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Motives and Motifs in Early English Law: Reading the *Mirror of Justices* after Maitland

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English medieval legal history knows few more tendentious texts than the *Mirror of Justices* (c. 1290). Forgotten, discovered, lauded, and despised, its fortunes offer a case study in the reception of medieval legal thought across more than seven hundred years, from the text's copying in the early fourteenth century by the London city chamberlain, Andrew Horn, to its rise to fame in the parliamentary debates of the seventeenth century, to its spectacular fall from grace in the late nineteenth century, when Frederic Maitland rejected it as the work of a "fantastic and irresponsible" author.[1] Of its heady early reception, "It would be long to tell how much harm was thus done to the sober study of English legal history," Maitland declared in his introduction to the Selden Society volume of 1893, where he proceeded to detail a list of legal "heresies" promulgated by the shrewd and mysterious fabulist, who mixed actual and invented law with such alacrity that generations of Whig historians believed to him the best available authority on Anglo-Saxon law and perhaps even a product of the pre-Conquest world itself.[2] The publication of the Selden Society edition, edited by W. J. Whittaker but prefaced by Maitland's scathing

[1] *The Mirror of Justices*, ed. and trans. William Joseph Whittaker with an introduction by Frederic William Maitland, The Selden Society vii (London: Bernard Quaritch, 1893), p. xlvi.
[2] *Mirror*, p. x. Maitland reserves special condemnation for the "credulous Coke," who "filled his Institutes with tales from the *Mirror*" (ibid). On the sixteenth- and seventeenth-century reception of the *Mirror*, see J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge: Cambridge University Press, 1957, rpt. 1987), pp. 41–3 and 67–8; Allen D. Boyer, *Sir Edward Coke and the Elizabethan Age* (Stanford: Stanford University Press, 2003), 150–2; Jeremy Catto, "Andrew Horn: Law and History in Fourteenth-Century England" in *The Writing of History in the Middle Ages: Essay Presented ton Richard William Southern*, ed. R. H. C. Davis and J. M. Wallace-Hadrill (Oxford: Clarendon Press, 1981), pp. 367-391, and David J. Seipp, "*The Mirror of Justices*," in *Learning the Law: Teaching and the Transmission of Law in England 1150-1900*, eds. Jonathan A. Bush and Alain Wijffels (London and Rio Grande: The Hambledon Press, 1999) pp. 85-112.

introduction, assured the *Mirror* an enduring, if marginal, position in the canon of English law. In scholarship since, it has remained an anomalous and somewhat aberrant text, a testament, as Maitland would have it, to the eccentricities of its author. "Not every book is typical of the age in which was produced," he promises his readers. "Every age has had its prophets, its eccentrics, and its paradoxers."[3]

Maitland's introduction made an effort to be the closing argument on the *Mirror* and, for many decades, largely succeeded in that goal. The text has been described as a "parody," "satire," "riddle," "curiosity," and a "sham,"[4] but rarely has it been seen as a sincere effort at the genre it most closely approximates: an epitome of Bracton's *De legibus et consuetudinibus Angliae* in the vein of *Fleta*, *Britton*, Gilbert of Thornton's *Summa*, *Hengham*, and other late thirteenth-century legal treatises. In recent years, however, readers of the *Mirror* have proven more sympathetic to its methods, arguing that the text's invented laws, mingled with *Bracton*'s reliable exposition, work more idealistically than practically, demonstrating what law *should* do and what fields of influence it can claim morally and juridically.[5] Along these lines, David Seipp deems the *Mirror* less an elaborate joke upon future historians than a "reformist textbook on law" that "shocks complacent, comfortable assumptions that the lawyers of seven hundred years ago were conventional stuffy, conservative, secular positivists."[6] Anthony Musson regards its author as "obliquely stating what he thought the law ought to be,"[7] and Stefan Jurasinski has

[3] *Mirror*, p. xxx. Seipp reviews the reception history of the *Mirror* following Maitland's assessment in "*The Mirror of Justices*." To excerpt only a small sampling of condemnations, T.F.T Plucknett says it "defies classification, and almost baffles description;" W.J. Windeyer deems it "heavy half-accurate learning;" and J. G. A. Pocock charges it as "lavishly fantastic" (85–6).
[4] See Seipp, "*Mirror*," pp. 85–6.
[5] As Seipp argues, "Every legal treatise, to one degree or another, states law as the author thinks it should be" (97).
[6] See Seipp, "Mirror," pp. 87 and 112.
[7] See "Rehabilitation or Reconstruction? Legal Professionals in the 1290s," in *Thirteenth Century England IX*, eds. Michael Prestwich, R. H. Britnell, and Robin Frame (Woodbridge, Suffolk: The Boydell Press, 2003), pp. 71–87, and also Musson, "Appealing to the Past: Perceptions of Law in Late-Medieval England," in *Expectations of the Law in the Middle Ages*, ed. Anthony Musson (Woodbridge, Suffolk: The Boydell Press, 2001), pp. 165-179, esp.

shown him to be a careful and methodical collector of his pseudo-Anglo-Saxon names, taking a sizeable number from contemporary literary sources, including La3amon's *Brut* and Middle English romances.[8]

But for these essays and all others concerned with the *Mirror*, the present included, reading the text means reading it after Maitland—which is to say, reading it with the question of authorial "guilt" or "innocence" in mind. The problem of intention—why and to what ends a writer would manufacture laws that never existed—comprised a major preoccupation of Maitland's introduction. In an elaborate close reading of the *Mirror*'s opening verses, Maitland followed custom in proposing Andrew Horn, its earliest known reader, as a possible candidate for author, but hesitated at making a secure attribution.[9] He proved less reluctant, however, when

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pp. 172-174. Ralph Hanna III makes a similar point in *London Literature, 1300-1380* (Cambridge: Cambridge University Press, 2005), p. 89.

[8] See Stefan Jurasinski, "Andrew Horn, Alfredian Apocrypha, and the Anglo-Saxon Names of the *Mirror of Justices*," *Journal of English and Germanic Philology* 105 (2006): 540–63. More amateur linguist than master forger in Jurasinki's judgment, the *Mirror* author was "much more at home in the realm of English romance than … serious historical investigation" (563).

[9] Written as prose in the opening of the *Mirror* in Cambridge, Corpus Christi College, MS 258, the verses invite all readers wishing knowledge of law and skill in pleading to peruse the *summa*. A rubricated line immediately following gives Andrew Horn's device, also copied into Horn's other surviving manuscripts:

> Hanc legum summan si quis vult iura tueri
> Perlegat et sapiens si vult orator haberi;
> Hoc apprenticiis ad barros ebore munus
> Gratum iuridicis utile mittit opus.
> Horn michi cognomen Andreas est michi nomen.

Maitland enlisted his friend A. W. Verrall to translate the verses, and his free rendering proved influential for Maitland's reading of the text:

> Read me, who'er the substance of the laws
> Desires to see, or plead with sage applause.
> Here Ivory's grace attracts apprentice eyes,
> While profit for the coif our book supplies.
> Horn—Andrew Horn—the author is who writes.
> (*Aside*) Thus Horn with Ivory, Truth with Grace, unites.

Maitland placed great emphasis on Verrall's translation of *ebore* as "ivory": "What in the name of sense, to say nothing of metre, have we to do with ivory (*ebore*)? To my friend Dr. Verrall I owe the suggestion that the five verses must be read together, and the mysterious Ivory of the third line is explained by the Horn of the fifth. Were there not two gates through which dreams came to mankind? Horace, Vergil, and Statius all said so" (xx–xxi). The "gates of Horn and Ivory" thus coyly alluded to Horn's authorship while also casting the whole of the treatise as fiction. Maitland's historical instincts would not allow him to attribute authorship to Horn in the final instance, however. Reviewing all the evidence, Maitland concludes that "if this book had been newly put into our hands and we had never heard of Andrew Horn, we should have said that it was written very soon after 1285, and probably before 1290" (xxiv).

it came to speculating about the motivations of the *Mirror* author more generally, that "lawyer, antiquary, preacher, agitator, pedant, faddist, lunatic, romancer, liar" who alone could explain the text's mistakes and treacheries.[10] Such a figure, Maitland argued, was "a representative, not of the spirit of an age, but of a disinterested spirit, the spirit of contradiction."[11] For who else but such a contradictory spirit could have written a text like the *Mirror*?

> Was not this an occasion for a squib, a skit, a "topical" medley, a "variety entertainment," blended of truth and falsehood, in which Bracton's staid jurisprudence should be mingled with freaks and crochets and myths and marvels, and decorated with queer tags of out-of-the-way learning picked up in the consistories?[12]

In pitting the "staid jurisprudence" of *Bracton* against the *Mirror*'s "freaks and crochets and myths and marvels," Maitland erected a boundary between legal truth and literary falsehood that readers since have been quick to recognize as anachronistic. But a more lasting assumption of the introduction has been harder to dispel: namely, that the *Mirror* inadvertently reveals the character of its author, his motives, sincerity, and professional ethics.[13]

This essay proposes to shift discussion of the *Mirror* away from the ever-inscrutable problem of authorial intention and toward the richer field of rhetorical strategy. By considering how the writer arrives at his vision of legal history, I argue, we can gain subtler insight into why he might have undertaken such a project in the first place. Maitland's overriding concern with

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For review of the textual crux posed by *ebore*, see Herman Cohen, *A History of the English Bar and Attornatus to 1450* (London: Maxwell and Sweet, 1929; rpt Clark, NJ: The Lawbook Exchange, 2005), pp. 319–20. For discussion of Maitland's debate over the *Mirror*'s authorship, see Jurasinksi, "Andrew Horn," pp. 545–6 and n28.

[10] *Mirror*, p. xlviii.

[11] *Mirror*, p. xlii.

[12] *Mirror*, p. xlix.

[13] Maitland established this line of inquiry. "Once we know his character," he writes in the introduction, "we shall begin to suspect that those passage in his book which successfully stand a comparison with plea rolls and honest treatises are the most deceptive, having been designed for the very purpose of inducing us to swallow fables that lurk amongst them" (xxxiii).

the character at work behind the *Mirror* has worked to discourage close examination of the logic at work within the *Mirror*. By emphasizing the atypicality of the book and its author, he mooted the question of the *Mirror*'s own internal coherence: the fact that the book made sense within itself mattered little if it offered no trustworthy view of its purported topic. As this essay argues, however, it is precisely the *Mirror*'s efforts at articulating a morally coherent version of the common law that resulted in the text's most radical distortions to the legal past. Idealism and reformism indeed guide the *Mirror*. But a literary sensibility also underlies that idealism, complicating any straightforward attempt to plumb the text's motivations. By examining its rhetoric alongside its legal content, this essay traces the *Mirror*'s negotiation of two different literary modes: complaint writing and legal instruction. This combination presents something of a clash of genres, particularly for modern readers, but it more powerfully presents a clash of logics, in which the desire to change a system confronts an equally strong desire to explain and validate that system.

De Consolatione Legis: *Bracton* Meets Boethius in the Preface to the *Mirror*

Any investigation of the *Mirror* begins with the one extant manuscript of the text. This volume—Corpus Christi College, Cambridge, MS 258—formed part of the collection of legal and historical manuscripts bequeathed by Andrew Horn to the Guildhall in 1328. His will records them as

> a large book of the deeds of the English which contains much that is useful, and another books of ancient (laws?) of the English with the book called *Bretoun* and the book called

the *Mirror of Justices*, and another written by Henry of Huntington. Also another book of English statutes with many liberties and other items relevant to the city.[14]

Although later users dispersed and rebound the contents of these volumes, all of the listed manuscripts survive except the Henry of Huntington.[15] They bear witness to the broad historical sensibilities of their owner, Horn, who as chamberlain for London took seriously his responsibilities as guardian of the city privileges. A dedicated civic historian and early legal antiquarian, Horn is linked to the voluminous *Liber Horn*, a 376-folio codex comprised of the statutes of Henry III and Edward I and an assembly of London city ordinances; the *Annales Londiniensis*, a continuation of the *Flores Historiarum* adapted for London civic history;[16] and the *Liber Legum Regum Antiquiorum* and *Liber Custumarum*, encyclopedic compendia of English law gathered from Guildhall documents and his own collection during his time as chamberlain.[17]

A work with its own clear antiquarian bent, the *Mirror* fits neatly within the scope of Horn's interests. As chamberlain, Horn served as civic archivist, amassing statutes, chronicles, and law codes in an effort to demonstrate a continuous history of common law privileges extending to the Anglo-Saxon past.[18] Horn apparently intended the *Mirror* to follow chronologically upon just such a legal-historical survey: CCCC MS 258 was originally bound together with the contents of Corpus Christi College, Cambridge, MS 70, the "librum de

[14] "unum magnum librum de gestis anglorum in quo continentur multa utilia, et unum alium librum de veteribus [legibus?] anglorum cum libro vocato Bretoun et cum libro vocato speculum Justic', et alium compositum per Henricum de Huntingdon[ia]. Item alium librum de statutis Anglorum cum multis libertatibus et aliis tangetibus civitatem". The Latin is cited from Catto, "Andrew Horn," pp. 370-1. On Andrew Horn's manuscripts, see also Hanna, *London Literature*, pp. 67-79, and N. R. Ker, "Liber Custumarum, and other Manuscripts formerly in the Guildhall" in *Books, Collectors, and Libraries: Studies in the Medieval Heritage* (London and Ronceverte: The Hambledon Press, 1985), pp. 135-142.

[15] The dispersal of these volumes has been painstakingly traced by Ker, "Liber Custumarum" and Catto, "Andrew Horn."

[16] See Catto, pp. 374-6, and Antonia Grandsen, *Historical Writing in England c. 550 to c. 1307* (Ithaca: Cornell University Press, 1974), pp. 508-517.

[17] See Ker, "Liber Custumarum," for the contents of the *Liber Custumarum*, pp. 140-2.

[18] See Catto, "Andrew Horn," p. 387, and Hanna, *London Literature*, 68–73.

veteribus [legibus?] anglorum" today known as the *Leges Anglorum*. Spanning legal history from the earliest laws of Ine and Alfred to the major statutes of the thirteenth century, the *Leges Anglorum* provided Horn material and inspiration for his later projects, including the *Liber Horn*.[19] But the *Leges* or a similarly minded compendium may well have aided the *Mirror* author as well. His creative use of the laws of Alfred, treatises like the *Leges Henrici Primi* and *Leges Edwardi*, and textbooks like *Glanvill* suggest access to some large-scale compilation like the *Leges Anglorum*.

Famously, however, the narrator portrays the text's production as far more haphazard than simply consulting a reputable anthology of legal material. Supposedly a prison document, the *Mirror* owes its writing to the exigencies of an unjust legal system, in which the author finds himself jailed by the very people he condemns. The narrator explains the text's origins and intentions in a single, long sentence that opens the book:

> When I perceived that divers of those who should govern by rules of right had regard to their own earthly profit, and to the pleasing of princes and lords and friends, and to the amassing of lordships and good, and would never assent that the right usages should be put in writing, whereby would be taken from them the power of arresting some by colour of judgment, and of exiling, imprisoning, or disinheriting others, without suffering punishment therefore, and when I saw them cloaking their sin by the 'exceptions' of error and ignorance, and having little or no regard to the salvation of the souls of sinners from damnation by lawful judgments, as their office demands, and having hitherto used to

[19] For descriptions of CCCC MS 70+258, see M. R. James, *A Descriptive Catalogue of the Manuscripts in the Library of Corpus Christi College Cambridge*, 2 vols. (Cambridge: University Press, 1909–12), 1.148–9 and 2.8–9. On the *Leges Anglorum* see Felix Liebermann, *Über die Leges Anglorum saeculo XIII ineunte Londoniis Collectae* (Halle: Max Niemeyer, 1894) and "A Contemporary Manuscript of the 'Leges Anglorum Londoniis Collectae,'" *English Historical Review* 28 (1913): 732–45. For additional consideration of the *Leges Anglorum* in relation to their twelfth-century predecessor, the *Quadripartitus*, see Patrick Wormald, *The Making of English Law: From King Alfred to the Twelfth Century* (Oxford and Malden, MA: Blackwell, 2001), pp. 237–44. On Horn's compiling of MSS 70 and 258, see also Catto, "Andrew Horn," p. 373.

> judge folk out their own heads by abuses and precedents of others erring in the law, and not by the right rules of Holy Writ, to the great hindrance of your endeavour, all ye who build without foundation, and take on yourselves to judge before that ye are learned in jurisdiction, which is the very groundwork of your profession, and hold yourselves out as learned in the law of land before ye have mastered the law of persons (like to those who study the liberal arts before the parts of speech): I, the prosecutor of false judges, and falsely imprisoned by their order, in my sojourn [in gaol] searched out the privileges of the king and the old rolls of his treasury, wherewith my friends solaced me, and there discovered the foundation and generation of the customs of England which are established as law, and the guerdons of good judges and the punishment of others, and as briefly as I could I set in remembrance what is essential, for which end my companions aided me in the study of the Old Testament and the New, and the canon and the written law.[20]

This passage shows debts to a number of sources. Its opening diatribe against false justices echoes chroniclers' complaints against the worst offenders of the judicial crisis of 1289–1293, an inquiry into corruption in the courts that resulted in the dismissal, imprisonment, and amercement of some of the most prominent members of the judiciary. In their pioneering study

[20] *Mirror*, p. 1. Translations of the *Mirror* are Whittaker's. "Cum jeo maperceyvoie devers de qe la lei deveroyent governer par rieules de droit, aver regard a lur demeine terriens proffiz, e as princes seignurages e amis plere, e a seignuries e avoir amassier, e nient assentir qe les dreiz usages fusent unqes mis en escrist, par unt poer ne lur fuse toleit, des uns par colour de jugement prendre, les autres exiler, ou enprisoner, ou desheriter, saunz peine emporter, coveranz lur pechie par les excepcions de errour e de ignoraunce, e nient ou poi pernaunte regard as almes de peccheours sauver de dampnacioun par leaux jugementz, solom ceo qe lur office demaunde, e eient usez en cea a juger la gent de lur testes par abusions e examples dautres erpanz en la lei plus qe par droites riules de seint escripture, en arreirissement grantment de vostre aprise, qi edefiez sanz foundement e apernez a juger eins ces qe vous vous conoissez en jurideccion qest pie de vostre aprise, e en lei de terre einz ceo qe en lei de persones, auxi com est de ceuz qe apernent arz avant les parz: —Je persecutor de faus juges e par lur exsecucion fausement enprisone, les privileges le Roi en les vieuz roulles de sa tresorie, dount amis me solacerent en mon soiour, cerchai, e le foundement e la nessaunce des usages dEngleterre donez por lei, oveqe les gueredouns des bons jugez e la peyne des autres i trovai, e a plus bref qe jeo savoie la necessite mis en remembraunce, a quoi compaignons meiderent destudier el viel testament, el novel, el canon e en lei escrist."

of what they called Edward I's "state trials," Tout and Johnstone address the range of complaints amassed against judges during the three years that Edward I had been away in Gascony.[21] Particular grievances included judges who refused to hear exceptions or special pleas, who rigged juries in favor of plaintiffs, who intimidated parties or showed blatant or subtle favoritism, and who held inquests in the wrong counties, accepted bribes, and changed verdicts to aid one side or the other.[22] Another popular genre of complaint alleged record tampering—court officials destroying or altering roll entries—but by far the most common grievance concerned unjust imprisonments. Nearly thirty percent of complaints, Tout and Johnstone surmise, had to do with sheriffs, bailiffs, and other powerful local figures using prison to manipulative ends. "The usual form it took," they state, "was the imprisonment of a man to extort money, or the seizure of his goods for the same reason."[23]

Against this background, the *Mirror* author's imprisonment appears at once more and less likely as a historical fact.[24] The *Mirror* devotes considerable attention to the problem of imprisonment. Under a crime of homicide, for instance, he includes "homicides in will," a category reserved for those whose false testament results in an innocent person's death. Coroners and justices who force a false confession are guilty by this rationale, as are false jurors, false witnesses, and defamers. "Homicide in will" is likewise committed by "those who imprison folk in such places, or put them such pain, that it can be found by inquest that they were nearer death by such evil places or pains."[25] Similarly outraged language appears in chronicle accounts, where annalists condemn the "immense outrages and homicides" [*enormia facinora and homicidia*]

[21] See T. F. Tout and Hilda Johnstone, *The State Trials of the Reign of Edward the First, 1289–1293* (London, Royal Historical Society, 1906) and further discussion below.
[22] Tout and Johnstone, *State Trials*, pp. xxxix–xli.
[23] Ibid, pp. xli-xlii.
[24] Maitland himself suspected that the tale of wrongful incarceration was a "'common form,' a literary device which will awaken interest and sympathy" (*Mirror* xxii). He is undoubtedly right on this point, though the author's use of a literary commonplace does not rule out actual experience either.
[25] *Mirror*, p. 23.

perpetrated by the likes of Adam de Stratton, Thomas de Weyland, and other justices and court functionaries brought down by royal justice.[26] Mixing lurid detail and sweeping generality, these writers bemoan a system corrupted by greed, violence, cowardice, and desperation. This "sensationalist, tabloid view" of the crisis has posed problems for historians hoping to see through rhetoric to the real causes and consequences of the dismissals.[27] But the language of complaint, however exaggerated, can also help us better understand the *Mirror*'s own vexed form of truth-telling.

The complexity of this truth first becomes apparent when the narrator describes himself in the first person as the prosecutor (and persecutor) of false justices: "Je persecutor de faus juges e par lur exsecucion fausement enprisone." While modern readers have traditionally taken this description as quasi-personal, it is also a literary composite, drawn from the genres of the legal *summa* and the philosophical *consolatio*. In the former instance, the immediate point of reference is Bracton's *De legibus*, from which the *Mirror* takes the bulk of its content. The *Mirror* author closely adapts his source text in his own preface, echoing *Bracton*'s concern that unseasoned judges learn the arts of law before the parts and even borrowing the text's striking (and equally troublesome) "I" proclamation:[28]

> Since these laws and customs are often misapplied by the unwise and unlearned who ascend the judgment seat before they have learned the laws and stand amid doubts and

[26] Bartholomew Cotton, *Historia Anglicana*, ed. Henry Richards Luard, Rolls Series 16 (London: Longman, Green, Longman & Roberts, 1859), p. 171. For a review of chroniclers' reactions to the judicial inquests, see *State Trials*, pp. xxxiv, and further discussion below.

[27] See Musson, "Reconstruction and Rehabilitation?" pp. 71–2, and Paul Brand, "Edward I and the Judges: the 'State Trials' of 1289–93," in *Thirteenth Century England I*, ed. P.R. Coss, S. D. Lloyd (Woodbridge, Suffolk: Boydell and Brewer, 1986), pp. 31–40.

[28] As Maitland notes, the "ego, Henricus de Brattone," identifying the work as Henry Bracton's is only rarely attested in manuscript. More commonly, the name has been replaced by "Ego talis" ("I so-and-so"), and in one case a scribe has obviously conflated the two traditions into the nonsensical "Ego H. de Bractone talis." A number of manuscripts, he concludes, "plainly seem to trace their descent from a copy in which the name was struck out or marked for omission by subjacent dots and *talis* was written above it." See *Selected Passages from the Works of Bracton and Azo,* Selden Society 8 (London: Bernard Quaritch, 1895), p. xiii.

> the confusion of opinions, and frequently subverted by the greater [judges] who decide cases according to their own will rather than by the authority of the laws, I, Henry de Bracton, to instruct the lesser judges, if no one else, have turned my mind to the ancient judgments of just men, examining diligently, not without working long into the night watches, their decisions, *consilia* and *responsa*, and have collected whatever I found therein worthy of note into a *summa*, putting it the form of titles and paragraphs, without prejudice to any better system, by the aid of writing to be preserved to posterity forever.[29]

This passage suggests that the *Mirror* author not only extracted legal content from *Bracton* but also borrowed the account of its origins, translating the scene of scholarly industry from the study to the prison. Rather than an instructor of lesser judges, the *Mirror* author proclaims himself a prosecutor of false judges; in place of Bracton's late-night scholarly vigils, he conjures a portrait of lonely prison vigils, studying "the privileges of the king and the old rolls of his treasury."

While the allusion to *Bracton* does not preclude the narrator's actual incarceration, it does suggest a more complicated relationship between source and epitome than mere willful distortion. As its competing titles imply, the *Miroir a Justices* (or *Speculum Justiciariorum*, according to the manuscript incipit) aspires both to encyclopedism and critique, summarizing a body of knowledge even as it exposes its deficiencies.[30] But if this *speculum* reflects upon the

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[29] Henry Bracton, *De legibus et consuetudinibus angliae*, trans. Samuel E. Thorne, 4 vols. (Cambridge, Mass.: Belknap Press, 1968), 2.18–9. "Cum autem huiusmodo leges et consuetudines per insipientes et minus doctos, qui cathedram iudicandi ascendunt antequam leges didicerint, saepius trahantur ad abusum, et qui stant in dubiis et in opinionibus et multotiens pervertuntur a maioribus, qui potius proprio arbitrio quam legum auctoritate causas decidunt, ad instructionem saltem minorum ego, Henricus de Brattone, animum erexi ad vetera iudicia iustorum, perscrutando diligenter non sine vigiliis et labore, facta ipsorum, consilia et responsa, et quidquid inde nota dignum inveni in unam summam redigendo sub ordine titulorum et paragraphorum, sine præiudicio melioris sententiæ, compilavi, scripturæ suffragio perpetuæ memoriæ commendanda."

[30] The ambiguous aims of the text may be glimpsed in the work's proliferating titles: in the manuscript incipit and explicit, it is the *Speculum Justiciariorum* (f. 1r) and *Mireour des Justices* (f. 51v), a reflection upon judges; in the body of the text, it is the *Mireur a Justices*, a manual for judges (f. 1v).[30] As Seipp describes, "Our author was

ideals and imperfections of its primary object of scrutiny, judges, it also casts a sidelong glance at its generic model, the legal *summa*, and the educative possibilities of the form. As is well known, the preface to *De legibus* is itself heavily indebted to Roman law commentators. Bracton drew primarily from the Bolognese commentator Azo in this section of the work, as well as from William of Drogheda's *Summa aurea* and Tancred's *Ordo Justiciarius*, from which he adapted the description of his method of organizing material under "titles and paragraphs."[31] As H. G. Richardson has demonstrated, Roman law provided Bracton a level of theoretical abstraction necessary to the project of the *summa*: without a vantage from which to survey jurisprudence as a whole, he could not have learned, as Maitland put it, "how to write about, how to think about, law."[32]

Though ostensibly a summary and reduction of *Bracton*, the *Mirror* also emulates the grander methodological aspirations of its source. Like Bracton sifting through the *consilia* and *responsa* of his mentors, the *Mirror* author turns to historical materials—"old rolls and privileges"—in order to synthesize a holistic treatment of the common law. Alongside these sources of royal administration, the narrator adds the books of the Bible and major works of canon law.[33] Like Bracton, the *Mirror* narrator finds in canon and civil law a vocabulary for talking about the origins and ends of jurisprudence on the largest possible scale—from the beginning of law with God's original injunction in Eden to the practice of law in the late

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holding up a mirror to the judges' faces in two senses. The mirror reflected the judges' own defaults and defects so that they could see them and the mirror showed judges their law and themselves as they should be." See "*Mirror of Justices*," p. 97.

[31] See Maitland, *Bracton and Azo*; H. G. Richardson, *Bracton: The Problem of His Text*, Selden Society s.s. vol. 2 (London: Bernard Quaritch, 1965); Richardson, "Azo, Drogheda, and Bracton," *English Historical Review* 59 (1944): 22–47; and Richardson, "Studies in Bracton," *Traditio* 6 (1948): 61–104, esp. p. 64.

[32] *Bracton and Azo*, p. xxvi

[33] At the close of the prologue he lists the complete books of the Vulgate: the five volumes of the Pentateuch; the eight books of the prophets; the nine volumes of the "hagiographers" (i.e., Job, Psalms, Proverbs, Ecclesiastes, etc.); the apocrypha; and the Evangelists and Apostles of the New Testament. The writings of the "Holy Fathers" also fall within the purview of the New Testament but have "no certain number determined." See *Mirror*, p. 3.

thirteenth century in England. Unlike Bracton, however, he looks to create a new body of law from the convergence of these sources, one that marries the universalizing ambitions of civil law, the ethical strictures of Biblical law, and the administrative architecture of English common law. As the author explains, the *Mirror* began as a different kind of textual instrument than the *summa* it eventually becomes. His first step was to make a "concordaunce" of English custom and Holy Scripture and then from this concordance—quite likely a literal cross-reference of Bracton, the Bible, and other sources—to construct the five books of the *Mirror*:

> And I made a concordance of our usages with the Scriptures. And in a language easy to be understood, and for your aid and that of the commonalty of the people, and to the shame of false judges, I compiled this little summary of the law of persons, or the law of the folk, in five chapters: to wit, (1) Of sins against the holy peace, (2) Of actions, (3) Of exceptions, (4) Of judgments, (5) Of abuses. And this summary I have called the Mirror for Justices, according as I have found the virtues and the substances sanctioned by bulls and by holy usages which have obtained since the time of King Arthur in accordance with the rules aforesaid. And I pray you to redress and adjust the defaults as best you may be warranted by good warrant, and to procure that the daily abuses of the law may be reproved and brought to naught.[34]

As this passage makes clear, the *Mirror* begins from a fundamentally different premise than *Bracton*, even as it goes on to adopt the structure of a legal textbook. Its primary motivation lies in uncovering the ethical substrate that links Biblical, canon, civil, and common laws and then to

[34] *Mirror*, p. 3. "E de nous usages fiz concordaunce a lescripture. E en langage plus entendable en eide de vous e del comun del poeple e en vergoigne de faus juges compilai ceste petite summe de la lei des persones, des genz, en v. chapitres, ceste assaver, en pecchiez countre la seinte pees, accions, excepcions, jugemenz, abusions, qe jeo appellai Mireur a Justices, solum ceo qe jeo trovai les vertues e les substaunces embullees e puis le temps le Roi Arthur usez par seinz usages accordaunce as riules avantdites. E vous pri qe les defautes voillez redrescier e aiouster solom ceo qe par verrei garraunt enporrez estre garantiz e procurer a reprendre e confondre les cotidienes abusions de la lei."

subject contemporary legal practice to analysis by this rule. Such a project is necessarily historical, and the *Mirror* indeed begins at the origins of history itself, with the birth [*nessaunce*] of divine commandment in Eden, tracing its descent from God to Moses to the two "volumes" of law, canon and secular, that govern present-day humanity.[35]

In attempting to harmonize religious and secular law, the narrator straddles genres and intellectual jurisdictions, bringing Biblical logic to bear upon the workings of the common law. Maitland objected strenuously to this conflation, calling it "Puritanism" and the writer an "amateur," who confused "'capital crimes' and 'mortal sins'… 'mortal actions' and 'venial actions,'… 'real, personal, and mixed sins.'"[36] But in fact such confusion was precisely the point of the *Mirror*. Exploiting a growing semantic difference in the thirteenth century between the notions of "crime" [*crim*] and "sin" [*pecche*], the author deliberately applies the latter designation to all forms of trespass.[37] This language allows him an obvious rhetorical point—that violations of secular law are violations of God's law—but also a broader philosophical argument: that common law should reason from an altogether different foundation than the customs enforced as the law of the land. By his definition, the common law is a transcendent, not organic, system: derived from those "ancient customs warranted by Holy Writ," it is called

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[35] *Mirror*, p. 5. Relating a conventional interpretation of Genesis, he describes how God gave law to humanity because love for their Creator would not alone goad them to salvation. God then made "Moses a doctor, whose place the Pope now holds," and from this lineage, law passes down in two volumes:

> (1) the canon, which is conversant with the reformation of spiritual sins by admonitions, prayers, reprehensions, and excommunications; and (2) the written law, which is conversant with the correction of material sins by summonses, attachments, and punishments." To the province of the prelates falls the canon law, he explains, while lay princes administer the written, "and each aids the other.
> [*el canon qe se conoist en amendemenz de pecchiez espiritieus par amonicions, priers, reprises, e escomengez: en lei escriste que se conoist en corrections des pecchiez materieus par somonses, attachementz e peynes. Lespirituele guient les prelatz. Les autres guient les lais princes; e se eide lune par lautre*.]

[36] *Mirror*, pp. xxviii–xxxiii.

[37] Seipp notes that the terms *pecche* and *peccatum* were used throughout the thirteenth century to describe types of legal offenses. Where he suggests that the author does not recognize a conceptual difference between the terms, I would argue that the consistent relabeling of criminal offenses as sins makes a deliberate rhetorical point and suggesting a widening semantic distinction at the time of composition. See "*Mirror*," pp. 102–3.

common [*comune*] "because it is given in common to all."[38] Fixed by the unbending precedent of the Ten Commandments, this rule then becomes the basis for critique and invention within the *Mirror*—where common practice deviates from a universalized common law, the author either notes the law as an "abusion" or changes it without comment.

The desire to search out a transcendent moral system suggests one other possible source underlying the *Mirror*'s preface—Boethius's *Consolation of Philosophy*. A fellow prisoner of conscience and "prosecutor of false judges," Boethius receives his education in cosmology, justice, and divine providence from the mouth of Lady Philosophy herself, who guides her pupil, or patient, from the wounded solipsism of complaint to the rational contemplation of God's eternity. True acolytes of Philosophy are few to be found, however: on first appearance in Book I of the *Consolation*, Lady Philosophy's gown shows itself "obscured by a kind of film as of long neglect" having been "torn by the hands of marauders who each carried off such pieces as he could carry."[39] As she explains to Boethius, the neglect derives from generations of philosophers trying to abscond with her inheritance:

> As part of their plunder they tried to carry me off, but I fought and struggled, and in the fight the robe was torn which I had woven with my own hands. They tore off little pieces from it and went away in the fond belief that they had obtained the whole of philosophy. The sight of traces of my clothing on them gained them the reputation among the

[38] *Mirror*, p. 5. "La lei dunt ceste summe est fete est estrete des aunciens usages garantiz de seinte escripture, e pur ceo qele est generalement done a touz est ele apele comune."
[39] Boethius, *The Consolation of Philosophy*, trans. V. E. Watts (London and New York: 1969), p. 36. "…caligo neglectae uetustatis obduxerat. […] Eandem tamen uestem uiolentorum quorundam sciderant manus et particulas quas quisque potuit abstulerant." *De Consolatione Philosophiae*, ed. Adrian Fortescue (London: Burns, Oates & Washbourne, Ltd.), Book I, prosa 1, p. 3.

ignorant of being my familiars, and as a result many of them became corrupted by the ignorance of the uninitiated mob.[40]

The *Mirror* narrator lodges a similar complaint against justices in his opening diatribe, switching to second-person direct address to castigate "all you who build without foundation, and take on yourselves to judge before you are learned in jurisdiction, which is the very groundwork of your profession." Like Lady Philosophy's Stoic and Epicurean mobs, these legal sophists "hold [them]selves out as learned in the law of land before [they] have mastered the law of persons (like to those who study the liberal arts before the parts of speech)." As with the *Consolation*, the *Mirror* looks to advance an educative agenda that works from the reverse principle: starting with "parts," the elementary foundations of law, it looks to build a ladder leading to higher contemplation of the art as a whole.

But if Boethius eventually finds his consolation in the providential fixity of neo-Platonism, the *Mirror* author seems to find no solace at all in his own time. The tone throughout the work is restless and vituperative, with the narrator regularly acting as a kind of Biblical gadfly to secular common law procedure. On the subject of attachments, for instance, the author takes cap. 1 of the Statute of Winchester (1285), obligating neighbors to raise hue and cry against felons, as an opportunity to import into the English courts the logic of the *lex talionis*. Mortal sinners "are to be taken in their crimes if they be notorious" or pursued to the next township if they flee and then killed upon capture.[41] Accusers receive similarly stark treatment: anyone who

[40] *Consolation*, p. 39. "…meque reclamantem renitentemque uelut in partem praedae traherent, uestem quam meis textueram minibus disciderunt, abreptisque ab ea panniculus totam me sibi cessisse credentes abiere. In quibs quoniam quaedam nostri habitus uestigia uidebantur, meos esse familiares inprudentia rata nonnullos eorum profanae multitudinis errore peruertit." Book I, prosa 3, pp. 8–9.

[41] *Mirror*, pp. 48-9. "And if anyone flee, then, according to the statute of Winchester, the hue and cry must be pursued with horn and mouth, so that all those of one township, who are capable of following the cry, shall make pursuit to the next township. And if the fugitive be caught let him be killed, so also if he defends himself and cannot otherwise be taken." [*E si ascun se defut adunqe solom la constitucion de Wincestre fet a siure a hu e a cri de corne*

"desires to complain for the sake of vengeance, or in order to drive a sinner to the salvation of his soul" must present his plaint to the coroner where the "sin" was committed. The coroner shall then "cause it to be distinctly enrolled, and the plaintiff will thus write himself down as a homicide, because of his corrupt desire to slay his neighbour by his plaint, so that he will be judged by the *lex talionis* if he cannot prove his plaint."[42]

However obviously distortive these passages appear to us now, they find precedent within the *Mirror* itself, which at an earlier point cites as established law a similar provision dating from King Alfred's reign: "everyone of the age of fourteen and upwards should be ready to slay mortal sinners in their notorious crimes and to pursue them from vill to vill with hue and cry if they could not kill or catch them."[43] Viewed from the perspective of this supposedly more ancient custom, the author's later provision appears as a *relaxation* of the law over time, reserving immediate death only for those who flee apprehension, while commending others to appropriate judgment by the courts. In the repetition of these imaginary ordinances, we glimpse the internal logic of the larger work, in which "ancient custom" works somewhat paradoxically to supplant the actual established customs of the author's own day. The point of such fictions is not to invent laws for the sake of invention, but to invent precedents with lasting moral implications for sinners and judges in the late thirteenth century. As with so much reformist literature, this impulse emerges from a deeply conservative faith in an ideal past, neatly embodied in the *Mirror* in the figure of King Alfred, whom the next section of this essay treats in more detail. But complicating the text's conservatism is an equally strong faith in the power of

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e de bouche, issi qe touz ceux de une ville qe poissanz soient de courre les pursuient jesqes a lautre ville proscheine E si ascun soit atteint seit occis, a aussi sil se court a defense sil ne pusse autrement estre pris.]

[42] *Mirror*, p. 49. "E si ascun se vodra pleindre pur vengeance avoir ou pur chacer peccheour a savvacion de alme, voist al corouner de lu ou li pecchie se fist, e mostre sa pleinte en la fourme qil la voudra prover. E li corouner destinctement la face enrouller, e li pleintif se face escrire cum homicide pur la voluntie corrumpue de occire son proene par sa pleinte si qe il le jugement talion sil ne pusse atteindre de prover sa pleinte."

[43] *Mirror*, p. 11. "Ordene fu qe chescun de age de xiiij ans en sus saprestast des mortieux peccheours occire en lur pecchies notoires, ou de les consuire de vile en vile a hu e cri, si lem ne les poet occire ne deprendre."

written legal instruments—and in late medieval pleading more generally—to effect just outcomes. Writing in fact serves throughout the *Mirror* as an important remedy to injustice, holding accountable those who would "never assent that the right usages should be put in writing" and providing recourse to those harmed by neighbors or the system at large. We can see the *Mirror* in part as an effort to marry the clarity of Old Testament morality to the complexity of contemporary written law, with the result that neither field is left free of contradiction. Alfred, however, plays a central role in bridging these traditions, as he demonstrates in his own ninth-century law code how royal ordinance descends directly from Mosaic commandment.

Alfredian Constitutions and Common Law Origins

Long seen as the text's most seductive invention, the "premiers constitutiouns" of King Alfred comprise a short but significant portion of Book I of the *Mirror*. It was Alfred, the narrator tells us, who assembled the first parliaments in England, and Alfred, too, who established the protection of remedial writs, so that "everyone should have a process related to his case under the seal of the judge or another party."[44] Despite their evident fictiveness, these "constitutions" have survived as most the famous and influential portion of the *Mirror*, drawing readers with their compelling mix of fantasy and verisimilitude. In his 1571 *Commentaries*, the lawyer Edmund Plowden cited the *Mirror* as evidence that the ancient Christian kings formulated their law as close to that of the Bible as possible.[45] Sir Edward Coke, an admirer of Plowden's and an influential champion of the *Mirror*, would modify the dating of the text to a post-Conquest

[44] *Mirror*, pp. 8 and 10. "…chescun ust le process del a jornee de son plee souz le seal le juge ou de la partie."
[45] Plowden makes the first reference to the *Mirror* in more than two hundred years: "And so of the ancient Time the Law of this Realm has been accordingly, as it is expressed in the Book called the *Mirror of Justices*, which was made before the Conquest." See *The Commentaries or Reports of Edmund Plowden, of the Middle-Temple, Esq.* (London, 1816 reprint) p. 8. Access via ECCO, 25 January 2013. Overviews of the early reception of the *Mirror* are provided by Maitland in his introduction, p. x, and Seipp, "*Mirror*," pp. 108–9.

reproduction of an originally pre-Conquest work, allowing that "the most of it was written long before the Conquest, as by the same appeareth, and yet many Things were added thereunto by *Horne* a learned and discreet Man, (as it is supposed) in the Reign of E. I."[46] As evidence for the antiquity of parliament and its essential autonomy from the king, the *Mirror* would prove invaluable.[47] In the preface to the ninth volume of his *Reports*, Coke excerpts significant passages from the *Mirror*'s proem and first book: "In this Book," he declares, "appeareth in effect the whole Frame of the antient common laws of this Realm."[48] Empowered by this seeming direct evidence of a pre-Norman parliamentary institution, Cokes used the *Mirror* to argue for the Saxon origins of the Chancery, for the "ancientness of the serjeants of law," and more broadly for the continuity of a specifically English legal tradition, embodied in the notion an unwritten, native common law that takes its origins in the Saxon past. Coke was not alone in his appreciation of the *Mirror*. An edition in French was published in 1642 as *La somme appelle Mirroir de Justice vel Speculum Iusticiariorum factum per Andream Horne*, and an English translation appeared four years later, translated by William Hughes and reprinted in 1649, 1650, 1768, and 1840.[49] William Prynne, Nathaniel Bacon, William Dugdale, and Samuel Johnson were only a few of the seventeenth-century jurists and writers to make use of *Mirror* in arguments. Even John Milton calls upon it in evidence of parliament's early origins, citing it in his first *Defense of the English People* as "a very Ancient Book… in which we are told, That the

[46] Edward Coke, *The Reports of Sir Edward Coke* Vol. 10 (London, 1727 reprint) p. xxvi. Access via ECCO, 25 January 2013.
[47] The role of *The Mirror of Justices* in the development of ancient constitutionalist thought is discussed in Pocock, *The Ancient Constitution and the Feudal Law*, pp. 41, 43, 67-8, and 92, and more fully in Janelle Greenberg, *The Radical Face of the Ancient Constitution: St. Edward's 'Laws' in Early Modern Political Thought* (Cambridge: Cambridge University Press, 2001).
[48] Coke, *The Reports of Sir Edward Coke*, vol. 9 (London, 1727 reprint) sig. A2. Access via ECCO, 25 January 2013.
[49] Eighteenth-century editions were joined in 1716 by Peter Hughes' *Georgicum: or, a supplement to The mirror of justices; being an account of some instances of the practice of former times, in order to the improvement of justice*, in which the *Mirror*'s depiction of Alfred as an English Moses is redeployed towards a new target, George I.

Saxons, when they first subdued the *Brittains,* and chose themselves Kings, required an Oath of them, to submit to the Judgment of the Law, as much as any of their Subjects."[50]

It is tempting to group the *Mirror* author himself among this company, as an ancient constitutionalist *avant la lettre*, concerned with identifying the earliest possible origin of a native parliamentary tradition. Like the *Leges Edwardi Confessoris*, the *Leges Henrici Primi*, and similar works of twelfth-century legal "imposture," as Bruce R. O'Brien's calls them, the *Mirror* stresses political stability over rupture.[51] The Norman Conquest finds no mention in the *Mirror*. Even the Saxons, whose mercenaries Hengist and Horsa served as bywords for trickery in medieval chronicles, take over England as the "humblest and simplest" of people. Choosing a sovereign by consensus, the early Saxons are credited, too, with inventing a system to hold him accountable, agreeing "that the king should have companions to hear and determine in the parliament all the writs and plaints concerning wrongs done by the king, the queen, their children, and their special ministers."[52] Like other post-Conquest renditions of Anglo-Saxon law, this narrative of legal origins underplays conquests both Norman and Germanic: at once native and imported, Saxon law comes to England in order to invent its own distinctive administrative architecture. Thus, the most scurrilous detail in this passage—the notion of an Anglo-Saxon process to hear complaints against the royal family and its ministers—signals that the author has more in mind than simply moving back the date of the first parliament. His larger concern lies in imagining the origins of remedial processes *within* existing law—in ascertaining how law comes

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[50] John Milton, *Defense of the English People by John Milton ; in answer to Salmasius's Defence of the king* (Amsterdam?, 1692), p. 192. Samuel Johnson refers to the *Mirror* in Chapter II, p. 12, of *An essay concerning Parliaments at a certainty, or, The kalends of May* (London, 1683), calling "This way of writing Law is the best that can be invented, for it is the way of Preaching by Positive and Negative, which is a two-edged Sword, and cuts both ways." Access via EEBO, 25 January 2013.

[51] On imposture rather than forgery as a descriptive term for these kinds of codes, as well as their ideological work in resolving crises of conquest, see Bruce R. O'Brien, *God's Peace and King's Peace: The Laws of Edward the Confessor* (Philadelphia: University of Pennsylvania Press, 1999).

[52] *Mirror*, p. 7. "qe li Roi ust compaignouns pur oir e terminer as parlementz trestuz les brefs e les pleintes de torz le Roi, de la Reyne, e de lur enfanz, e de lur especiaus."

to correct communal infractions and, just as importantly, how it comes to correct itself and its ministers.

That Alfred should serve as the embodiment and origin of a reformist legal tradition in England is not surprising. As Jurasinki notes, Alfred enjoyed a reputation into the thirteenth century as the wisest of the Anglo-Saxon kings, dispensing sententious advice in the anonymous *Proverbs of Alfred* and exemplifying righteous lawgiving in vernacular histories like the *Metrical Chronicle of Robert of Gloucester*.[53] For a work of legal antiquarianism like the *Mirror*, it remains crucial, too, that Alfred's law code stood together with Ine's at the beginning of a written tradition of law in England—indeed, they often literally appeared together in the initial folios of legal compendia like the *Leges Anglorum*. In CCCC MS 70, for instance, the law codes of Alfred and Ine follow immediately upon expositions of Anglo-Saxon vocabulary and hidages, a progression matched in the *Mirror* in the "Coming of the English" section, when the first of the Saxon kings divides his kingdom into thirty-nine counties [*pais*], all of which are then enumerated for the reader.[54] If, as seems likely, the *Mirror* author consulted a large legal anthology like the *Leges Anglorum* in the early drafting of his text, he may have encountered Alfred's law code in a similar context to that found in CCCC MS 70, where Anglo-Saxon terminology and jurisdictional boundaries frame the written ordinances of the kings themselves.

Within such a context, the code would have distinguished itself even beyond Alfred's apocryphal reputation for wise governance, thanks to the lengthy and sophisticated preface

[53] Jurasinksi, "Andrew Horn," pp. 540–2.
[54] The first four items of the manuscript consist of an *Expositio Vocabulorum* (f. 1 r–v), the *Tribal Hidage* and *Burghal Hidage* (f. 2 r–v), and the law codes of Ine and Alfred (ff. 2v–10r). See Liebermann, *Über die Leges Anglorum*, pp. 4–10. On the genre of the *Expositio Vocabulorum*, which translated and explained Anglo-Saxon legal terms for Anglo-Norman and Latin readers, see Don C. Skemer, *"Expositio Vocabulorum*: A Medieval English Glossary as Archival Aid," *Journal of the Society of Archivists* 19 (1998): 63–75. On the *Tribal Hidage*, see David Dumville, "The Tribal Hidage: An Introduction to its Texts and Their History," in *The Origins of Anglo-Saxon Kingdoms*, ed. Steven Bassett (London and New York: Leicester University Press, 1989), pp. 225–30, and Wormald, *The Making of English Law*, p. 179.

attached to the beginning of most copies of the code.[55] Translating passages of Exodus and the Acts of the Apostles into Old English, Alfred's preface anticipates the mix of Biblical and secular law found in the *Mirror* and provides a possible theoretical foundation for the work as a whole, demonstrating how just kingship descends directly from Mosaic commandment. As Michael Treschow has shown, the prologue helped to authorize Alfred's legal innovations in his own code: by emending injunctions from Exodus to fit the nuances of Anglo-Saxon legal practice, then attaching those injunctions to the missionary purpose of the Gospels, Alfred "[locates] his law code in a biblical lineage" that brings together justice and mercy in the person of the king.[56] Notably, Alfred's preface survives in close proximity to the *Mirror* itself. The Latin version from the *Quadripartitus*, copied separately from the code and after the statutes of Edward I, survives as the final item in CCCC MS 70. Before the two volumes were separated, it would have thus stood as a de facto introduction to the *Mirror*.[57]

As a possible influence on the ethos, and perhaps even the content, of the *Mirror*'s ancient constitution, Alfred's prologue bears some extended consideration. Commencing in medias res with Exodus 20:1–2, it opens by citing God's original commandments to Moses: "The Lord was speaking these words to Moses and thus said: I am the Lord your God. I led you

[55] Liebermann edited the preface as part of *Die Gesetze der Angelsachsen: Text und Übersetzung* (Halle: Max Niemeyer, 1903), pp. 17–47. On the modern editing and translation of Alfred's law code separately from its preface, see Michael Treschow, "The Prologue to Alfred's Law Code: Instruction in the Spirit of Mercy," *Florilegium* 13 (1994): 79-110.

[56] Treschow, "Prologue," p. 82.

[57] ff. 96v–98v. The statutes of Edward I are listed by title only on f. 96r. Horn explains in a marginal note the abrupt end to his compendium: "There will no be more now, because you have enough in the two subsequent books, that is, the book called the *Mirror of Justices* and the other called *Bretoun*. These books were not sealed by the king, but nevertheless were so pleaded in the times of Edward, son of King Henry III, and Edward, son of King Edward." [*Non erit plus nunc, quia satis habes in ii libris subsequentibus videlicet libro vocato Speculum justiciare, et altero libro vocato Brethun, et non sunt libri sigillati per regem attamen taliter placitabantur temporibus regum Edwardi filii regis Henrici III, et Edwardi filii regis Edwardi*]. The Latin preface to Alfred's law code follows immediately after the single folio of Edwardian legislation. On Horn's marginal note and its implications for his later projects, see Catto, "Andrew Horn," pp. 370–1.

out of the land of the Egyptians and their bondage."[58] These words introduce the Decalogue, which Alfred translates before turning to an array of less familiar laws that make up Exodus 21–23. Formally, these four chapters encompass injunctions both broadly moral (do not steal) and juridically precise (he who incapacitates another must make restitution for lost wages and physician costs). They likewise introduce the theory of retributive justice that would so captivate the *Mirror* narrator: any person convicted of killing a man with intent, stealing and selling another into bondage, or striking one's parents, for example, shall be put to death under the logic of an eye for an eye and a tooth for a tooth [Ex 21:12–24]. The prologue then turns to the New Testament, where Christ's exemplary mercy and pastoral commitment complete Alfred's model of Christian kingship. The monarch follows in the footsteps of Moses, insofar as he commands the law, and Christ, insofar as he judges mercifully and teaches others by his example. "What others would not have you do, do not the same to them," Alfred summarizes from Matthew 7:12; "From this one commandment may man perceive how to judge all justly; he need no other law book."[59]

With this new law in place, the preface concludes, many nations, including England, took up belief in Christ. Synods assembled throughout the world in which bishops and respected laymen determined the compensations owed secular lords for misdeeds.[60] Having fixed the proper compensations for various crimes, Alfred writes, the synods then recorded them in their books [*senoðbéc*], "here one law, there another" [*hwær anne dom hwær oþerne*].[61] Alfred portrays his own code emerging from the perusal of these books, which he then collates with the

[58] Liebermann, *Die Gesetze*, *Af. El Pro.*, p. 26. "Dryhten wæs sprecende ðas word to Moyse 7 þus cwæð: Ic éom dryhten ðin God. Ic ðe útgelædde of Egipta londe 7 of hiora ðeowdome."
[59] Liebermann, *Gesetze*, *El* 49, 5–6, p. 44. "þæt oðre men eow ne don, ne doð ge ðæt oþrum monnum. Of ðissum anum dome mon mæg geðencean, þæt he æghwelcne on ryht gedemeð; ne ðearf he nanra domboca oþerra."
[60] Liebermann, *Gesetze*, , *El.* 49,7, pp. 45-6.
[61] Liebermann, *Gesetze*, *El.* 49, 8, p. 46

laws of earlier Anglo-Saxon kings: "Then I, King Alfred, gathered these together and commanded to be written many of them that our predecessors observed, those that pleased me; and many that pleased me not, I threw out with the advice of my council and bade them to be observed in a different manner."[62] Alfred accounts his own contributions to the code as minimal, not presuming to put anything of his own in writing, since he could not know what would be useful to those who came after him.[63] Copying instead only what seemed to him most just [*ryhtoste*] of the laws of Ine, Offa, and Æthelbert. Alfred presents his law code as a collation—or a concordance—of the earliest conciliar decrees of the Christian Church together with the best of the Anglo-Saxon legal tradition. Ideal kingship for Alfred thus demands an embodiment of Mosaic and Christian ethical systems. But the project of commanding good laws requires of kings an additional aptitude: an ability to judge the quality of an observance based not solely on its antiquity but also on its practicality, fairness, and moral rectitude. In this way, Alfred provides a model for kingship in the *Mirror* even as he also exemplifies a key aspect of *Mirror*'s methodology: through the collation of various sources, secular and religious, Alfred extracts his own "common law" designed to govern judges no less than the judged.

It is this focus on the ethics and obligations of judgment that most closely links the Alfredian prologue and the *Mirror*'s Alfredian "ancient constitution." Both texts make divine law the source for their meditations on the regulation of power, but the *Mirror* integrates this holy regulation into the very structure of royal administration. Hence, in his apocryphal thirteenth-century iteration, Alfred institutes parliaments not simply to attend to the business of the realm but to guide consciences, in order that "the folk should keep themselves from sin, and

[62] Liebermann, *Gesetze*, *El* 49, 9, p. 46. "Ic ða Ælfred cyning þás togædere gegaderode 7 awritan het, monege þara þe ure foregengan heoldon, ða ðe me licodon; 7 manege þara þe me ne licodon ic áwearp mid minra witena geðeahte, 7 on oðra wisan bebead to healdanne."
[63] Ibid. "Forðam ic ne dorste geðristlæcan þara minra awuht fela on gewrit settan, forðam me wæs uncuð, hwæt þæs ðam lician wolde ðe æfter ús wæren."

live in quiet and receive right according to fixed usages and holy judgments."[64] In turn, his first statute enjoins everyone to "love his Creator" while prohibiting "tort and force and every sin."[65] Alfred's royal sovereignty rests upon his commitment to God's sovereignty, and the *Mirror* goes on to detail all that belongs to the rights of crown, including seignory over land, coin, franchises, treasure, waifs, and the property of felons. What remains of these franchises the king enfeoffs to loyal retainers. With the obligations of lordship and vassalage in place, Alfred then ordains coroners and sheriffs to assist the earls [*comites*] in the pursuit of justice and commands that they gather freeholders of their districts together for county and hundred courts, so that "equity should be administered, and …each should judge his neighbour as he would himself be judged in a like case at another time."[66]

The interpolation of the Golden Rule into this nascent court system signals a key method of reasoning throughout the *Mirror*. Biblical precept—judge others as you would be judged—melds with common law practice to produce its own legal logic: equity arises not only from proceeding in new cases according to similar legal principles and examples, as *Bracton* teaches, but from imagining compassionately how one would wished to be judged in the same position, as the Bible teaches.[67] In this merging of Biblical maxim and legal instruction, the *Mirror* echoes the ninth-century Alfred in his preface, when he identifies Matthew 7:12 as the "one

[64] *Mirror*, p. 8. "genz se gardereient de peccher, vivereient en quiete e recevereient droit par certeines usages e seinz jugemenz."
[65] p. 8. "e defendu fust tort e force e chescun pecchie."
[66] *Mirror,* p. 9. "qe lem usast equite, si qe chescun jugeast son proeine partier jugement cum len voissist autre foiz receivre en cas semblables."
[67] "If new matters arise which have not before been seen," *Bracton* advises, "[If like matters arise let them be decided by like, since the occasion is a good one for proceeding *a similibus a similia*.] and their judgment is difficult and unclear, let them be adjourned to the great court to be there determined by counsel of the court." [*Si autem aliqua nova et inconsueta emerserint et quae prius usitata non fuerint in regno, si tamen similia evenerint per simile iudicentur, cum bona sit occasio a similibus procedere ad similia*.] Bracton*, De legibus*, trans. Thorne, p. 21. On this particular passage and the problem of equity for Bracton, see Frederic L. Cheyette, "Custom, Case Law, and the Problem of Medieval 'Constitutionalism': A Re-Examination," *Political Science Quarterly* (1963): 362–90, at 385-89.

commandment" from which humanity may "perceive how to judge all justly."[68] Readers of Alfred's preface indeed recognized the Golden Rule as the central instruction of the text as a whole, so much so that in every surviving manuscript copy of the table of contents to the prologue, the first item distills Matthew 7:12—"Ne quis alii iudicet quod sibi iudicari nollet."[69] Pertinent for justices and others in positions of power, the maxim also crystallizes the reasoning process at work in the *Mirror*, where "new law" emerges precisely to address failures in equity and compassion.

Alfred's preface and the *Mirror*'s original constitutions offer different templates for integrating divine and secular law. For Alfred, the injunctions contained in Exodus anticipate in both form and substance the ordinances contained in his own code, and in places he even adjusts his translation to better reflect this congruency.[70] For the *Mirror* author, Alfred presents an alibi for appraising the law of his own time, "canonizing" certain key principles as ancient usage in order to reject others as harmful innovation. Moral conservatism in this way sponsors many of the *Mirror*'s most liberal alterations to legal history. But in rewriting England's legal past, the narrator wants to do more than "see the stream of law flowing backwards," as Maitland suggests.[71] He rather hopes to see it moving forward on different terms, reasoned according to a stronger moral logic than its own established precedents. "All of our customs," as he tells his readers, "are…founded for the salvation and exaltation of God; and the knowledge and wisdom that comes from God is to judge the folk, not at will by analogies and precedents [*similitudes e*

[68] See n60 above.
[69] Liebermann, *Gesetze*, p. 17. For discussion of Alfred's emphasis on Matthew 7:12, see Treschow, "Prologue," p. 81.
[70] See Treschow, "Prologue."
[71] *Mirror*, p. xliii.

examples] that are not canonised [*nient canonizes*], but by love of peace and chastity and temperance, and by friendly admonition towards mercy and good works."[72]

Passages like this one earn the *Mirror* its reputation as an "unreasonable" work of legal epitome. In its idealism, the statement would seem opposed to the essential pragmatism that governs common law process. As *Bracton* notes, judging by similitude [*a similibus ad similia*] represents the only means for the common law to decide "new and unusual matters"—in effect, to remain an organic and flexible system capable of reasoning from its own principles. For the law to admit no "uncanonised" decisions would render it static, impractical, and virtually inapplicable: a law seeking disciples, perhaps, but hardly inviting practitioners. Just what purpose does the author mean his work to serve, then? If we treat it as no joke, we would do well not to treat it as a textbook, either—at least not one solely intended for practical use. And while a strong reformist agenda clearly motivates the *Mirror*, it falls somewhat short of satire, showing a fervidness that proves, if anything, harder to categorize. I suggested at the beginning of this essay that the *Mirror* might productively be considered a work of literary complaint, and the concluding section examines this claim in more detail, arguing that the rhetoric of literary plaint offers useful insight into the text's approach to the legal past.

Strict Justice: Languages of Critique and Reform

If one term could exemplify the critical tenor of the *Mirror* it would be *abusion*, a word employed ubiquitously in the text to denote improper, wrongful practices—both those outside of the law, as in the case of crimes, and within the law, as in the case of unfair (albeit entirely legal) usages. The author devotes an entire section, Book V, to the problem of abuses, using a brief

[72] Ibid, p. 6. "Touz nos usages sunt ausi fondez por la sauvacion e la exaltacion de la seinte pees Dieu, car le seu e li saver qe de Dieu vient nen est mie a juger la gent a la volee par similitudes e examples nient canonizes, eins est amour de pees, de chastetie, dattemprure, damiable amonestement de merci e des bones oeuvres."

prologue to distinguish himself from *Glanvill*, *Bracton*, and other canonical treatments of the common law:

> There are some who say that, while other realms make use of written law, England alone makes use of her customs and usages as law. But between right and wrongful usages there is a great difference; for wrongful usages, which are not warrantable by law nor allowable by holy writ, are not be followed, *e.g.* the usages of thieves which is the usage to rob and steal. And to set forth certain abuses which are held for usages, and which are frauds on the law and repugnant to right and not avowable by holy writ, is the object of this chapter, which makes a collection of a part of the abuses of the law of persons and a supplement for the knowledge of right law and true usages.[73]

The author echoes *Glanvill*, only to immediately qualify the popular maxim that England alone abides by unwritten law. Longevity of use, he explains, does not guarantee the justness of any given law: certain usages pervert rather than support right and thus do not warrant the title of law at all. In distinguishing between "right" and "wrongful" usages, the author carves out a distinctive niche for the *Mirror* to inhabit. Moral adjudicator of the law and its practitioners, it works as a "supplement" (an *afforcement* or "reinforcement" in the French) to conventional common law textbooks.

In the final section of the book, this reinforcement takes the form of a commentary on the abuses within the *Vetera Statuta*, the major English statutes dating from Magna Carta to the reign

[73] *Mirror*, p. 155. "Plusours sunt qe dient qe coment qe autres reaumes use lei escrite soulle Engleterre neqedent use ses custumes e ses usages pur lei. Mes entre droiz usages e torcenouses ad grant difference, car torcenous usages nient garantissables par lei ne soeffrables par seinte escripture ne funt point a usure, example des larrons qi usages sunt a robber e emblir. E pur monstrer ascuns abusions tenues pur usages qe sont frauds a la lei e repugnantes a droit nen sont trovez avouable par seinte escripture est fet cest chapitre de une cueillecte de partie de abusions de la lei des persones en afforcement de la conoissaunce de la dreite lei e des verreis usages."

of Edward II, which ends in the *Mirror*'s case with the Statute of Merchants.[74] Not even the Great Charter escapes this critical litany, its reforms neither radical enough to suit the author nor effective enough to prevent misuse. On its famous first article, safeguarding the liberty of the Church, the writer objects to a lack of enforcement measures: lay judges who rule on clerical matters should receive some sanction, preferably nothing less than corporal punishment. Regarding reliefs, lords and barons should be made to pay according to the extent of their properties. The provision forbidding improper distraint of fees, "is proper as it stands," the writer argues, "but there is hardly a man in the realm who has tenants and does not trespass against it by himself or his ministers."[75] Likewise, "[a]s to the ordinance that constables are not to take what belongs to others, this is a rule that extends to all mankind" and ought to apply to "purveyance as well as robbery."[76] Reprising many points the author mentions previously in the *Mirror*—concerning villein status, female inheritance, unjust imprisonment, and rape, among others—this running commentary on the major statutes might be seen as a capstone to the text, an attempt to apply the author's carefully developed moral precedents to the law of the land as it stands. But if the final section on abuses functions as a gloss to the *Vetera Statuta*, it is a gloss that supplants rather than supports its subject matter. Insofar as they fail to anticipate their own abuse and privilege the powerful over the weak, the statutes fail in their most basic ambit. By quite literally substituting his own gloss in their place, the author positions the *Mirror* as the final judge of statutory tradition as a whole, decrying its reforms for being not nearly reformist enough.

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[74] On the *Vetera Statuta*, see H. G. Richardson and George Sayles, "The Early Statutes," *Law Quarterly Review* 50: 201-23, 540-71; Adelaide Bennett, "Anthony Bek's Copy of *Statuta Angliae*" in *England in the Fourteenth Century: Proceedings of the 1984 Harlaxton Symposium*, ed. W. M. Ormrod (Woodbridge, Suffolk, and Dover, N. H.:The Boydell Press, 1986), pp. 1-27; and Hanna, *London Literature,* pp. 44-48.

[75] Ibid, p. 177. "Le point qe defent torcenouses destresces des fieus est covenable en sei, mes il nest guers homme el reaume qi tenaunz eit qil ne trespase en cest point par li ou par ces ministres."

[76] Ibid., p. 178. "Ceo qest defendu a constables a prendre lautri defend droit a tote gent de si qe nule difference nest par entre prise de lautri maugrie soen e robberie."

By taking on the roll of the *vox clamantis*, the *Mirror* narrator aligns himself more familiarly with complaint versifiers than common law lawyers. Such a position does not necessarily obviate training in the law, though it does entail a radical shift in rhetoric and purpose. English complaint poetry of the thirteenth century showcased a sophisticated range of legal knowledge, deploying the language of the courts to level criticism at judges, the king, the ecclesiastical establishment, and the system they had leverage to abuse. As Wendy Scase has shown, the rhetoric of complaint verse borrows heavily from the procedures of legal plaint itself: the usually anonymous poet may take on the voice of the complainant, detailing a lists of offenses against individuals, the realm, and social propriety more broadly, or he may adopt the voice of official power, passing judgment on the grievances of the laity.[77] In either case, the distillation of legal processes into formal poetry allows the writer to occupy a position both inside and outside the system he critiques. Like the *Mirror* author, he can boast an extensive working knowledge of the law; also like the *Mirror* author, he may distance himself from the very expertise he demonstrates, lodging his plaint from the position of a wronged suppliant rather than an experienced advocate.

Biblical language features prominently in this brand of poetry. The early fourteenth-century plaint "Beati qui esuriunt," for instance, plays upon the opening verse of the Beatitudes (Matthew 5:6) to contrast those who would "faciunt justiciam" with those who would "lambeant honorem" [lap up honors]: blessed are they, the poet argues, "who hunger and thirst and do

[77] Wendy Scase, *Literature and Complaint in England, 1272–1553* (Oxford and New York: Oxford University Press, 2007). As she argues, "The literature of clamour relies upon judicial plaint for its claims to legitimacy, its topics, its forms and language; for analytical terms such as *bill*, *libel*, *petition*, and *plaint*…; and sometimes even for the means of its material production" (3). On complaint poetry, see also J. R. Maddicott, "Poems of Social Protest in Early Fourteenth-Century England," *England in the Fourteenth Century: Proceedings of the 1985 Harlaxton Symposium*., ed. W. M. Ormrod (Woodbridge, Suffolk: Boydell Press, 1986), pp. 130-44, and David Matthews, *Writing to the King: Nation, Kingship, and Literature in England, 1250-1350* (Cambridge: Cambridge University Press, 2010).

justice, who hate and flee the wickedness of injustice."[78] In the current fallen age, however, those who stand true to principle are few, he continues. The courts are wed to money, the magistrates follow the direction of "favor et denarii," and court clerks speed the claims of the powerful over the poor. These sentiments are commonplaces of medieval venality satire, but their commonness does not make them any less sensitive to the realities of the courts. As the poet goes on to ask, who could narrate or plead [*enarrare*] the hard plight of the poor? A person is "dragged here and there, and placed in the assizes, and compelled to give oath, not daring to murmur." But should he murmur and not make immediate satisfaction [*Ni statim satisfecerit*], all is "salt sea" [*salsum mare*].[79]

As Anthony Musson has noted, these kinds of general complaints against bribery, jury manipulation, false imprisonment, and false enrollments comprised the literary backdrop to the reforms of early 1290s, when Edward launched his inquiries into judicial malfeasance.[80] One notable example is the *Narratio de Passione Justiciariorum*, a pastiche of Biblical verses from

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[78] Written as prose in London, British Library, Harley MS 913, "Beati qui esuriunt" was edited by Thomas Wright as "Song on the Venality of the Judges" in *Political Songs of England: From the Reign of John to that of Edward II*, ed. Peter Coss (Cambridge: Cambridge University Press, rpt. from 1839), pp. 224–30. The translation of the poem are my own.

Beati qui esuriunt
Et sitiunt, et faciunt
    justiciam,
Et odiunt et fugiunt
    injuriae nequitiam (224)

[79] Wright, *Political Songs*, p. 228.

De vicecomitibus,
Quam duri sunt pauperibus,
    quis potest enarrare?
    Qui nichil potest dare,
Huc et illuc trahitur,
Et in assisis ponitur,
    et cogitur jurare,
    non ausus murmurare.
Quod si murmuraverit,
Ni statim satisfecerit,
    est totum salsum mare.

For further discussion of the poem, see also Scase, *Literature and Complaint*, 48-9, and Musson, "Rehabilitation and Reconstruction?", pp. 83–4.

[80] Musson, "Rehabilitation and Reconstruction?", pp. 83–5.

the Old and New Testaments satirizing the ignominious falls of Thomas de Weyland and Adam de Stratton.[81] Cleverly translating contemporary events to the distant past, the "illo tempore" of Gospel narration, the *Narratio* begins with a certain noble king who traveled to a distant country to accept his tribute.[82] He called his servants and distributed his good to them, giving them the power to hear cases and do justice.[83] But his servants each raised themselves up in judgment, forgetting the cries of the poor and reproaching their neighbors.[84] The king thus returns, commanding his retainers to hear "the voices of my people in Egypt, since on account of the misery of the weak and the groans of the poor I will now rise up and take vengeance on my enemies."[85]

By veiling historical events with a thin fabric of Biblical quotation, the writer satirizes the venality and cowardice of the justices in question, while also emphasizing the sacred origins of their office, placing Edward in the role of God, Moses, and Christ. "Adam, Adam, ubi es?" the narrator has Edward quip, as he seeks out the shame-faced Adam de Stratton in a parody of the Fall.[86] The joke relies upon the familiarity of the audience with both levels of narration, the Biblical and historical, while the critique aims at the distance separating moral ideals and professional actions. In this way, the *Narratio* works in a similar, if more coherently executed, satirical vein as the *Mirror*, trusting its audience to see Biblical allegory as the deliberate,

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[81] The *Narratio* has been edited by Tout and Johnstone as an appendix to *State Trials*, pp. 92–8, and survives in two manuscripts: London, British Library, Add. MS 31862 (f. 54), and Oxford, All Souls College, MS 39, (f. 109v). In the All Souls manuscript, a short poem on the Weyland, Brompton, Lovetot, and other notorious judges of the 1280s immediately follows.

[82] Tout and Johnstone, *State Trials*, p. 95. "In illo tempore rex quidam nobilis abiit in regionem longquinquam accipere sibi tributum." (Luke 19:12)

[83] Ibid. "et vocavit servos suos et tradidit illis bona sua [Matt. 25:14] et potestatem dedit eis iudiciam facere et iusticiam." (John 5:27)

[84] Ibid. "Unusquisque secundum propriam virtutem paravit in iudicio tronum suum: et oblitus est clamorem pauperum et opprobrium accepit adversus proximum suum." (Ps 9:8–13, Ps. 14:3).

[85] Ibid., p. 96. "Rex vero ulterius proficisens dixit domesticis suis: 'Circuite terram et perambulate eam, et audite voces populi mei qui est in Egipto, quia propter miseriam inopum et gemitum pauperum nunc exurgam et reddam ultionem hostibus meis." (Joshua 18:8; Ps 11:6)

[86] Ibid.

didactic tool it is meant to be. More complex and ambitious than the *Narratio*, the *Mirror* also trusts its audience to distinguish allegory from fact, perhaps no more pressingly than in the depiction of King Alfred's judicial executions. In the hundred-and-eighth item in the *Mirror*'s long list of abuses, the author avers that "It is an abuse that justices and officers who slay folks by false judgments are not destroyed like other homicides."[87] He then turns again to his exemplar: "King Alfred in one year had forty-four judges hanged as homicides for their false judgments."[88] As we have seen, the precedent for this "judicial purge" resides in earlier books of the *Mirror*, which emphasize Alfred's supposed adherence to the *lex talionis*. Mortal sinners should receive like punishments, and false judgment is a mortal sin; therefore, the false judge deserves death for the deaths he caused (or failed to rightfully avenge).

Many of the forms of misconduct that earn hanging in Alfred court, however, bear resemblance to complaints brought before the *auditores querelarum* in 1289–1293. Alfred hangs Watling, for instance, for judging "Sidulf to death for receiving Edulf his son, who was afterwards acquitted of the principal crime."[89] Signer is likewise put to death for judging Ulf to death after acquittal; Eadwine is sentenced to death for replacing jurors with three who agree with his sentence against Hathewy, and Oscelin hangs for judging Seaman to death "under a vicious warrant founded on a false suggestion, which supposed that Seaman was put in prison before he really was so."[90] These fictional cases trade in more scandalous offenses—and lethal outcomes—that the complaints found in the inquest rolls, where the majority of accusations involve false imprisonment and seizure of goods and come to no verdict at all. But if we strip

[87] *Mirror*, p. 166. "Abusion est qe justices e lur ministres qi occient la gent par faus jugement ne sunt destruz al foer dautres homicides."
[88] Ibid. "Que fist le Roi Alfred prendre xliiij. justices en un an taunt cum homicides pur lur faus jugemenz."
[89] Ibid. "Il pendi Watling pur ceo qe il avoit juge Sidulf a la mort pur le recet de Edulf son fiz qi puis saquita del fet principal."
[90] Ibid, pp. 166–167. "pur vicious garant fondie sur fausse suggescion qi supposa celi Seaman estre en prison par la garaunt einz ces qi il i esteit."

away the drama of capital punishment, we see underlying Alfred's judicial hangings a host of more quotidian complaints: false sentencing after acquittal, improper warrants, failures of procedure, and jury manipulation.

It was precisely homicide, however, that emerged in chronicle accounts as the definitive sin of the *peccatorum pessimae*, the worst offenders during the king's absence.[91] The Dunstable annalist describes how the "clamor miserorum" came to king, complaining that those to whom he had entrusted the kingdom had corrupted the courts with money and garnered renown through foreign wealth. "They had conspired to homicide," he asserts, "and to those same homicides knowingly admitted."[92] Bartholomew Cotton likewise deems the judges perpetrators of "homicidium," a charge that seems clearly exaggerated given the inquest evidence. Why do these various accounts all level accusations of homicide? Rumor and sensationalism certainly play roles. As Tout and Johnstone note, inquest findings showed officials to be neither "the thorough-paced scoundrels that the chroniclers would have us think them," nor the complainants "as completely innocent and injured as they represent themselves."[93]

Apart from its sensationalism, homicide carries a symbolic import in these discussions that speaks to the most important function of the judicial office—the power to take and preserve the lives of others. As *Bracton* suggests, this power is exercised as a licit form of homicide. Quoting Raymond de Peñafort, *Bracton* explains that the "administration of justice" constitutes one of the four branches of "homicide by deed."[94] So long as the judge orders capital punishment

[91] As is stated of Solomon of Rochester, itinerant justice, by the author of the *Flores Historiarum*, when he was poisoned by his own church parson. See Tout and Johnstone, *State Trials*, pp. xxxi, and *Flores Historiarum*, ed. Henry Richards Luard, Rolls Series 95, 3 vols. (London: Eyre and Spottiswoode, 1890), 3.82-3.
[92] Cited in Tout and Johnstone, *State Trials*, xxxiv. "Iterim clamor miserorum venit ad eum, quod justiciarii et alii ministry, quos regno suo praefecerat, corrupti muneribus judicia subverissent; et quod de substantia aliena incliti facti essent: item quod homicidio consensissent et ipsos homicidas scienter receptassent."
[93] Tout and Johnstone, *State Trials*, xlii-xliii.
[94] Bracton, *De legibus*, p. 340. The *Mirror*'s own discussion of homicide borrows initially from Bracton, before digressing into a discussion of "the three ways God was killed." See pp. 22–5.

"from a love of justice," he acts morally. It constitutes wrongful homicide, however, "if done out of malice or from pleasure in the shedding of human blood [and] though the accused is lawfully slain, he who does the act commits a mortal sin because of his evil purpose." Furthermore, both judge and court officer sin if they carry out capital punishment "when proper legal procedures have not been observed."[95]

Construed in the widest possible terms, judges might be said to commit homicide when their own venality, malice, and failures to observe "proper legal procedure" [*iuris ordine*] result in the deaths of others, however indirectly. Indeed, as *Bracton* notes, a judge or officer may follow the letter of the law and still sin mortally if he takes undue satisfaction in the death. "Homicide" might thus be said to encompass not just the direct killing of another person but—for judges especially—the spiritual abandonment of their ethical and professional obligations such that other lives are mortally injured. The *Mirror* takes this reasoning to its logical extreme, treating homicide as the outcome of all forms of judicial misconduct. In practical terms, such accusations clearly overstate their case. Rhetorically, however, the idea that false judgment deserved the severest possible punishment was commonplace, even making its way into *Bracton* in the "thoroughly un-Azonian" sermon against false justices that punctuates the prologue.[96] Composed of verses from Revelation, the Pauline epistles, and the Gospel of Matthew, the excursus serves to remind its readers that earthly judgment is but a rehearsal for the Final

[95] Ibid. "Istud atuem homicidium si sit ex livore vel delectatione effundendi humanum sanguinem, licet ille iuste occidatur, iste tamen peccat mortaliter propter intentionem corruptam. Si vero hoc fiat ex amore iustitiae, nec peccat iudex ipsum condemnando ad mortem, et praecipiendo ministro ut occidat eum, nec minister si missus a iudice occidit condemnatum."

[96] The phrase is Maitland's. See *Bracton and Azo*, p. 17. "Let no one, unwise and unlearned, presume to ascend the seat of judgment," *Bracton* warns suddenly in the prologue, "which is like unto the throne of God, lest for light he bring darkness and for darkness light, and, with unskillful hand, even as a madman, he put the innocent to the sword and set the guilty free, and lest he fall from on high, as from the throne of God, in attempting to fly before he has wings." [*Sedem quidem iudicandi, quae est quasi thronus dei, non praesumat quis ascendere insipiens et indoctus, ne lucem ponat tenebras et tenebras lucem, e ne manu indocta modo furientis gladio feriat innocentem et liberet nocentem, et ex alto corruet quasi throno dei, qui volare inceperit antequam pennas assumat*.] Bracton, *De legibus*, p. 21.

Judgment, when God's infallible law will render the unjust their due. In its apocalyptic urgency, the sermon underscores a shared concern of *Bracton,* the *Mirror*, and the numerous anonymous complaint writers of the mid- and late thirteenth century: that the behavior of judges determines the behavior of the legal system as a whole. If those at the highest levels use their power to manipulate the constraints they are meant to observe and apply, then one could rightly assume, to quote Maitland, that "All confidence in the official oracles of the law had vanished."[97]

"The Art-Work of the Future": Motive and Motif in the *Mirror*

Writing to the American legal scholar James Bradley Thayer in 1889, Maitland asked in passing if his colleague had any thoughts on the *Mirror*: "I am inclined to think that when properly read it is a very instructive book and that the Society might do far worse than edit it. It is a protest by a conservative full of strange opinions about law and history."[98] Given his condemnation of the text four years later in print, it is easy to overlook the fact that Maitland was the *Mirror*'s first champion in over a century. He ensured that its strange but instructive opinions formed part of the Selden Society's canon of medieval English law, and his sensitivity to its literary qualities—however affronted he may have been by their inclusion—opened a door that later scholars would pass through with far less apprehension. In his introduction, Maitland repeatedly deems the *Mirror* a "romance" and its author "a romancer," a pejorative intended to align the text with a long line of romantic readers to come: in particular, those Whiggish scholars who had "devoured" the *Mirror* with "uncritical voracity" in the seventeenth century.[99] In its own attachment to origins, the *Mirror* anticipated this brand of historiography, which Maitland was

[97] *Mirror*, p. xlix.
[98] C. H. S. Fifoot, ed., *The Letters of Frederic William Maitland*, Selden Society s.s. vol. 1 (London: Selden Society, 1965), p. 59. On Maitland's decision to publish the *Mirror*, see Seipp, "*Mirror*," p. 111.
[99] Thus Maitland describes Coke. See *Mirror*, p. 9.

eager to dispel in his own projects: evolutionary, naïve, and relentlessly narrow in perspective, it determinedly sought legal foundations regardless of supporting evidence.[100]

But Maitland's own aesthetic sensibilities also shaped his understanding of the *Mirror*. He calls it a "variegated, tessellated book," a *Dichtung und Wahrheit*, or work of poetry and truth akin to Goethe's autobiography.[101] The music of Wagner likewise informed his approach to the text's central legalistic preoccupations:

> If we now ask for his motives, we had better for while use the word *motive* in the sense that Richard Wagner has made familiar. No other law-book is so like the "art-work of the future." It is constructed out of a few leading motives, each of which is frequently reintroduced in some new key with more or less ornament and embroidery. We might pick these out and label them "the false judges motive," "the Hebraic *talion* motive," and so forth; but any reader will soon see that he can do this for himself, and will find the task amusing.[102]

With a pun on the more typical, legal definition of "motive," Maitland adapts the musical concept of a leading motive, or leitmotif, to describe the exercise that makes the *Mirror* so problematic as a historical source. As this essay has sought to show, the work's prevailing themes—false judgment, Anglo-Saxon conciliar governance, retributive justice—form part of a larger ethical pattern in the *Mirror*, as the author searches for coherent, foundational precedents that might resolve the moral crises of his own day. These "leading motives," however, are also precisely what lead the text away from empiricism and toward art. Summoning Wagner's notion of the "art-work of the future," Maitland casts the *Mirror* as a lonely modern in a medieval

[100] For discussion of Maitland's critique of Whig historiography, see Maura Nolan, "Metaphoric History: Narrative and New Science in the Work of F. W. Maitland," *PMLA* 118 (2003): 557-572, and Roy Stone de Montpensier, "Maitland and the Interpretation of History," *The American Journal of Legal History* 10 (1966): 259-281.
[101] *Mirror*, p. xlviii.
[102] *Mirror*, p. xxviii.

world. By Wagner's definition, the art-work of the future "abandons modern fellowship…to find its satisfaction in solitary fellowship with itself."[103] Maitland clearly saw the *Mirror* in similar terms—a rogue work at loose in legal history, beholden to no legal cohort beyond his own company. Methodologically, the *Mirror* stood in dramatic opposition to Maitland's precise and careful *History of English Law*. In terms of ambition, however, it constituted something of an uncanny twin, a *summa* set apart by its own grand scope.

The interplay between motive and motif, intention and artistry, stands at the heart of the debate over the *Mirror*. To the extent that we adopt Maitland's emphasis on authorial motivation, we also choose sides according to his original terms: is this writer operating in bad faith or with good intentions gone awry? In either case, what really stands trial in this inquiry is the place of literature—of romance, complaint, homily, and invective—in a work of medieval law. For Maitland, the need to exorcise this "disinterested spirit" from legal history derived as much from his own methodological stakes as from any concern that a thoroughly forgotten ghost might someday rise again. And, indeed, precisely in republishing the *Mirror*, Maitland ensured that this spirit survived to haunt another century and beyond. We might conclude finally that a certain vexed sympathy ultimately joins the two. Forged less in shared legal matter, it arises rather in a writerly recognition of the pleasures of vituperation, critique, and contradiction.

[103] Richard Wagner, *Richard Wagner's Prose Works: Vol. 1: The Art-Work of the Future &c.*, trans. William Ashton Ellis (London: Kegan Paul, Trench, Trübner, and Co.) p. 88.