direct engagement with the generic similarities between exemplum and case raises larger questions about the relationship between law and literature. The last decade has seen a great deal of reflection on the future of that relationship, and there have been some significant shifts in methodology. When the "law-lit" movement first gained popularity in the late 1970s, its major claim was "its commitment to the human as an ethical corrective to the scientific and technocratic visions of law."[26] The humanism of literature stood in contrast to the stultifying bureaucracy of law. Alongside this initial approach arose two other forms of criticism: the hermeneutic type, which applied deconstructionism to legal texts; and the narrative type, which lauded the importance of storytelling in the legal context.

Each of these approaches has come under scrutiny. First of all, there is growing doubt about the assumption that literature can provide a humanistic warmth and empathy that is lacking in the law. As Jane Baron writes, "there are plenty of emotions, values, and general human messiness already within the law, as any sensitive reading of the facts of cases proves."[27] The law is more than a dry collection of rules. Yet, at the same time, the deconstructionist turn has been criticized for not giving enough credence to the stability of the rules that do exist. And indeed, since the strategies and methodologies of literary criticism have started to lead a life of their own apart from the literature they were meant to explain, can we still properly speak of "law and lit"? Lastly, the legal storytelling movement worked with various "presuppositions about the inherent truth, exemplarity, or ethics of stories."[28] It was thus an extension of the humanist movement, but in its reliance on a fully functioning exemplarity it contradicted some of the tenets of deconstructionism.

Given the contradictory assumptions in these various discourses, it is perhaps not surprising that the current discussion has moved beyond any specific association between law and literature, to a more general linkage between law and culture. In the words of Jane Baron, "I believe that the definition of the field 'law,' like that of any other field, will to some degree reflect or be a product of what we, as a culture, want law to be and do. The greatest promise of 'law and' lies in exploring these cultural aspirations, but it cannot deliver on this promise if it takes law's boundaries for granted."[29] The hope, then, is that the increasingly fuzzy boundaries of a field that is

[26] Julie Stone Peters, "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion," *PMLA* 120.2 (2005): 444.

[27] Jane B. Baron, "Law, Literature, and the Problems of Interdisciplinarity," *The Yale Law Journal* 108.5 (1999): 1079.

[28] Peters, "Vanishing Real," 447.

[29] Baron, "Interdisciplinarity," 1085.

now often termed "law, culture, and the humanities" allow us to practice a more diffuse and nuanced criticism, even while our self-awareness of these shifting boundaries drives our inquiry into law's engagement with culture.[30]

It is the cultural investment in these boundaries – both in the limits of the law and the generic instability of the exemplum – that also forms the focus of this book. While Gower largely takes for granted the human need for law, he investigates both the reach of each type of law (natural, positive, divine) and the application (e.g., in terms of its rigor or mercy). The picture that emerges is of a delicate balancing act: while Gower is conservative in his respect for institutions, his desire to see justice served leads him to question the traditional boundaries of the law. This can lead paradoxically to both greater rigor and increased empathy. In fact, in the story of Orestes, which forms the focus of the last chapter of this book, we see both tendencies: Orestes is excused for his personal vengeance whereas his stepsister is killed despite her ostensible innocence.

Law and Social Change

It would be tempting to ascribe Gower's ambivalence about such subjects as private enmity to some longer history, such as the reaction to bureaucratic centralization and the shift from custom and oral culture to documentary culture. Applied to Gower, such a theory might reveal a kind of pattern of Gower defending natural law, personal vengeance, local courts, and so forth. However, no clear pattern emerges. In fact, it seems to me that Gower was willing to flatter and praise both the king and the various magnates and yet retained a certain distance from court politics that gives him his characteristic scope of inquiry, and indeed criticism.

This critical stance might explain why Gower never clearly indicates that he is writing for a particular coterie of readers.[31] Gower has been most commonly associated with bureaucrats and civil servants, with merchants, with nobles and magnates, and with the courts of Richard II and Henry IV.[32]

[30] One can see this focus on cultural boundaries also in the work of prominent legal historians. Of note are the two collections edited by Anthony Musson: *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe* (Aldershot: Ashgate, 2005) and *Expectations of the Law in the Middle Ages* (Woodbridge: Boydell, 2001). Despite this interest in expanding the boundaries of law, there is still much skepticism about the value of looking to literary representations of the law. See, for instance, Jonathan Rose, "English Legal History and Interdisciplinary Studies," in Musson, ed., *Boundaries of the Law*, esp. 176–77.

[31] Robert Epstein, "London, Southwark, Westminster: Gower's Urban Contexts," in Echard, ed., *Companion*, 43–60.

[32] For the bureaucratic connection, see Kathryn Kerby-Fulton and Steven Justice, "Langlandian Reading Circles and the Civil Service in London and Dublin, 1380–1427," *New Medieval Literatures* 1 (1997): 59–83, and "Scribe D and the Making

A study of any of these groups allows particular narratives to come into focus, yet Gower's work seems to transcend any specific association. Gower aims to speak for the "comun vois," and given his professional self-sufficiency and independent status, this is not simply an ironic gesture, an act of propaganda or self-deception. It ties in well with Gower's vision of a fair and just law for all the realm. Admittedly, such a delicate balancing act brings along some spills. The *Cronica Tripertita*, with its rather one-sided account of Richard II's deposition, is an obvious example. Yet even there Gower realizes the difficulty of providing legal justification, and seeks to anchor the law in a broader cultural consensus of what is right and just.

Gower's independent viewpoint makes it thus difficult to associate him with any particular historical narrative. This does not mean that we can read Gower in isolation from the stories of law, exemplarity, social change, and literary criticism. Rather, the complex ways in which Gower's work maps onto these historical trajectories reveal precisely their often conflicting directions. For instance, diachronic readings frequently work with the opposing poles of openness and dogmatism, or of imaginative freedom and didacticism. Yet the cultural investment in each of these poles differs significantly. Gower critics, as mentioned, often praise Gower for his humanism – his love of the contingent and the particular – whereas legal historians have increasingly questioned whether legal doctrine is so inhumane after all.

There is no easy way to make these various interests meet, but at the very least Gower shows us that the problem of exemplarity – namely matching the particular and the general – is much like the problem of relating law and literature to each other. Gower thus ultimately shares Montaigne's awareness of the problem, but he does not find a solution only in lived experience. Gower doggedly attempts to work through this relationship and he has not given up on finding some way to approximate law and justice. In this way, Gower blends acute realism with utopian system building.

The legal historian Robert Cover captures some of the spirit of this transformative cultural project in his view that "Law may be viewed as a system

of Ricardian Literature," in *The Medieval Professional Reader at Work: Evidence from Manuscripts of Chaucer, Langland, Kempe, and Gower*, ed. Kathryn Kerby-Fulton and Maidie Hilmo (Victoria: Univ. of Victoria Press, 2001): 217–37. Merchant connections are discussed by Roger A. Ladd, *Antimercantilism in Late Medieval English Literature* (New York: Palgrave Macmillan, 2010). For the best recent argument that Gower meant to reach lords and magnates, see Elliot Kendall, *Lordship and Literature: John Gower and the Politics of the Great Household* (Oxford: Clarendon, 2008). For royalist connections, see some of the critics discussed in chapter four of this book. The Lancastrian connections are well known, but their impact on the manuscript tradition and the dating of Gower's *Confessio* (an increasingly controversial subject in recent years) is best discussed by Joel Fredell, "The Gower Manuscripts: Some Inconvenient Truths," *Viator* 41.1 (2010): 231–50. I should note that I will generally read the *Confessio* in relation to Richard II's reign, but I do acknowledge the strong possibility of later revision for a different audience.

of tension or a bridge linking a concept of reality to an imagined alternative – that is, as a connective between two states of affairs, both of which can be represented in their normative significance only through the devices of narrative."[33] Literature and law both employ normative and prescriptive elements precisely in order to create imaginative narratives that are linked to various cultural projects. For Gower, the bridge that has to be built spans from the inadequacy of law to the future of a just society, and the resources to build the bridge include the judicial exemplum.

[33] Robert Cover, *Narrative, Violence, and the Law: The Essays of Robert Cover*, ed. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor: Univ. of Michigan Press, 1992), 101.

Chapter 1

THE EXEMPLUM AND THE LEGAL CASE

Jacques Derrida, in his essay "The Law of Genre," has fun with the assumption that there could indeed be a law of genre. In a slightly facetious way, he questions whether genres can ever be free from contamination and impurity. Perhaps not surprisingly, Derrida embraces the counter-law that genres must always mix. In addition, the movement from exemplary individual text to the level of genre is never an easy one from species to genus, or from particular to general. This is why Derrida concludes, "What is at stake, in effect, is exemplarity, and its whole *enigma*."[1]

Given that the problem of genre is also the problem of exemplarity, it seems poignant that the medieval exemplum as a genre has proven resistant to definition. Jean-Thiébaut Welter, at the outset of his monumental work *L'Exemplum dans la Littérature Religieuse et Didactique du Moyen Age*, writes, "Par le mot *exemplum*, on entendait, au sens large du terme, un récit ou une historiette, une fable ou une parabole, une moralité ou une description pouvant servir de preuve à l'appui d'un exposé doctrinal, religieux ou moral."[2] In this definition we can begin to see the proliferation of genres (the short story, the fable, the parable) that the exemplum can appropriate, all in the service of providing a didactic lesson. The exemplum can borrow material from saints' lives, from history, from natural science, and the list goes on. Given such generic fluidity, many critics prefer to define the genre in terms of function rather than form.[3]

The question we need to consider therefore is not only whether the exemplum can appropriate the legal case, but why it might do so. This question is particularly important for the *Confessio Amantis*, where Gower labels his

1 Jacques Derrida, "The Law of Genre," *Critical Inquiry* 7.1 (1980): 59.

2 Jean-Thiébaut Welter, *L'Exemplum dans la Littérature Religieuse et Didactique du Moyen Age* (1927; New York: AMS, 1973), 1.

3 Walter Haug writes, "Das Exempel is nicht als Gattungs-, sondern als Funktionsbegriff aufzufassen." See Haug, "Exempelsammlungen in Narrativen Rahmen: Vom 'Pañcatantra' zum 'Dekameron,'" in *Exempel und Exempelsammlungen*, ed. Walter Haug et al. (Tübingen: Niemeyer, 1991), 264. See also Fritz Kemmler, *'Exempla' in Context: A Historical and Critical Study of Robert Mannyng of Brunne's 'Handlyng Synne'* (Tübingen: Narr, 1984), 191–92.