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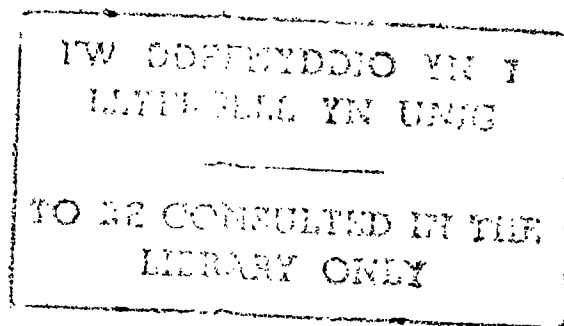
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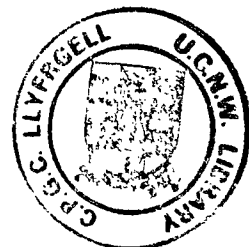
Malory's Morte Darthur and the Idea of Treason

Mischa Jayne Rose



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Abstract

This study argues that treason is understood as a breach of allegiance in medieval popular tradition as well as in legal definitions of the crime in Roman, Anglo-Saxon, military, and medieval French and English law.

The scope of treason in Malory's Morte Darthur owes much to the crimes of treason in military, English, and archaic French law. But Malory also reflects extra-legal acts of treason such as adultery. He synthesises from these diverse laws and ideas a reasonably consistent body of pseudo-historical custom, which contributes to his Arthurian society's material plausibility and realism.

Malory's treatment of the traitor is greatly indebted to extra-legal thought, most notably in that his traitors are evaluated in terms of their motivations and ethical characters as well as their culpability of objective traitorous acts. Malice, mortal sin, unnatural tendencies and repeated treasons characterise the traitor as villain: the traitor as hero is depicted as fundamentally virtuous, non-malicious, and generally commits one treason only with the best of motivations.

Treason, however, always involves sin, and in the last three tales Malory begins to acknowledge that treason therefore implies a crime against God as well as society. Infidelity to God in the last two tales is expressed through the coinciding treasons, disloyalties and over-valued worldly loyalties of Malory's characters, and these, regardless of the moral intentions of the perpetrators, bring about the downfall of the Arthurian kingdom. The fall of the nation can be interpreted as a retribution for the characters' sins against God which leads the surviving members to realign their allegiances and embrace heavenly chivalry and the religious life in recognition of and in penance for their previous misdeeds.

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SECTION ONE
TREASON IN HISTORY

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'Four years later Clementis was charged with treason and hanged. The propoganda section immediately air-brushed him out of history and, obviously, out of all the photographs as well. Ever since, Gottwald has stood on that balcony alone. Where Clementis once stood, there is only bare palace wall. All that remains of Clementis is the cap on Gottwald's head.'

Milan Kundera, The Book of Laughter and Forgetting, trans. Michael Henry Heim (Harmondsworth: Penguin, 1980) 3.

Preliminary to Section One

Treason in History

The idea of treason is somewhat different from the legal crime of treason. The legal crime is only a partial expression of the idea of treason, which I intend to argue is primarily understood as breach of allegiance. Medieval law was concerned foremost with reinforcing an inferior's proper fidelity to major centres of power. Treason in literature, however, if it reinforces treason in law, also presents extra-legal ideas of treason. These are still breaches of allegiance or obligation or good faith, but the objects of attack are more diverse. One can betray one's family or friends, one's subordinates, one's status, even one's obligations of decency to humanity as a whole--objects that are peripheral semi-political powers, or sometimes scarcely powers at all. Extra-legal treason is primarily a failure to respect one's social, moral obligations, and the individual's culpability is therefore measured in terms of his moral character and circumstances.

Treason in Malory's book sometimes reflects extra-legal tradition, but is for the most part derived directly or indirectly from systems of law. Primarily, however, Malory's emphasis is ethical and extra-legal; the political element of treason is secondary to the moral.

Treason, however, was first and foremost a political and legal crime, and for that reason, no study of Malory's ideas of treason can commence without a brief overview of the idea of treason according to legal interpretation. This study therefore opens with an introductory section outlining the salient points of the development of the concept and crime from its probable origins to its eventual complex medieval hybrid.

Chapter One:

The Early History of Treason

1:1 The Concept of Treason

Treason has generally been understood in terms of its object of attack. One eighteenth-century definition sees treason as 'the crime of Treachery and Infidelity to our lawful sovereign. . . . High Treason is defined to be an Offence committed against the Security of the King and Kingdom.'¹ A twentieth-century definition regards treason as the 'crime of attacking the safety of a sovereign state or its head.'² These definitions, however, define treason only within ^{the}monarchical or modern state. Yet something very like treason has been acknowledged in communities which are neither monarchies nor in any sense states, such as for example the Anglo-Saxon hlāfordswice, betrayal of a provincial lord by his retainers.

The very attempt to define treason by locating its object of attack is misleading: it is rather like trying to define the concept of theft by itemising all the things which have been, or could conceivably be, stolen. But, as the concept of theft is universally accepted as the unjustifiable appropriation of things rightfully belonging to another, the universal idea of treason is of breach of allegiance, whether this allegiance is to lord, people, king or crown. All the treasons of Roman law, Germanic law, and subsequent English medieval law, along with extra-legal treason and treason in military law, can be understood as breach of allegiance; further afield, breach of alle-

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1. 'Treason,' in Giles Jacob, The New Law Dictionary (1752).
 2. 'Treason,' Encyclopædia Britannica, 11th ed.

giance is also characteristic of treason in medieval and early modern Japan.³

Generally speaking, the structure of the community--republic, monarchy--determines the object of allegiance--people, king--and the kind of allegiance--natural, contractual, or deferential--in turn determines which actions are treasonable. Within a given community, however, there may be some diversity of opinion, particularly by different social classes, as to the kind and extent of allegiance; this necessarily leads to diversified ideas as to what constitutes a breach of allegiance. Equally, smaller communities within the larger political structure--such as the family or knightly orders--may each

3. See especially The Tale of the Heike / Heike Monogatari (2 vols. trans. Hiroshi Kitagawa and Bruce T. Tsuchida, U of Tokyo P, 1978) which primarily deals with the misdemeanours of the 12th century ruling family, the Heike, and their retributive downfall at the hands of the Genji. Kiyomori, the Priest-Premier of the Heike, is accused of attacking the palace of the Cloistered Emperor and forcing him into exile; furthermore Kiyomori is said to have indulged in such arrogance and tyranny that the Emperor himself had to resort to flattery to keep his life: 'Neither in the past nor in the present can we find treacherous deeds to equal his. . . . We, the monks of the North and South capitals of Japan, must now cleanse the world of the villainies of this treacherous retainer of the emperor' (1: 256-7). Treason here consists of breach of personal allegiance and usurpation of authority. These were also tenets of Germanic and Roman law, although the Japanese parallel is totally independent. In practice, however, treason in the Heike tends to consist of actions against the Heike themselves, sometimes glossed over as attempts on the security of Japan; allegiance is defined very much in terms of subjection to power. The usual idea of the samurai as loyal to the death is firmly contradicted by S. R. Turnbull (The Samurai: A Military History, London: George Philip, 1987), who observes that Emperors, in the High Middle Ages, were figureheads for manipulating and were accounted scant respect (95), and the Samurai themselves were rarely constant in their personal allegiances (111), a viewpoint substantiated by the Heike. By the eighteenth century, however, the nostalgic ideal of the Samurai placed loyalty, especially to a lord, above all else. It is said that when Lord Soma's house burned down, one of his retainers, hearing him bewail the loss of his family tree, rushed into the flames. Later he was found, face down and burned to death; he had however cut open his stomach and inside preserved the genealogy intact. See Yamamoto Tsunetomo, The Book of the Samurai / Hagakure, trans. William Scott Wilson (Tokyo, New York and San Francisco: Kodansha International Ltd., 1983) 143-4.

possess their own forms and objects of allegiance, and therefore group-specific ideas of treason.

1:2 The Origins of Treason

It seems likely that treason evolved from an offence against the primary social unit of early society, the family.⁴ The kin-group is the society in which mankind seeks extended protection against a threatening environment. The individual therefore owes natural allegiance to the family and to those who possess authority within the family; the need to survive demands that this be so. Allegiance is a little more than loyalty based on blood-tie; it is the participation by which the individual identifies his own interests with those of his kin for the greater good of all. In this context the traitorous breach of allegiance is any action which undermines the community's raison d'être, by threatening its survival and perpetuity; crimes such as the murder of a man able to bear arms, or a woman able to bear children, are a threat to the family's survival as a unit, and as such are prototypes of treason against the people. The killing of the head of the family can be thought of as a rudimentary form of high treason; the patriarch possesses authority over the kin-group and acts in their interests; his loss is destabilising, endangering the unity and perhaps the security of the familial group.⁵

With the expansion of the family through an extended kin-group into a larger community related by interest, rather than blood, however, the conditions of survival as a unit and the focus of social authority change. In such a community neither isolated murder nor the

4. Floyd Seyward Lear, Treason and Related Offences in Roman and Germanic Law, The Rice Institute Pamphlet 42 (1955): 5-8.

5. Lear 51-2.

killing of the familial patriarch threaten the survival or the safety of the whole; security is achieved through delegating to a public power the authority to act in the communal interest. Allegiance, however, is still dictated by the need to maintain security, if not survival, and is therefore shifted from the immediate family and its head, to the whole people and its public authority.⁶ The object of treason, in this case, is the safety of the prototype state and the authority which ensures that safety.

1:3 The Roman Republic: Treason against the People

The Roman Republic provides the best early example of a sophisticated notion of treason against the people. The Roman citizen's allegiance was owed to the Republic; actions which threatened the Republic were breaches of allegiance.⁷ Initially these were classified under one inclusive legal term, perduellio. Its initial meaning seems to have been 'wicked warfare,' deriving from the notion that all wars instigated by Rome were just, those instigated by foreigners unjust. Perduellis, however, subsequently came to mean 'interior enemy' or 'traitor' rather than 'external enemy.' The external enemy was instead referred to as 'hostis,' which had formerly indicated a foreigner. Nevertheless perduellio seems to have retained some of its original meaning, suggesting a wicked war against the people.⁸

6. Lear 1-8.

7. In the early Republic, for example, it was treason to attempt to reestablish the monarchy (Lear 12).

8. Pandias M. Schisas, Offences Against the State in Roman Law . . . (London: U of London P Ltd., 1926) 5, and E. T. Merrill, 'Some Remarks on Cases of Treason in the Roman Commonwealth,' Classical Philology 13 (1918): 35, and S.H. Cuttler, The Law of Treason and Treason Trials in Later Medieval France, Cambridge Studies in Medieval Life and Thought 16, 3rd. series (Cambridge UP, 1981) 6.

There were two categories of crimes within perduellio; military offences such as a soldier's desertion from a Roman army to an enemy or a non-allied power, and offences which interfered with the proper workings of law, such as attempting to kill a magistrate or usurping his powers.⁹ Military crimes weakened the Republic's ability to defend itself; subversion of the law weakened its ability to regulate the public behaviour of its individual members. While these crimes did not always threaten the survival of the state, they could undermine its stability; and the primary purpose of any community--the protection of its members--depends on its continued stability.

The people's idea of what de-stabilizes the state, and the idea harboured by the people's officials, however, may differ, since the people and their officials may possess very different ideas of what constitutes the public interest. In some judicial matters, the public interest was interpreted solely by the consul. He had final decision on, for example, the condemnation of deserters.¹⁰ But the people themselves--in so far as the Assembly can be said to be representative--possessed the right to judge whether a condemned man had in fact acted against their interests; the condemned had the right to provocatio, or appeal to the people.¹¹ This limited the powers of the judge; he could not impose his ideas of what constituted the public good on an unwilling public, nor--more importantly--could he use his judicial power to serve his own interests--to rid himself of a personal enemy, for example--on the pretence of serving the public good.

The Senate seems to have considered, particularly in matters

9. Lear 10-12.

10. Schisas 52-3.

11. Schisas 32.

touching the safety of the state, that the interests of the public were best defined by enlightened officialdom. Consequently the Senate itself, when it saw fit, could refuse provocatio to a condemned man by use of the senatus consultum, which rendered irrevocable the judicial decision of the Consul and the Senate. This however was outlawed by the lex Sempronia, which ordered that any magistrate who made use of the senatus consultum to evade the laws of appeal should himself be prosecuted as a perduellis. The people retained the right to judge whether a traitor, for example, had really acted against the interests of the Republic, or whether his treason was somehow excusable or justifiable.

By 121 B.C., however, after the Gracchi's assaults on its authority, the Senate had found a means to circumvent the laws of appeal by replacing the outlawed senatus consultum with the senatus consultum ultimum, a kind of declaration of martial law intended for use during times of civil war. Since the Senate claimed that the safety of the Republic was the supreme law, all laws that contradicted this were invalid during a national crisis, and so anyone who could be considered an enemy--by which is meant perduellis rather than hostis--of the Republic could be executed without appeal under martial law. Ultimately, the public interest was defined by the Senate, not by the people; consequently the alleged enemies of the people tended to be primarily enemies of the Senate.¹²

12. See Lear 20-1 and Schisas 73-5. Schisas adds that Cicero argued that the perduellis had no right of appeal in any case, since a traitor forfeited his citizenship and was therefore a foreigner and an external enemy: as such he had no right of appeal (76). But it has been pointed out that this argument is unsound; it is because the traitor is not an external enemy that legal proceedings and punishment can be imposed upon him. An external enemy's act of war against Rome had no status before a Roman court; consequently, by the very fact of being tried by a Roman court, the traitor was recognised as a citizen and could there-

This however was some distance away from treason purely against the special interests of a ruler, which became a facet of treason in the Empire; though the Senate's desire for supreme sovereignty tended to favour special, rather than public interest, treason in the Republic remained primarily a crime against the people by the people; this was particularly evident in the law of treason under the later ^{Republic} ~~Empire~~, which was extended to protect the people from inept or corrupt officials.

1:4 Treason Against Majesty: The Crime of Maiestas

The concept of maiestas suggests greatness, 'a certain preëminence of which inferiors must take account--not so much superior power, perhaps, as an exalted prestige.'¹³ It is generally thought that the notion of diminution of majesty as a criminal offence entered Roman law as a result of the Hortensian laws of 287 B.C., in which the Plebeian tribunes were endowed with legal dignity similar to that of Patrician magistrates. Prior to this, the tribunes, although carrying out the same magisterial functions as the patrician officials, were not thought to be possessed of imperium--the vested authority of the State--and were consequently afforded no protection under the laws of perduellio.¹⁴ Under the Hortensian laws, crimes against the tribune were not considered as perduellio, but as a 'diminution of tribunicial majesty;' the crime of læsa maiestas stood in the same relation to a tribune as

...Continued...

fore claim a citizen's rights--including provocatio--until the time he was finally convicted and condemned (Schizas 76 and Merrill 50).

13. Lear 13.

14. Lear 13.

perduellio to a patrician magistrate.¹⁵

As the plebeians rose to be amongst the foremost officers and magistrates of the Roman community, however, the idea of maiestas took on an especial importance and eventually was applied to the whole Roman state;¹⁶ the term perduellio, after the time of Sulla, was used very rarely.¹⁷ Instead treason came to be called maiestas populi Romani or crimen imminutæ maiestatis.¹⁸ The idea that treason undermines the majesty of the people is a considerable advance on the concept of perduellio, and reveals a more sophisticated view of public life. Treason has become, as well as an attack on the material good of the state, a lessening of an attribute of the state, its greatness or self-image. The crime of maiestas necessarily incorporated insult as well as material injury inherent in the military crimes of perduellio or crimes against the communal stability through attacks on the political hierarchy.¹⁹

Of attacks on hierarchy, treasonable usurpation of superior power was the most fundamental in the later Republic: it was treason for a man

15. Schisas 7. Schisas however criticises this theory (9) because there was no real political difference between the status of a plebeian tribune and a patrician magistrate: in 367 B.C. the consulship was made open to plebeians, and by the end of the third century B.C. plebeian decrees carried the same force as those passed by the appropriate patrician authority. He therefore concludes that the origins of maiestas remain obscure.

16. Lear 14.

17. There is some debate whether perduellio fell into disuse; see Cuttler 6-7, Lear 14-5, Robert Samuel Rogers, 'Treason in the Early Empire,' Journal of Roman Studies 49 (1959): 90, A.H.J. Greenidge, 'The Conception of Treason in Roman Law,' Juridical Review 7 (1895): 288, and C.W. Chilton, 'The Roman Law of Treason Under the Early Principate,' Journal of Roman Studies 45 (1955): 74.

18. Schisas 7 and Lear 15.

19. Lear 14.

to usurp the powers of a magistrate, or for a magistrate to usurp the powers of a provincial governor. This was an attempt to maintain the centralisation of authority; self-help was illegal and undermined the judicial and administrative right of the state. The maintenance of the administrative order was in the interests of the whole community: treason was at this point still viewed very much as a crime against the people, whether their majesty or their security, and the treason laws correspondingly included irresponsible acts by the authorities themselves. Those in positions of authority, while they had power to do great good, also had power to harm or insult the community as a whole; the magistrate himself was therefore liable to charges of maiestas if he compromised the dignity of the people through abuse of office, such as, for example, waging war without popular authorisation.²⁰

1:5 The Crime of Treason in the Empire

The reinstatement of a Roman monarchy, however, radically altered the focus of allegiance and therefore the laws of treason. All of the crimes against the people, including abuse of office, remained good law in the empire, but the emperor, despite being the supreme magistrate, was above the law and was therefore outside the scope of the laws of the crimen maiestatis.²¹ This indicates that the law of treason protected the emperor more than the people: the people were not protected by the laws of maiestas from bad and tyrannical emperors. The allegiance owed to the emperor was, as Lear observes, deferential; he was not only possessed of the entire majesty of the state, he also possessed majesty in himself.²² Allegiance in some sense was still

20. See Lear 25-8 for this and other crimes of maiestas.

21. Lear 33.

22. Lear 22 and 33.

owed to the state, because unity of purpose in a community ensures its stability. But allegiance is due primarily to the emperor, on the grounds that he, by virtue of his powers, represents the interests of the state, and because of his status in itself. The objects of treason are therefore diverse. Treason is an attack and insult to the whole community; it might be thought also that treason against the people is indirectly treason to the emperor, since their interests are thought to be synonymous; it is also an attack on the stability of the community through interference with the emperor, who governs for the good of the people; finally, it is an attack on the emperor in himself, because of who he is and quite regardless of any consequences to the people as a whole.

The laws which protected the emperor were a combination of the same laws which, individually, had earlier protected lesser Roman officials. Cæsar Octavius Augustus was the first to benefit from this emphasised protection; in 23 B.C. he was invested with the imperium pro consulare, which enabled him to claim the legal sanctity of the supreme magistrate; in the same year, he also received the tribunicia potestas, which granted him the tribune's inviolable majesty and dignity. The addition of the office of pontifex maximus, in 13 B.C., emphasised the inviolability of the emperor and extended his secular powers to include religious functions also; the emperor therefore possessed the entire constitutional powers of the Empire.²³ Later, the attribution to the emperor of the ultimate maiestas of divinity consolidated this, becoming the supreme justification of his secular power.²⁴

23. Schisas 182-5.

24. Lear 16, 19-20, 23.

Consequently the law of treason attempted to protect all facets of the emperorship. It included, for example, concrete and politically disruptive crimes such as attempts to murder or replace the reigning emperor, or to commit adultery with his wife, along with less overt, yet potentially disruptive, treasons such as attempts to discern the outcome of a matter of state, or the future of the monarchy. Insults to the monarch's secular and divine majesty were naturally treasonable, and included counterfeiting coin bearing his image, defacing or destroying his consecrated statue, committing unseemly acts in its presence, violating the sanctuary afforded by it, and falsely swearing or breaking an oath made in the name of the prince. Treasonable usurpation of the monarch's imperial prerogative was committed when a common man wore purple: this colour was supposed to be unique to the emperor.²⁵

Crimes against the emperor were however multifunctional. They threatened his person, perhaps even his office, and implied disrespect to his secular and divine status; by virtue of his public office, they were also indirectly an attack on the state. But generally it is impossible to say whether an individual law was designed specifically to protect the emperor's office, person, prestige, sanctity or the public interest; most of the laws, while protecting one primary aspect, also protected some or all of the others.

The laws governing treason by heresy illustrate this well. There were a number of religious offences which were thought to be maiestas, such as the introduction of new gods or the practice of foreign religions, and the refusal to participate in the rites of the Imperial cult. The best known religio-political offence was Christianity, which could

25. See Lear 26-7.

be regarded as maiestas in requiring Christians not to participate in the worship of the emperor, or to recognise his divine status.²⁶ Primarily this lack of reverence was an offence against the emperor's divinity, and therefore his majesty. But split allegiance, as Henry VIII was aware, does not contribute to perpetuation of rule or political stability; the refusal to accept the ruler's religious status is close to a refusal to recognise his secular status, particularly when the religious status itself, inspiring awe and compliance, is a primary means of rule. Non-Roman religion had the potential to incubate civil unrest, rebellion, and even an attempt to overthrow the state; it was a possible threat to the security of the Empire, the public good which demanded the continuation of the Empire, the Emperor's office and person, as well as his prestige.

But despite the changing forms and objects of treason throughout Roman history, only the Roman citizen, or the citizen of an allied or subordinate power could be charged with perduellio or maiestas.²⁷ And this principle of breach of allegiance is especially obvious in the treasons of Germanic law, and it is to these that attention must now be paid.

26. Lear 28.

27. Schisas 13.

Chapter Two:

Treason in Germanic Law

2:1 Treason in Anglo-Saxon England

The characteristic treason of Germanic law was breach of pledged allegiance.¹ For the present purposes, it is best to observe this in the laws of the Anglo-Saxons, which indirectly influenced the later medieval understanding of treason as breach of trawbe to lord or king.

The Anglo-Saxon terms used for a violation of allegiance were cognate with the verb swican. Swican can mean 'to depart, wander, or escape;' 'to cease,' 'to withdraw allegiance from,' and also, 'to fail, desert, deceive or turn traitor.' As a noun--swica, suike--it occasionally means 'illusion,' but more often is used in the senses of 'deceiver' or 'traitor.' The compound words hlāford-swice and hlāford-searu designated more precise forms of swicdom; the former indicated treachery to a lord or king, the latter, plotting against the life of a lord or king.²

2:2 Crimes Against A Lord

Plotting against the life of a lord is mentioned in The Laws of Alfred; all classes, whether 'ceorle ge eorle' who plot against their lord's life must forfeit their lives and possessions.³ Should a man wish to clear himself, however, according to Alfred, he must do so

1. Lear 44, Cuttler 5, J.G Bellamy, The Law of Treason in England in the Later Middle Ages (Cambridge UP, 1970) 1, and Frederick Pollock and Frederic William Maitland, The History of Law Before the Time of Edward I, 2 vols. (Cambridge UP, 1895) 1:501.

2. See the appropriate entries in the Anglo-Saxon Dictionary . . . , ed. T. Northcote-Toller (Oxford: Clarendon Press, 1898).

3. F.L. Attenborough, ed. and trans., The Laws of the Earliest English Kings (Cambridge UP, 1922) 66-7, c.4 s.2.

with an oath equivalent to his lord's wergild. II Athelstan 4, equally, designates the death penalty for hlāfordsearwe; the previous penalty of forfeiture is--perhaps accidentally--omitted. There is also a different legal procedure for denial in the later law; it must take place, not by oath, but by three-fold ordeal.⁴

The pledged allegiance a man owed to his lord was probably the supreme relationship of Anglo-Saxon public life, overriding even ties of kinship, despite the fact that the family had at this time a semi-public function. According to the Laws of Alfred, a man might fight on behalf of his kin if they have been unjustly attacked, but not if this necessitated that he fight against his lord: 'pat we ne liefap.' Equally, the same lawcode makes it plain that no oath can override the obligations due to a lord, and states that it is better to fail in a pledge than in allegiance;⁵ there could be no justification in law of treason occasioned by divided loyalties. If Beowulf presents an accurate representation of law, motivation itself was irrelevant. The accidental killing by Hæpcyn of his lord and kinsman Herebealde is regarded as 'feoh-lēas gefeoht, fyrenum gesyngad.'⁶

There is good reason to think that the traitor, was the most abhorred criminal of Saxon England. The death penalty is rare in Old English law, and its use indicates the seriousness of hlāfordswice: the shift from denial by oath to the more severe denial by threefold ordeal suggests that the traitor was offered to unerring God, not fallible men, for judgment. There was to be no possibility that guilt should be

4. Attenborough 130-1.

5. Attenborough 84-5 c.42 s.5-6, 62-3 c.1 s.1.

6. Beowulf, ed. C.L. Wrenn and W.F. Boulton, 3rd. ed. (London: Har-
rap, 1973) 186 l.2441. 'A conflict without compensation, extremely
sinful' (my translation).

undetected. There was an added dimension in that the man served his lord in a relationship parallel to a believer's relationship to God. The violation of secular allegiance was therefore a serious violation of spiritual allegiance which directly touched on God; 'Se man þe þis gefæst ne þearf ^{hē him} nā ondrædan hellewitan būton hē beó hlāfordswica'--'the man who observes this fast need not fear the torments of Hell for himself, unless he is traitor to his lord.'⁷ The abhorrence of treason, however, was due not to the nation's desire to protect its structure, and therefore its interests, from internal enemies. Saxon law protected a lord primarily because the allegiance given to him was inviolable.⁸

It is true that the murder of a lord was detrimental to the community in that he held a position of social importance; he had legal duties, being bound to appear at assemblies, and was also responsible for bringing his own men to justice if they misbehaved. As a private landowner, he would normally have been granted the right of jurisdiction over his own lands; but he was in any case the local landlord, who by virtue of his status had military duties in time of war, either by levying forces at the King's demand, or by leading an army against localised invasions such as Viking attacks.⁹ The loss of a man in such a position, whoever killed him, could seriously weaken the community; but despite this, it was not hlāford-swice for a man to kill another man's lord. The law protected the community only from attack from within. The similarity with the later medieval petty treason is obvi-

7. Cited in Northcote-Toller under 'hlāfordswice.' My translation.

8. Lear 33-4.

9. Dorothy Whitelock, The Beginnings of English Society, rev. ed., (Harmondsworth; Penguin, 1972) 92 and 139.

ous; while it was treason for a wife to kill her husband, it was not treason for anyone else to kill a husband, even though the social implications of his death did not differ. Neither was it treason for a lord to kill his retainer. The law protected the sanctity of a sworn allegiance from violation by the inferior party; this, effectively, was the Anglo-Saxon definition of treason.

2:3 High Treason in Anglo-Saxon Law

To some extent this is true of treason against the king. Alfred's law on high treason was the first in English legislation:¹⁰ it indicates several direct and indirect ways in which a man can be a traitor to his king;

Gif hwa ymb cyninges feorh sierwe purh hine oppe purh
wreccena feormunge oppe his manna, sie he his feores
scyldig 7 ealles paes be he age.¹¹

A man who wishes to clear himself of such a charge may do so by an oath equal to the King's wergeld. The amount is not specified; but according to the Chronicle entry for 694, £120 was the amount paid in compensation for the West Saxon Prince Mul; Be Myrcna Lage corresponds to this, but adds that an equal amount must also be paid to the King's household, making the sum £240 in total.¹² Alfred's law implies that one actually guilty of treason, however, cannot make

10. Bellamy, Law of Treason 1-2.

11. Attenborough 64-5 c.4: 'If anyone plots against the life of the king, either on his own account, or by harbouring outlaws, or men belonging to the king himself, he shall forfeit his life and all he owns' (Attenborough's translation).

12. Attenborough 194 n 4.1.

amends by paying compensation.¹³ The fifth lawcode of Æthelred reinforces Alfred's law, but adds that formal denial of a charge may now be either by oath equivalent to the king's wergild, or by three-fold ordeal. It also adds that a man's desertion from the army, if the king is present, is done 'at peril to himself and all his possessions;' this is valid also for the excommunicate, who, having done no formal penance, nevertheless dares to remain in the neighbourhood of the king. He is not liable, however, if he is seeking protection.¹⁴

Most of these crimes are personal, that is, not only a breach of personal allegiance in a legalistic sense, but an indirect or direct attack or affront to the monarch's person. The idea of treason to the realm through the attack on the king's office--his legislative or judicial role, for example--is insignificant in the laws of hlāfordswice. Only the law forbidding hlāfordsearu by harbouring outlaws suggests that respect for the efficient workings of the law is synonymous with proper respect and loyalty to the monarch; but this idea was certainly not widely accepted. In an age where kings tended to restate previous edicts, Alfred's is the only law in which harbouring outlaws is tantamount to hlāfordswice.

2:4 Related Offences

There was also a third category of offences which may be said to be treasonable, though they are separate from hlāfordswice and do not

13. In early Welsh law, men who betrayed their lord were condemned to die, were refused burial in consecrated ground, and most significantly, were forbidden to offer galanas, or compensation, as expiation for their crime. See The Laws of Hywel Dda: Law Texts from Medieval Wales, ed. and trans. Dafydd Jenkins (Llandysul, Dyfed: The Gomer Press, 1986) 166.

14. Michael Swanton, ed. and trans. Anglo-Saxon Prose rev. ed. (London and Melbourne: Dent, 1985) 9.

seem to have been classified under one inclusive term suggesting their traitorousness. These included counterfeiting, arson, murder, open theft, and housebreaking. The only concrete link between these and treason is the penalty they incurred, death and forfeiture, which was customarily applied to offences involving the king or lord.¹⁵ These crimes approximate to landesverrat, or treason against the land and folk, a notion common in Germanic law. Of course there is no need to suppose a conceptual similarity of crimes which share a common punishment; the seriousness of the offences may well have determined the seriousness of penalty. But given that the penalty for treason in Roman law was generally death and forfeiture, which seems to have been transmitted through the laws of the Barbarians into Germanic law as a whole,¹⁶ and so into the laws of the Saxons, it seems fairly likely that arson and murder and the like were felt to be in some sense treasonable.

Possibly such crimes were felt to be breaches of natural allegiance. This is probably a condition of any society, and it might be supposed that any serious crime--such as arson or theft--which inflicts grievous harm on the community, could be regarded as a violation of natural allegiance and hence, as treason. But the Saxon idea of allegiance was above all else a matter of loyalty to a superior. It is more likely that serious crime was thought to be an indirect breach of allegiance to one's lord or king, as in later feudal law where serious crimes were treated as felony, that is, breach of the feudal lien between lord and vassal, even though the

15. 'The Laws of Ine' (?688-694), for example, penalise fighting in the monarch's house with forfeiture and death at the king's discretion (Attenborough 38-9 c.6).

16. Lear 31.

crime in question might not have directly touched on the feudal relationship itself. Such felony was penalised by death and forfeiture, although the lord, rather than the king, customarily received the escheats. The coronation oath of Saxon kings forbade the people all robbery and injustice;¹⁷ possibly this was, in general, one of the terms of allegiance, and in ignoring it, the criminal was effectively violating his allegiance to the king. In this case, it would be possible to say that all crimes, even the smallest, are treasonable; but a line has to be drawn somewhere, and only the most serious offences--both in terms of morality and social disruption--are treated as treason in penalty.

2:5 The Anglo-Saxon Idea of Allegiance

The appearance of the penalty of death and forfeiture in Anglo-Saxon England, along with the notion of hlāfordsearu, or conspiracy against the life of a king or lord, is almost certainly ultimately derived from Rome. The notion of maiestas, treason as a breach of deferential allegiance, was not however incorporated to any great degree in Germanic thought.¹⁸ Allegiance, in Anglo-Saxon England, was a strictly contractual matter, and to some extent involved bilateral rights. The subject owed his king obedience, or at least loyalty, in war and peace; but the king in return was obliged to maintain justice and equity amongst his subjects, as well as acting in their interests--by which is meant, not doing as they wish, but attempting to rule them in such a fashion as to save their souls.¹⁹

17. Percy Ernst Schramm, A History of the English Coronation Oath, trans. Leopold G. Wickham (Oxford: Clarendon Press, 1937) 180.

18. Lear 38 and Pollock and Maitland 1: 2, 18-9.

19. See Wulfstan's Institutes of Polity (Swanton 126-7).

At this point the guardianship of the realm was not a special interest of a royal line, and the absence of secure hereditary descent seems to have prevented Anglo-Saxon kings from appropriating to themselves specialised interests separate from the interest of the realm.²⁰ The king, if he recognised his duty of protection, identified his interests with those of the realm. The Saxon idea of kingship was functional: the king possessed administrative and judicial power for the good of the people.

The kingship was however rather more than an available job which was given to the most promising candidate who, if he proved unsatisfactory, could be replaced; the king was afforded a certain status and respect not awarded to others. Yet there is some reason to think that, like the lord who failed in his obligations towards his inferior, the unsatisfactory king could be rejected in favour of a more reliable protector. In parts of Scandinavia, it was considered that the people had not only a right, but a legally enforceable obligation to execute an unjust monarch.²¹ The Saxons did not go so far, but there are instances of bad kings being deposed, including if only temporarily, Æthelred II. There is no indication, however, that the deposed king was legally or extra-legally regarded as a traitor to his folk.

By the time of Wulfstan, however, it is noticeable that the deposition of a monarch--even an incompetent--was viewed with some

20. Saxon kings were generally elected, usually from within the Royal family, though not always through linear descent, if a previous king had not nominated a successor; but even then the successor had to be approved. Whitelock, English Society 53-54. See also Lear 53 on the tension between a monarch's special interests and the interests of the realm.

21. Lear 68.

trepidation, especially by the Church. Wulfstan seems to consider it hlafordswice; Ælfric admits that the English may choose their kings, but does not consider that the people have any right to reprimand or depose him once he is consecrated to office. This, as Whitelock observes, is due to the notion that the king was Christ's deputy on earth.²² The king was understood to be appointed by God rather than under contract from his inferiors; he ruled for the benefit of the nation, but was ultimately justified by criteria outside the nation.

This is something of a turning point in the history of English treason, because it implies the beginnings of a move away from contractual allegiance--the king answerable to his people--to deferential allegiance, to a ruler who though he is not by nature divine, partakes of divinity by grace, and to whom his people must therefore submit regardless of whether or not he fulfils his obligations towards them. But in the Anglo-Saxon period, such theocracy was not universally accepted, or at least was disregarded; whatever Wulfstan and Ælfric thought about it, Æthelræd was deposed and exiled in 1013. The move from contractual allegiance to deferential allegiance was advanced largely in the later Middle Ages²³--and even then theocratic kingship was never completely accepted in England.

After the invasion of the Normans in 1066, allegiance to the monarch is initially seen very much in terms of a lord-vassal rela-

22. Whitelock, English Society 53. See also Wulfstan's Sermo Lupi Ad Anglos, ed. Dorothy Whitelock (London: Methuen and Co. Ltd., 1952) 42 ll.79-80.

23. Lear 59.

tionship.²⁴ Norman England however saw a major change in the terminology of treason, and indeed in the definition of it; the association of land tenure with the lord-retainer lien determined an extended, and more precise, set of treasons against a lord; the revival of Roman law in the century following the Conquest imported the idea of læsa maiestas into English law, and helped to undermine the importance of treason against lesser lords, particularly as authority became more centralised in the person of the king. It is at this point in time that the English idea of high treason, though shadowy and difficult to recover, begins to take shape.

2:6 Treason in England 1066-1351

The Conquest's impact on English law was gradual. The Normans imported no written law of their own,²⁵ and it must be assumed that in the years following the Conquest, English law remained pretty much the same as it was in the days of Æthelræd or Alfred. One of William's early edicts states that, for the most part, the English should keep their own laws.²⁶

In linguistic terms, however, the Conquest had an immediate influence. English had been the language of the law: after the invasion, it was largely replaced by Latin and French. Treason generally seems to have been referred to by its Latin equivalents: in the early twelfth century, the author of the Latin Leges Henrici Primi uses the Saxon variant lafordswike, but mostly he employs

24. Pollock and Maitland 1: 280 and 2: 502. But c.f. Schramm 30.

25. Pollock and Maitland 1: 54.

26. Pollock and Maitland 1: 56.

proditio and traditio.²⁷ By the late twelfth century, the great legal theorist Bracton was borrowing from later Roman legal usage, and refers to the crimen læsæ maiestatis; although he is aware that plotting the death of one's lord is a capital offence,²⁸ he nowhere calls it hlāfordswice, proditio, traditio, or sedicio. Another word at first closely associated with treason against a lord is felo-
nia or felony, the feudal crime of breach of allegiance leading to forfeiture of the offender's fief.²⁹

Until the thirteenth century, there does not seem to have been one inclusive term for the crime of treason; the first written occurrence of the word treason itself is in the Ancrene Riwe, from about 1225.³⁰ It seems almost inevitable that the term treason should have been adopted into English; hlāfordswice fell into virtual disuse, probably because it was too specific to include the wider range of treasons current in the high Middle Ages. The Latin treason-equivalents were intelligible to both educated English and French speakers, but Latin was rarely spoken in court or outside it; and besides, the

27. Leges Henrici Primi, ed. and trans. L.J. Downer (Oxford: Clarendon Press, 1972) 114-5 c.12 s.1a, 152-3 c.43 s.7, 156-7 c.47 s.1, 232-3 c.75 s.1a.

28. Bracton, De Legibus et Consuetudinibus Angliæ / On the Laws and Customs of England, vol. 1, ed. George E. Woodbine, trans. Samuel E. Thorne (Cambridge, Massachusetts: Belknap Press of Harvard UP, 1968) 334 and 229.

29. Pollock and Maitland 1: 284-5 and Oxford English Dictionary, 2nd. ed. (Oxford: Clarendon Press, 1989) under 'Felony.' The derivation of felony is uncertain, but it seems most likely that it came from the Latin fel, meaning bitterness, gall, or venom; possibly there was an association of these unpleasantries with the equally undesirable feudal crime. By the twelfth century, the word felony in English legal usage had broadened its meaning to include all capital crimes, not only those against the person of a lord; it was also used with the meanings of 'strong,' 'savage,' 'cruel' and 'wicked.'

30. 'Treason,' Oxford English Dictionary,.

language of the King's court was French; treason came under the sole jurisdiction of the king, and it is natural that the language used in court came to be used outside it.³¹

Treason is ultimately derived, through French, from the Latin tradere, 'to hand over, deliver, or betray.'³² Both Latin and French derivations can be found in French literature long before the French term itself were imported into England: Trades appears the French Passion du Christ from 980; the earliest use of traïr and traïsun seems to be in the Chanson du Roland of 1080.³³ It is possible that traditio was incorporated into French and other European languages largely as a result of the association of the term with Judas's ultimate treason of deicide: the Vulgate describes Judas himself as a traditor. From the time of the Roman persecutions of Christians, traditor had denoted those who had echoed the treason of Judas; the traditor was one who handed over scripture to the authorities, as Judas had handed over his Lord.³⁴

2:7 Feudal Felony

Allegiance to a lord was more complex than in Anglo-Saxon England, since it was now tied up with laws of property and contract. The vassal received a fief of land and legal protection from his lord in

31. Pollock and Maitland 1: 60-2.

32. 'Treason,' Oxford English Dictionary; 'Traditio,' 'Traditor,' and 'Trado,' Oxford Latin Dictionary (Oxford: Clarendon Press, 1976).

33. 'Trahir' and 'Trahison,' Grand Larousse de la langue française en sept volumes (Paris: Librairie Larousse, 1978)

34. I am grateful to Dr. Margaret Thrall and P.J.C. Field for much of the information in this paragraph. See also 'Traditor,' in the Oxford Dictionary of the Christian Church (London: Oxford UP, 1974), and 'Judas Iscariot' in the New Catholic Encyclopaedia (New York: McGraw Book Company, 1967) for a discussion of the parallels between Judas and the traitor Achitophel.

exchange for his rendition of specified duties to his lord. This contract was formalised in the ceremony of homage and fealty, in which the lord publicly accepted a man as his vassal; in all probability, the man would then swear, on holy relics, to be faithful to his new lord.³⁵ The oath of fealty was basically concerned with the vassal's pledge to render due services, and to support his lord above all others--except the king--in military and legal matters. It seems likely that a man could do homage and hold land without swearing fealty; the Leges Henrici Primi state that if a man holds of several lords, his overriding obligations are to his liege-lord, the one to whom fealty has been sworn.³⁶ Presumably a man was justified in supporting his liege-lord against his secondary lords, either in court or on the battlefield; Bracton however suggested that if a conflict of loyalties arose, the dues of service should be rendered to all lords, and while a man should aid his liege-lord in person, he must nevertheless fulfil his obligations to his lesser lord by appointing a substitute to serve in his place.³⁷

Violation of allegiance to a lord was termed felony, and this is divisible into two categories of offences; those which directly involved the person of the lord himself, and felonious breach of allegiance through conviction for a serious crime. Both of these enabled the lord to repossess the offender's fief:³⁸ and, depending on the extent of the offence, the death penalty might also be applied.

35. Achille Luchaire, Manuel des Institutions Françaises: Période des Capétiens Directs (Paris, 1892) 185.

36. Leges 172-3 c.55 s.3, 152-3 c.43 s.6.

37. Pollock and Maitland 1: 282.

38. Leges 152-3 c.43 ss.3, 4, 7.

Felony of the first category could be committed by the vague proditionem domini--betrayal of a lord--or for military desertion from him. Both Bracton and Glanvill suggest that any act leading to the disherison, disgrace or injury of a lord constitutes a breach of homage; this seems to have included a vassal's denial that he held of a particular lord, failure to render due service to that lord, or the acquisition of a legal protector against that lord.³⁹ Of all these crimes, however, it was the killing of the lord which commanded the most abhorrence. Even the author of the Leges Henrici Primi indulges in a rare fit of enthusiasm in condemning it:

Si quis dominum suum occidat, si capiatur, nullo modo se redimat, set decimatione uel euisceratione uel ita postremo seuera gentium animaduersione dampnatur, ut diris tormentorum cruciatibus et male mortis infortuniis infelicem prius animam exalasse quam finem doloribus excepisse uideatur et, si posset fieri, remissionis amplius apud inferos inuenisse quam in terra reliquisset protestetur.⁴⁰

To him it is evident that treason against a lord is no mere matter of murder or violation of a property bargain. Rather, the traitor commits the legal equivalent of the unforgivable sin of blasphemy against the Holy Spirit, and accordingly should suffer afflictive, rather than remedial punishment:

In omnibus enim humane prauitatis excessibus medicine salutaris fomenta prolata sunt preter traditionem domini et blasphemiam Spiritus Sancti, id est habere cor inpenitens quod

39. Leges 153-3 c.43 s.3.

40. Leges 232-3 c.75 s.1 'If anyone kills his lord, then if in his guilt he is seized, he shall in no manner redeem himself but shall be condemned to scalping or disembowelling or to human punishment which in the end is so harsh that while enduring the dreadful agonies of his tortures and the miseries of his vile manner of death he may appear to have yielded up his wretched life before he has won an end to his sufferings, and so that he may declare, if it were possible, that he had found more mercy in hell than had been shown to him on earth' (Downer's translation).

iuxta uerbum Domini non remittetur alicui uel in hoc seculo uel in futuro.⁴¹

That he uses traditionem domini rather than proditionem, or even lafordswike, suggests a parallel with the crime of Judas.

The second class of felonies, indirect breach of allegiance, is more elusive; the Leges mention that a conviction for theft and defeat in trial by battle shall lead to the forfeiture of the fief. Since trial by battle was used only in cases where death or mutilation was the penalty, defeat indicates a conviction for a serious crime, and it seems likely that serious crime itself was regarded as a breach of allegiance to the lord.⁴² This is particularly likely given the Saxon precedent of punishing serious crime such as robbery or arson with the traitor's penalty of death and forfeiture; and the transference, in the twelfth century, of the term felon from the feudal petty traitor to the capital offender also suggests that the term had previously encompassed serious crime.

2:8 Allegiance and the Feudal Lien

The feudal lien was a mutually beneficial agreement between lord and retainer, with bilateral rights; as such it demanded a form of contractual allegiance from both parties. Felony could be committed by the lord against his retainer, if, for example, he unjustly or unlawfully deprived the man of his fief, or deserted him in need:

41. Leges 232-3 c.75 s.1a. 'For in the case of every extravagance of human wickedness the comforting alleviations of a legal remedy have been made available, except in the case of betrayal of one's lord and blasphemy against the Holy Ghost, (that is, impenitence of heart) which, according to the word of the Lord, shall not be forgiven to anyone, either in this world or the world to come' (Downer's translation).

42. Leges 152-3 c.43 s.7. Presumably a defeated accuser was equally guilty of felony; wrongful accusation, especially for serious crimes, was punishable by mutilation (186-7 c.59 s.13), which classified it as a serious offence: and later in the Middle Ages, a wrongful appeal of treason was liable to the penalties for treason.

the lord would forfeit lordship over the wronged man.⁴³ There were no exaggerated penalties for the lord who killed his vassal; he had merely to pay compensation to the victim's family because, as the Leges explain with some pathos, the man was there to serve and not be killed.⁴⁴ While the feudal lien was contractual in that the vassal was free to divorce himself from an unsatisfactory lord by diffidatio, it is noticeable that the hierarchical bias of the law demands an almost deferential allegiance be paid to the undefied lord. It was not permissible to fight him in self defence: the vassal who sought justice against his lord was obliged to wait for thirty days in wartime, a year and a day in peacetime, while others acted as mediators.⁴⁵ The lord, however, could repossess the fief of his disloyal vassal as soon as the vassal had received a lawful summons.⁴⁶

Felony as breach of allegiance to a lord was however limited to the height of feudalism, and by the time of Bracton, just over a century later than the Leges,⁴⁷ it can be seen that the lord-vassal relationship is lessening in importance as the monarchy increases its authority. Bracton is aware that the murder of one's lord is a serious crime, but he nowhere associates it with treason, and wrongly assumes it is penalised by burning.⁴⁸ Britton however does con-

43. Leges 152-3 c.43 s.8.

44. 234-4 c.75 s.3.

45. Leges 258-9 c.83, c.83 s.1, 152-3 c.43 s.9.

46. Leges 52-3 43 s.4.

47. The Leges date from about 1115, and are certainly no later than 1118 (see p.9); Bracton's work dates from about 1250 (Pollock and Maitland 1: 185).

48. Bracton 299.

sider plotting against a lord to be treason: it is a lesser treason also to commit adultery with his wife, or forge his seal; it has also been suggested that the violation of the lord's daughter was treasonable.⁴⁹ But by 1352, there was no treason, in law, against a lord. The importance once attached to it, and the severity of the penalties it incurred, had been shifted to high treason.

2:9 The Idea of Allegiance to the King

For some time after the Conquest allegiance to the king seems to have mirrored allegiance to a lord; King William demanded homage and fealty from every freeborn Englishman over the age of twelve and therefore claimed the right to special legal protection as a lord as well as a king.⁵⁰ High treason was therefore something of an extension of felony. Consequently, since the allegiance of the king's subjects was determined by sworn oath rather than by territorial boundaries, when there was no sworn allegiance, there could be no treason. Thus, in 1136, King Stephen could spare a rebellious garrison on the grounds that they had never sworn fealty to him, although they were denizens of his territory.⁵¹

Attempts were made, naturally, to secure the supremacy of the monarch; allegiance to him overrode fealty to lesser lords. Allegiance to the monarch, however, was viewed as contractual--even by the monarch--and men frequently attempted to chastise monarchs who had failed in their duties. A man might formally terminate or repudiate by diffidatio the allegiance he owed to his monarch, which legally allowed him to resort to arms in public war against his king. The

49. Bellamy, Law of Treason 15, Pollock and Maitland 2: 503.

50. Pollock and Maitland 1: 280.

51. Pollock and Maitland 2: 504 n. 1.

Earls of Gloucester and Leicester formally defied Henry III, who defied them in turn before the Battle of Lewes.⁵²

It has been said that the English monarchy could not, without hypocrisy, curtail the baronial right to rebellion or treat such rebellion as treason until the time of Edward III; the English monarchy was subject to France, but this did not prevent the English from warring on the French king on French territory. Edward III, however, declared himself rightful king of France, and was therefore neither de facto nor de jure subject to any temporal superior; he was, as the maxim went, as an emperor in his own realm. In practice, however, the English monarchy appropriated the terminology and rights of sovereignty long before they were truly sovereign.⁵³ The Leges Henrici refer to King Henry as 'cesar Henricus' implying that the prerogatives of the Roman emperor were already his:⁵⁴ King John considered England as the equivalent of an empire;⁵⁵ Bracton considers that læsa maiestas, legally a crime against those kings who possessed the Roman imperium, and therefore sovereignty, could be committed against the English king; kings before Edward had in any case penalised baronial rebels, diffidatio notwithstanding, if their insurrection failed;⁵⁶ and Edward himself issued a pardon to all of

52. Pollock and Maitland 1: 284 and 2: 503. See also English Historical Documents 1042-1189, ed. Davis C. Douglas and George W. Greenaway, 2nd. ed. (London: Eyre Methuen; New York: Oxford UP, 1981) 438 for King Stephen's acknowledgment of his barons' right to defy him.

53. See Pollock and Maitland 2: 504, Bellamy, Law of Treason 11, and Walter Ullman, 'The Development of the Medieval Idea of Sovereignty,' The English Historical Review 250 (1949): 1-35.

54. Leges 80-1.

55. Bellamy, Law of Treason 10.

56. Bellamy, Law of Treason 11.

those who had participated in rebellion against his father.⁵⁷

The twelfth and thirteenth centuries saw a move towards deferential allegiance, allegiance without conditions, to the monarch. This had first become evident in later Saxon England, though seems to have been obscured in the next few centuries. John of Salisbury however, had described the king as deriving his authority to rule from God: the king's 'persona publica is not framed by the policy making of men, although it is concerned with their welfare.'⁵⁸ Bracton also concedes the divine role of kings, and goes as far as applying to England the Roman idea that what pleases the Prince has the force of law; but he is careful to add that the pleasure of the Prince is law only if it accords with the pleasure of the barons.⁵⁹ The public interest is not defined by one man alone, but by a body of men; thus the private interests or whims of one man are less likely to determine public policy. Still, kingship was God-centred not man-centred, and the sacred duty of unconditional obedience to God had its secular parallel in unconditional obedience to the king who ruled, and judged, on behalf of God on earth. The monarch possessed a kind of maiestas, an authority derived from outside the state, and therefore not answerable to the state; and as in Rome, allegiance was therefore deferential. This necessarily determined the form of treasons; it is at this time that the influence of Roman law can be seen in English treason law, and insult, as well as injury or at-

57. 1 Edward III c.1 in Statutes of the Realm vol.1 (1810) 251.

58. Elizabeth T. Pochoda, Arthurian Propaganda: Le Morte Darthur as an Historical Ideal of Life (Chapel Hill: U of Carolina P, 1971) 42.

59. Ernst H. Kantorowicz, The King's Two Bodies: A Study in Mediaeval Political Theology (1957; Princeton, New Jersey: Princeton UP, 1981) 149-58.

tempted injury, becomes treasonable. There was some doubt as to the validity of tyrannicide and deposition; the later Saxons had hit on the theory that deposition was hlaforðswice because of the christological status of the king; but while John of Salisbury advocated tyrannicide, Bracton considers that no-one has the right to even reprimand a king.⁶⁰

2:10 The Crimes of High Treason

It is however difficult to identify the crimes which constituted treason in the High Middle Ages.⁶¹ Killing, or plotting or consenting to kill, the king, betraying the army, adhering to the king's enemies--which included spying--the concealment of traitorous plots, and counterfeiting, clipping coin or forging the king's seal are mentioned by several writers, along with disinheriting the king of the kingdom, killing his family or violating his wife, eldest daughter or the wet-nurse of the king's heir.⁶² The Leges Henrici Primi, while highly reticent on high treason, include a set of offences which place the offender in the King's mercy, such as the old crimes of landesverrat and various crimes directly involving the king. These include showing disrespect to the monarch: slandering his person and commands; constructing fortifications without permission; killing his servants, showing contempt for his writ, and breaking the peace

60. Bracton prohibits a king from all wrongdoing, lest he become the vicar of the devil (305), but adds that, while the people may petition an evil monarch into mending his ways, they have no earthly redress against him if he will not reform, but must wait God's just retribution (33).

61. Pollock and Maitland 2: 501.

62. Bracton 334, Bellamy, Law of Treason 15-18.

given by the King's own hand.⁶³

A good many of these crimes were formally designated treason in the Great Statute of Treasons in 1352. Others were not, and it is difficult to say whether all those offences under the King's jurisdiction in the Leges were treated as treason; it is safe to say that all the crimes were breaches of allegiance, but not all violations of allegiance need be treated as treason in law. However, the illegal construction of fortifications is, in the Peterborough Chronicle, said to be treasonable;⁶⁴ and killing the king's servants or showing contempt for the king's writ was certainly treated as treason. In 1250 Walter de Clifford narrowly escaped death and disherison for the latter offence, which he committed in style by forcing a messenger to eat an unwelcome royal writ and its seal.⁶⁵ Acts of private warfare, such as robbery, kidnapping to ransom, or murder must also have been occasionally regarded as treason, since the 1352 Act specifically excludes these.

Many of these treasons, or probable treasons, reveal a Roman influence: concealment of plots and the murder or violation of the royal family are Roman treasons, and the notion of slander and contempt of the King or his writs is extremely close to the insult to authority, the læsæ maiestatis, of Roman law. Acts of private war were all treasonable usurpations of the sovereign's sole right to declare war: they may have been borrowed from the continent, where

63. Leges 116-7 c.13 s.1.

64. 'Alle he wæron forsworen 7 here treothes forloren, for æuric rice man his castles makede 7 agæns him heolden; 7 fylden þe land ful of castles.' The Peterborough Chronicle 1070-1154, ed. Cecily Clark, 2nd. ed (Oxford: Clarendon Press, 1970) 55 ll.13-15.

65. Pollock and Maitland 2: 506.

they formed part of the Roman crime of lèse-majesté against the regal rule of the French monarch.⁶⁶ By 1352 the English monarch, while retaining the sole right to declare war--private warfare was illegal and to be judged either as felony or trespass depending on its seriousness--did not consider private warfare to be a treasonable usurpation of his power. Treasonable usurpation--accroachment of the royal power--was in any case a rare offence in England. Generally, rather than being regarded as a treason in itself, it supplemented accusations of treason. Accroachment received no definition in England, and was therefore an extremely fluid offence, and one well suited to removing unpopular royal favourites--and conversely, extending royal power. For these reasons both king and magnates were suspicious of it, and accroachment was omitted from the 1352 statute.⁶⁷

66. Cuttler 25, 32-3.

67. Bellamy, Law of Treason 14.

Chapter Three:

The Late Medieval Scope of Treason

3:1 Treason in Statute Law

The confusion as to what crimes constituted treason in English common law seems to have persuaded Edward III to define the offence; his statute of 1352 remained the most authoritative enactment on the crime throughout the Middle Ages, and indeed beyond.¹

The Statute is concise but thorough. It specifies that it is treason to compass or imagine the death of the king, his queen, or their eldest son and heir; to violate the queen, or the king's eldest unmarried daughter, or the wife of the king's eldest son and heir. More military treasons include levying war against the king in his realm or elsewhere, adhering to the king's enemies in the realm, or aiding and comforting those enemies either in the realm or abroad. Counterfeiting the king's great or privy seal is also made treasonable, along with counterfeiting the king's coin and importing, with the intent to fraudulently use, false English coin. The Statute then deems it treasonable to kill the chancellor, the treasurer, and the king's justices of any bench, in so far as they are in the execution of their office.

These treasons, since the fourteenth century, have been called high treason; but the statute also refers to 'un autre manere de treson', what would now be called petty treason. This is fundamentally aggravated murder, being the killing of a master by his servant, a husband by his wife, or a prelate by the religious or secular man who

1. 25 Edw. stat. 5 c.6, in Statutes of the Realm 1: 320. Probably the most famous modern traitor convicted under the provision of the 1352 Act is William Joyce. See Rebecca West, The Meaning of Treason (London: Macmillan & Co. Ltd, 1949; rept. London: The Reprint Society Ltd., 1952) 8-9.

owes him faith and obedience.

Further, though less illustrious statutes, added the following crimes of high treason to this list; riot and rumour (1381): plotting to depose the king, or rendering up liege homage; advising or procuring a repeal of both the judgments and statutes of the parliament of 1397-8 (1398); breaking of truce and safeconduct (1414); clipping, washing, or filing English coin (1415); escaping from prison, if the escapee had been previously indicted of high treason (1423); house-burning, when the owner had previously received letters threatening arson if a certain sum of 'protection-money' was not left in a specified place (1429); the taking of Englishmen or their goods by Welshmen in Wales or the Marches (1442); and the forging of foreign coin (1488-9).²

Those who drafted the 1352 statute undoubtedly intended that it should supersede, rather than supplement, common law; and one historian has noted there is no conclusive evidence to suggest that common-law treasons survived the Treason Act of 1352.³ But statutory law itself was occasionally disregarded or indeed forgotten in the Middle Ages:⁴ Richard II in 1398 found it necessary to reinforce the still valid Act of 1352 by re-promulgating the earlier clause which forbade waging war against the king. And royal justices themselves occasionally judged as treason offences which were not so under statute law, most noticeably in the aftermath of the Peasants' Revolt, when the murder of

2. See Statutes of the Realm vol. 2 (1816), for 5 Ric. II stat. 1 c.6 (p.20), 21 Ric. II c.3 (p.98), c.4 (p.99), and c.20 (p.110), 2 Hen. V stat. 1 c.6 (pp.178-81), 4 Hen. V c.6-7, 2 Hen. VI c.21 (pp.226-7), 8 Hen. VI c.6 (pp.242-3), 20 Hen. VI c.2 (pp.317-18), and 4 Hen. VII c.18 (p.541).

3. Bellamy, Law of Treason 95-101.

4. Harold F. Hutchison, The Hollow Crown: A Life of Richard II (London and New York: Methuen, 1979) 111-2.

loyal men was treated as treason.⁵ Such extensions of the law of treason were probably intended as exemplary measures to improve public order, and as such accorded with the spirit, if not the letter, of the 1352 Statute.

3:2 The Parliamentary Declaration of Treason

The 1352 legislators, while ostensibly limiting the range of treasons to those specified in their statute, had acknowledged that the written law of one era was inadequate in that it could not provide for new and unforeseen crimes which might appear treasonable. Treason was as awkward to define six hundred years ago as it is today, but its very importance necessitated that what legal definition there was should be capable of encompassing not only general treasons such as the killing of the king, but more unusual treasons specific to a particular situation. Consequently, when a seemingly treasonable crime appeared before the Justices, they were to refer the case to the king in Parliament for declaration as to whether it should be judged treason or not. For example, while it was not generally thought that the killing of merchants was treason, in 1379 the king and parliament declared that the murder of the Italian Jean Imperial by 'aucuns liges nostre Seigneur le Roi en la Citee De Londres' to be 'Treson, & crime du roiale Magestee blemye,' not least because Imperial was living in London under the king's protection and was representing Genoa in the negotiation of a treaty with Richard II.⁶

5. Bellamy, Law of Treason 105.

6. Rotuli Parliamentorum (1767-1777) 3: 75; also cited in Samuel Rezneck, 'The Early History of the Parliamentary Declaration of Treason,' English Historical Review 42, no. 168 (1927): 502. See also Bellamy, Law of Treason 88-9.

Given that the common law of treason had been superseded, the role of the king and parliament was not so much as law-finders in the sense that they were required to clarify existing common law treasons or legislate for new ones according to the principles inherent in existing common law, but as law-makers.⁷ In terms of legislation, however, with the possible exception of the reign of Richard II, crimes designated treason after 1352 seem to have been ones which accord with the criteria of previous treasons; there was no overt 'treason by legislation,' that is, the designating as treason evidently non-treasonable crimes in order to employ the exemplary penalties of treason proper. All of the late medieval treasons are in some sense breaches of allegiance, and can be categorised according to their objects as crimes against a domestic superior: against the folk; against the authority of the king; and against the monarch's person or family.

3:3 Petty Treason

The three crimes of petty treason provide the most striking examples of the idea of treason as a breach of allegiance; in these cases the allegiance was that sworn to a domestic superior. The principle was not exhaustively applied, however; not all possible breaches of domestic allegiance were treasonable in law, and it is to be noted that the lord-vassal relationship is not encompassed within the master-servant clause of the 1352 Act. Familial murder, equally, was not classed as treasonable, although non-legal writers--and later legal writers--often consider it so. Parricide or matricide was judged petty treason only when the perpetrator was in the service of his parents'

7. C.f. Rezneck 501.

household.⁸

3:4 Landesverrat

The idea that treason can be committed against the people was not foreign to medieval thought, although it must be said that only a few crimes fell into this category, and even then attempts were made to somehow fit treason against the land and folk into the hierarchical framework, designating it treason against the king and the realm. It is perhaps necessary to distinguish between treason proper, and other crimes, not in general treason, but which were traitorously perpetrated with the intent or the consequences of treason proper; crimes which, as the statutes often say, put the people 'en point destre destruire.' Under these circumstances it is not unreasonable to assume that the monarch should consider the perpetrators to have violated their allegiance to him through afflicting his people, just as the subject Welsh could be judged in violation of allegiance by afflicting the English.⁹ While the riot and rumour, for example, of the Peasants' Revolt could have been construed as widespread 'levying war against the king' under the terms of the 1352 statute, riot itself need not touch on the person or indeed the authority of the king, but the statute of 1381 nevertheless considered that the crime was to be regarded as treason because it was 'contre Dieux bone foi & reson & contre la dignitee nostre Seignur

8. Bellamy, Law of Treason 228, J.H. Baker, An Introduction to English Legal History, 2nd. ed. (London: Butterworths, 1979) 248, Francis Bacon, 'A Collection of Some Principall Rules . . .' in The Elements of the Common Lawes of England . . . (London, 1630); facsimile reprint in The English Experience 164 (New York: Da Capo Press; Amsterdam: Theatrum Orbis Terrarum Ltd., 1969) 66.

9. In this case it is noticeable that the statute applied only temporarily; while such acts of war were always violations of allegiance, it was expected that a term of exemplary punishment would alleviate the problem to the extent that the people were no longer greatly under threat. See Bellamy, Law of Treason 131-2.

le Roi & sa corone & les loyes de sa terre.'

Extortion by arson, which had become something of a public nuisance in the 1420s, was another crime which, although it did not directly touch on the monarch's person or authority, was successfully rendered treasonable, but not only for reasons of convenience. The Statute itself refers to such burnings, and the subsequent impoverishment of the people involved, as being done 'felonusement & traite-rousement.' Possibly the insistence on the crime's traitorousness was an attempt to conceal its slight claim as treason proper, although other crimes against the people, though not treasonable under written law, were sometimes said to be traitorously perpetrated.¹⁰ Probably arson was regarded as truly treasonable, since the extension of the laws of treason was not lightly undertaken. In 1467, for example, the Commons unsuccessfully petitioned that sacrilege be made treason. While arson did not directly involve the king, it nevertheless had a respectable precedent as treason, and was in a real way an attack on the people, while sacrilege had no claim to be treason on either count.¹¹

A similar designation of 'treason by precedent and effect' can be seen in 1488-9, when forging foreign coin was made treason; this crime did not directly touch on the authority of the English monarch, but since tampering with English coin was already treason, it was no great departure from the letter of the law to render as treason related forms

10. Bellamy, Law of Treason 108 and 134. Bellamy observes that the term was usually used with some accuracy.

11. Baker 423 n.31. On the other hand it was not unknown for crimes which were extra-legally considered treasonable, which had respectable continental parallels as treason, or which had earlier been solely under the jurisdiction of the king, to be rejected as treasons. Two such examples were abduction of women and highway robbery. See Bellamy, Law of Treason 14, Cuttler 33 and Leges 108-9 c.10 s.1.

of counterfeiting, particularly since this was said to be to the great prejudice of both the king and his people.

3:5 Treason Against the King

Of all the crimes touching on the person or authority of the monarch, some show a definite colouring of Roman law, either directly, or indirectly through continental or feudal law, such as adultery with the royal family or the medieval equivalent of murdering a magistrate, treason by killing a king's justice. The English crime however protected the authority of the king vested in the office, not the person of the justice himself; it was treason to kill a justice in the execution of his office, but not when he was 'off duty.' Henry V's statute on safeconduct reflects yet another source of medieval treason law, military law:¹² but military law had on the whole a greater influence on law in literature than English statute law.

With the exception of the importation of counterfeit coin, which according to the 1352 Statute had to be perpetrated with the intent to deceive the king and his people, intention was irrelevant. The man who committed a treasonous crime without intent to inflict the consequences of treason on his fellow citizens was considered as guilty as one who had acted with culpable intent, which is certainly a tenet of Roman law although was probably, from Roman law or otherwise, a principle of Old English law.¹³ Quite apart from the gravity of the crime's supposed consequences, intention was irrelevant simply because treason was a side-effect of certain crimes. A man could kill the treasurer because he hated him personally, not because he wished to break allegiance or put the people 'en point destre destruire;' the

12. Bellamy, Law of Treason 128-9.

13. Lear 28.

breach of allegiance and the crime's consequences, however, were objectively similar to those of an intended treason such as aiding the king's enemies.

Like the crime of treason in Imperial Rome, English treason did not have a single object. The treason of violating the queen, for example, touched on the good of the realm because it might open disputes on the succession; it might also, as with Isabella and Mortimer, indicate a wider plot against the king, which touched on the interests of both the king and the national interest he was thought to secure. Similarly such a liaison might invite seditious slander to the disadvantage of the monarch and therefore his realm. Beyond all of these national, or potentially national, consequences, however, adultery with the queen was a flagrant violation of a subject's personal allegiance to his king; it dishonoured him, usurped his rightful place, deceived him, and showed disrespect for his status.¹⁴ Adultery with the queen and killing the king were the most popular treasons in romance; while they were political offences in that they had the potential to national disruption, they were also dramatic crimes of personal betrayal with immediate and concrete effects on the people involved.

All of the medieval treasons are breaches of allegiance, although there are many crimes which, though breaches of allegiance, were not designated treason. It was not, for example, treason to kill the king's messenger, although this could be construed as a breach of

14. See Ralph. A. Griffiths and Roger S. Thomas, The Making of the Tudor Dynasty (1985; Gloucester: Alan Sutton, 1987) 28-9 for an account of the Parliamentary efforts to control the possible remarriage of the dowager-queen Katherine. It was feared that Katharine's remarriage, particularly with one of her late husband's subjects, might prejudice the honour of the Crown.

allegiance and frequently was prior to 1352.¹⁵ Generally only the most publicly disadvantageous breaches of allegiance, or those most likely to dishonour the king to the disadvantage of the nation, were rendered treasonable. But it is not possible therefore to define treason as a crime solely against the nation or state: the law of treason excluded abuse of office, despite the fact that the bad king, or the corrupt official with royal authority, had greater opportunity to systematically put the people 'en point destre destruire' than any mere enemy of the king's. Royal authority did not owe allegiance to the state. It could not therefore commit treason against that state.

3:6 Theocracy, Allegiance and Deposition

The theory of kingship by divine appointment colours the terminology by which kings described themselves: 'Rex Anglie Dei Gratia,' and it is beyond question that the theory itself found popularity with kings as well as political philosophers.¹⁶ Theocracy--even in its limited English form--accompanied and contributed to the centralisation of power in the monarchy, not least by justifying the replacement of the sworn allegiance of vassalage--with all the rights to rebellion and defiance of royal authority that implied--by territorial allegiance based on monarchical sovereignty.

Such a theory of divine rule divorced from election by the people was naturally conducive to the supremacy of royal power. Henry IV made much of it in claiming his throne:

15. Pollock and Maitland 2: 506-7.

16. This is a usual greeting from the king in legal documents and charters. Divine appointment was initially be compatible with popular assent; Schramm observes that 'Dei Gratia' was a common monarchical appellation from the eighth century though the theory of kingship this ultimately implied was not developed until well after the Saxon period (25-6).

'In the name of Fadir, Son and Holy Gost, I, Henry of Lancast', challenge yis Rewme of Yngland and the Corone with all y^e membres and appurtenances, als I y^t am discendit by right lyne of the Blode comyng fro the gude lorde Kyng Henry therde, and thorghe yat ryght yat God of his grace hath sent me, with helpe of my Kyn and of my Frenedes to recover it: the which Rewme was in poynt to ben undone, for defaut of Governance and undoyng of the gode Lawes.'¹⁷

Henry stressed the orthodox criteria which were thought to reveal God's will: hereditary right; nomination by the present monarch; and the supreme judicium dei of conquest. It was something of a paradoxical claim; by insisting that through his mother, Blanche of Lancaster, he was rightfully descended from Henry III, Henry dismissed Richard as an usurper with no rightful claim to the throne; rumours of Richard's illegitimacy added further weight to this theory. But nonetheless, Henry accepted nomination by the childless Richard himself. Henry justified his usurpation with any theory at his disposal, but this did not extend to accepting kingship at the hands of the people. The role of the people was respectably subdued, taking the form of a ritual approval--sometimes called an election--firstly by the estates of the realm in parliament, secondly by approval by the people during the coronation. The people had the right to refuse a monarch--though they were not to do so for nearly a century--but not in any sense to nominate or empower one on their own authority.¹⁸

17. Rotuli Parliamentorum 3: 422-3, and Hutchison, Hollow Crown, 229.

18. For Henry's claims to the throne see Hutchison, Hollow Crown 224-33. Schramm observes that Henry was said to have ensured a packed house (175) to secure his formal approval: election was still accorded a role in the making of a king, although it was a small one. Henry, arguing with rebellious monks about the validity of his kingship, is said to have reminded his opponents that he was duly elected: this point was his third argument, however, which suggests that it was a last resort and that his previous arguments--that Richard had abdicated and been deposed--carried more authority. See An English Chronicle from 1377 to 1461, ed. J.S. Davies (Camden Society, 1856) 25.

As an usurper Henry was necessarily vulnerable, which partially accounts for the extreme conservatism of his claims to the throne; he was, as Hutchison points out, careful to avoid the impression that he had gained the kingship primarily by parliamentary nomination.¹⁹ Firstly this was unprecedented and, to the conservative medievals, therefore of questionable validity. Furthermore, such nomination might imply a kind of contractual allegiance, the king answerable to the state which invested him; if parliament was conceded the privilege of making a king, it might well attempt to control him, perhaps even depose and replace him if, as was highly likely, he proved intractable. The more orthodox claim by divine appointment, on the other hand, was more likely to ensure that Henry enjoyed the rights and privileges of most of his predecessors.

The insistence of the divine authority of kings defines allegiance in terms of obedience, rather than loyalty, obligation rather than freely rendered service. The vassal has become a subject who owes allegiance to king, as to God, by obligation not by choice. It seems to have been taken for granted that the people granted their allegiance to the monarch simply by living on English soil under the protection of the king's laws. Possibly it was assumed that, since all oaths of fealty to lord or master contained a clause 'saving the fealty owed to our lord the king,' most or all men had indirectly sworn fealty to the king at one time or another;²⁰ but since no attempts were made to

19. Hutchison, Hollow Crown 225 and 232.

20. Statutes of the Realm 1: 227-8, 'Modus Faciendi Homagium et Fidelitatem.' The homage of freemen contained the clause 'sauve le foi que jeo doi a nostre seigneur le Roi:' the oath of villeins contained no such clause although this did not exempt them from charges of treason in the aftermath of the Peasants' Revolt.

discover whether alleged traitors had indirectly sworn allegiance or not, it is best to assume that the individually sworn oath was no longer the sole basis of allegiance. Those rebels who insisted that they did not owe allegiance to Henry while their Lord Richard still lived--he was popularly believed to be alive in Scotland--were treated as traitors. Allegiance to Henry was compulsory: allegiance to Richard void. It had, at the deposition, been formally and legally withdrawn on behalf of the whole people--including those who still wished to support him.²¹

The lords still swore allegiance to the king in the ceremony of homage and fealty, and this seems to have made some difference;²² the oath was after all binding on their honour, but allegiance was owed to the king whether they swore or not. And, since the subject cannot choose his allegiance, he is not free to revoke it at will; diffidatio, while it ends freely sworn allegiance, cannot revoke obligatory allegiance. By the later Middle Ages defiance did not exempt rebels from legal penalty, although diffidatio or something akin to it seems to have remained an important formal prelude to acts against the king; perhaps it was a matter of honour and tradition.²³ Richard, however, with a theocratic logic, made treason of the actual rendering up of

21. Hutchison, Hollow Crown 231, An English Chronicle 25, Rotuli Parliamentorum 3: 424.

22. See Rotuli Parliamentorum 5: 282-3.

23. See the Duke of Gloucester's confession in Rotuli Parliamentorum 3: 378-9. Gloucester attempted to discover whether it was legal--and safe--to render up liege homage to Richard. His memory was understandably defective on whether he had done so or not (rendering up liege homage had been made treason in 1397-8 and Gloucester may have feared that its terms would be applied to his own earlier diffidatio), but finally Gloucester seems to have admitted that he had temporarily rendered up liege homage and deposed Richard.

liege homage; the statute was repealed by Henry, though this need not indicate that diffidatio was therefore legally sanctioned.²⁴

The ultimate conclusion of theocratic rule is that an anointed king cannot be rightfully deposed by his people; the difficulties of enforcing a law of treason which included deposition are however obvious,²⁵ so the law of treason in Richard's reign could only encompass plots to depose the king. Richard's viewpoint derived from his idea of mystical kingship: he was to argue that a king consecrated to God cannot be unconsecrated,²⁶ which implies that the monarch's authority over his people cannot end although they deny it. As Ælfric would have it, once the king is consecrated the people cannot shake his yoke from their necks.²⁷

In 1399, however, Richard himself was deposed. Like Edward II before him, his abdication was procured.²⁸ He is said to have recom-

24. Henry in fact repealed all treason legislation other than that contained in 25 Edw. III stat. 5 c.6 on the grounds that the proliferation of laws was confusing. Henry of course, by the provision of the acts of 1397-8, was a traitor. See 1 Hen. IV c.10 in Statutes of the Realm 2: 114.

25. Lear, echoing Sir John Harrington's words, observes 'treason is only treason when it fails' on the principle that 'Treason doth ne'er succeed and what's the reason? / When it succeeds, no man dare call it treason' (17). C.f. Lacey Baldwin Smith, Treason in Tudor England: Politics and Paranoia, (London: Jonathan Cape, 1986) 1.

24. Anthony Steel, Richard II (Cambridge UP, 1941) 284.

27. C.f. priesthood: though a priest may break his oaths or be forced to live a secular life, he is nonetheless a priest for all eternity. But if it can be proved that a priest had no intention of keeping his vows or was barred from the priesthood in the first place, his ordination can be declared invalid. Henry implied that Richard--through possibly being illegitimate as well as not the lineal heir--was thereby forbidden to take kingship upon himself, and that his consecration was therefore invalid.

28. Harold F. Hutchison, Edward II: The Pliant King (London: Eyre and Spottiswood, 1971) 131.

mended Henry as his successor.²⁹ In this way the deposition and usurpation were invested with royal authority: 'le roy le veut' and thus none can disagree. Some weeks before this, however, a commission of scholars had been appointed by Henry to investigate the legitimacy of Henry's hereditary claim to the throne. They came to the surprising conclusion that, while Henry had no provable claim on the basis of lineage, the people and clergy on their own authority could depose Richard on account of his immoralities, depredations, and abuses. These, compiled into the thirty-three gravamina, were read in parliament to justify both the abdication and the deposition. Richard was absent; his request for fair trial was refused.³⁰ Quite apart from the real possibility that Richard might be acquitted, Henry was again suspicious of establishing precedents; it was an accepted part of the royal prerogative--which it was in Henry's long term interests to maintain--that the king was outside the cognizance of his own courts.

The validity of deposition on the authority of the clergy and people, and the justifying gravamina, however, are the most interesting points. The gravamina established Richard's unfitness to rule, accusing him of perjury--he had broken his coronation oath--tyranny, sacrilege, and practically everything else which contradicted the ideal of a good king. In theocratic terms, the people had no right to depose Richard, whatever his depredations; he was solely under God's jurisdiction. Yet there was, in law, a loophole which provided for the rightful deposition of kings, which had been given expression by none other than Bracton. The king, wrote Bracton, was called rex not from

29. Hutchison, Hollow Crown 226. It has however been said that Richard surrendered the crown to God and not to Henry (Steel 278).

30. Hutchison, Hollow Crown 228-9, Steel 82-3.

reigning but from ruling well; this saying was familiar to the Middle Ages.³¹ It implied that the king who rules badly--not least in breaking his coronation promises--forfeits God's authority; being without authority, he can be deposed by the people. A much later formulation expresses this well:

For a king to rule by lust, and not by law, is a creature which was never of God's making, not of God's approbation, but his permission: and tho' such men are said to be Gods on earth, it is in no other sense that the devil is called the god of this world. . . . All people who live at the beck and nod of tyrannical men may and ought to free themselves from that tyranny if, and when, they can; for such tyrants who so domineer with a rod of iron, do not govern by God's permissive hand of approbation or benediction, but by the permissive hand of his providence, suffering them to scourge the people, for ends best known to himself, until he opens a way for the people to work out their own infranchisements.³²

There is no sense, however, that the king who broke his coronation oath was guilty of treason. Kings are called traitors only in non-legal literature; not until Charles I was an English monarch convicted and executed for treason on the grounds that he had betrayed his allegiance to the realm.³³ The coronation promises were acknowl-

31. Bracton 505: 'Dictur enim rex a bene regendo et non a regando, quia rex est dum bene regit, tyrannus dum populum sibi creditum violenta opprimit dominatione.' See also Vita Edwardi Secundi / The Life of Edward the Second . . ., ed. and trans. N. Denholm Young (London: Thomas Nelson and Sons Ltd, 1957) 74: 'Cum rex a regendo dicatur, utpote qui populum legibus gubernare et gladio debeat ab inimicis defendere, dum bene regit conuenienter rex appellatur: dum populum spoliat tyrannus magis esse iudicatur.'

32. The Trial of Charles Stuart King of England: Volume One of a Complete Collection of State Trials and Proceedings for High Treason . . . [?1730] f.3^r col.2.

33. Trial of Charles Stuart f.2a^r col.1-2: 'For there is a contract and a bargain made between the king and his people, and your oath is taken: and certainly, sir, the bond is reciprocal, for as you are the liege lord, so they liege subjects. And we know very well what has been so much spoken of, "Ligeantia est duplex."' The book adds that, since the people on their part can be guilty of treason against the king, the king can commit treason against his folk.

edgements of the king's duties towards his people, but they were not oaths of fealty nor did they indicate reciprocal allegiance; allegiance was owed from the lesser to the greater, and an inversion of this was regarded as a dangerous oddity. If anything, the king owed allegiance to God, since it could be argued that he held his lands, in feudal fashion, from God.

Yet it is rare for anyone, let alone a king, to be accused of high treason to God. Though it could be justifiably argued that abuse of vested authority is a breach of allegiance to the investor, be it God or the king, such betrayal was not treasonable in English law--although extra-legally it was sometimes regarded as such.³⁴ Abuse of office was instead encompassed within misprision, which was a minor offence punishable with fines or loss of office, and at worst exile.³⁵ The monarch's misuse of God's authority seems to have more in common with misprision than treason; just as the corrupt justice forfeited his right to judge on behalf of the king, and could therefore be removed, the unjust king forfeited his authority to rule on God's behalf, and could therefore be similarly removed from office.

34. Cade's rebels, for example, described corrupt justices as traitors (Three Fifteenth Century Chronicles, ed. James Gairdner, Camden Society New Series 28, Westminster: Camden Society, 1880) 96, but abuse of office was a vague notion which, were it made treasonable, would allow the king or his barons to convict for treason those who had in some way proved uncooperative. This was not unknown; the Lords Appellant executed the Justices who replied, in a manner greatly disadvantageous to baronial power, to Richard's questions concerning treason and the royal prerogative. See Hutchison Hollow Crown 109-11, and for Richard's questions to the judges, The Statutes at Large . . . vol. 1, ed. Owen Ruffhead (London, 1769) 419-21.

35. See Bellamy, Law of Treason 216-24, and R.L. Storey, The End of the House of Lancaster, rev. ed. (Gloucester: Alan Sutton Ltd, 1986) 44 and 59 for the 'misprisions' of the Duke of Suffolk.

3:7 Attitude and Penalty

Treason was the cancer of the body politic: the diseased member was thought to have the potential to destroy the whole. Ties of allegiance inherently maintained social cohesion, institutional hierarchy, unity, and order; treason, materially and symbolically, attacked the very structure of society. Cade's rebels complained that the allegedly traitorous council about the king had

lost his law, his marchandyse is lost, his comon people is dystroyed, the see is lost, Fraunce is lost, the kyng hym selffe is so set that he may not pay for his mete nor drynke, and he owythe more then evar any Kynge of Yngland owght, for dayly his traytours about hym wher eny thyng shuld come to hym by his lawes, anon they aske it from hym.³⁶

Treason, to Wulfstan, had been one of the signs of the imminent apocalypse:³⁷ two or three hundred years later there was a feeling, expressed in apocalyptic language, that treason was not a symptom of impending destruction but a potential cause of the annihilation of society. This in itself was enough to summon the hatred of traitors and justify the especial severity with which they were treated in law.

The indicted traitor who escaped from prison before trial was automatically convicted. If, being brought to trial, he refused to plead, he would also be considered guilty, and, unlike non-pleading in cases of felony, was not exempt thereby from forfeiture.³⁸ If the accused could not be brought to trial, or died before trial, he could be attainted of treason, that is, declared guilty and subject to forfeiture.³⁹ This severity was extended to wrongful appeals of trea-

36. Three Fifteenth Century Chronicles 96.

37. Sermo Lupi Ad Anglos 40, 11.61-3.

38. 'Treason,' Encyclopædia Britannica.

39. Bellamy, Law of Treason 211-12.

son; the accuser was liable to the penalties for treason. Robert Goodgroome, the Molecatcher, indicted for felony, turned approver and obligingly revealed that several of his acquaintances had intended to kill the king with poison which Robert had discovered in the garden while he was looking for moles. The story implicated the molecatcher--he had not revealed the plot as soon as he discovered it, which was regarded as complicity by the fifteenth century--but it was on the grounds of wrongful accusation that Goodgroome was dispatched to Tyburn.⁴⁰

A duly convicted traitor, unless he could produce or acquire a valid pardon, could expect death. Women were drawn and burned; common men were drawn, hanged, cut down alive; they might then have their genitals cut off, be disembowelled--the entrails were then burned--before what was left was beheaded and quartered. Most traitors were subjected to forms of damnatio memoriæ; their remains were usually displayed in some public place, and unless the man's family could recover his remains he would be denied burial.⁴¹ Forfeiture of land and goods to the Crown was a universal element, which hinted at compensation to the monarchy, and Richard II barred the male descendants of those attainted in the 1397-8 Parliament from participation in Parliament or as counsellors.⁴²

40. Margaret Aston, 'A Kent Approver of 1440,' Institute of Historical Research Bulletin 36 (1963): 82-90. Robert's evidence is also printed, in modernised language, in Storey 199-202.

41. Bellamy, Law of Treason 23-4, also the fifth chapter of Bellamy's The Tudor Law of Treason: An Introduction (London: Routledge and Kegan Paul; Toronto and Buffalo: U of Toronto P, 1979) 182-227, Pollock and Maitland 2: 499 n.3, and W.R.J. Barron, 'The Penalties for Treason in Medieval Life and Literature,' Journal of Medieval History 7 (1981): 189-90.

42. 21 Ric. II c.6 in Statutes at Large 417 and Statutes of the Realm 2: 99.

The medieval penalty for treason was more systematically severe than its early precedents; Roman law designated the death penalty--perhaps by crucifixion or wild beasts--but this was generally commuted to exile in the Republic, being replaced by death again in the Empire.⁴³ However, the increasing severity of the Roman traitors' punishment lay in the forfeiture of land, goods and civil rights, and in the forms of damnatio memoriae which might be imposed on an executed man. Attempts might be made to destroy all record of him: mourning was forbidden; and his sons were barred from the magistracy, and even rendered liable to confiscation and infamy.⁴⁴ France, however, outdid Rome and England together: there it was argued that a traitor's descendants should die alongside him, lest they also be infected with treason;⁴⁵ and French traitors' deaths were often highly inventive, parodying the crime. Thus the counterfeiter Jean Jouye, who had smelted coin, was boiled alive.⁴⁶

In England it was not general practice to parody the crime through its punishment, although during the time of Edward I, when the full rigours of the penalty were new, sometimes writers related aspects of the crime to details in the punishment.⁴⁷ The main purpose of the English execution was to demonstrate that royal authority, through the process of law, had great power against resistance or opposition; it

43. Lear 29, Chilton 75-6, Rogers 238-9.

44. Lear 30-1. C.f. Tacitus, The Annals of Tacitus, trans. Alfred John Church and William Jackson Brodribb (London: Macmillan and Co. Ltd; New York: The Macmillan Company, 1921) 128-9.

45. Bellamy, Law of Treason 13.

46. Cuttler 118.

47. Barron, 'Penalties for Treason' 989-90.

visibly reasserted the power of order over chaos: punishment and death are shown to be

The successe of all rebels, and this fortune chaunceth ever to traytours. For when men strive against the streame, their bote never cometh to his pretended porte.⁴⁸

Apart from this emphasis on conformity to authority, the traitor's death served other practical and ideological ends: it was afflictive and, being public, therefore exemplary; it expressed the conventional attitude towards traitors while in itself it also helped to create that attitude. The very indignity of the manner of execution emphasised the traitor's shame: drawing, or the commuted equivalents of walking or riding, publicised the traitor; he was an object of curiosity, perhaps of disgust, and therefore alienated from those he had put 'en point destre destruire.'⁴⁹ The agony of the execution proper was intended to be shocking; Edmund Jennings, the disembowelled priest who bravely cried 'To Saint Gregory!' probably showed unusual self-control.⁵⁰ If anything, the execution stressed a traitor's bestiality by forcing him to behave bestially; the butchering of the traitor, as

48. Hall's Chronicle (London, 1809) 222.

49. Bellamy (Law of Treason 18) observes that drawing was the hallmark of treason, but the desire to publicise wrongdoing seems to have determined the use of drawing for lesser crimes; an illustration in a 1397 Charter shows a baker being dragged through the streets. The scales above his head indicate that he had sold shortweight bread (J.B. Post, 'Faces of Crime in Later Medieval England,' History Today Jan. 1988: 21). Originally drawing was afflictive, but eventually the hurdle was introduced which, as Pollock and Maitland observe, secured a living body for the hangman (2: 500). The approach to the place of execution, whether by drawing or otherwise, was a popular spectacle; the much hated Tiptoft, the 'Butcher of England,' set off from Whitehall at 3 p.m. expecting to be executed on Tower Hill by nightfall. Unfortunately his progress was delayed by spectators, and he had to be lodged in the Fleet overnight, before being duly executed a day late (The Great Chronicle of London, ed. A.H. Thomas and I.D. Thornley, London and Aylesbury: George W. Jones, 1938: 121-13).

50. Bellamy, Tudor Law of Treason 205.

Adam of Usk observed, resembled the treatment of captured game--indeed the details of the execution itself may have been instituted with that in mind.⁵¹ And to the medieval mind, to resemble a beast, at least in its less noble aspects, was to be disgusting. The unpopular Richard III, in death, is said to have been 'like an hogge or another vile beest.'⁵²

The ultimate destination of the traitor's soul was uncertain. Since God's mercy is infinite, the repentant traitor could be saved, and his execution could be interpreted as a penance in remission for his sin.⁵³ Man's mercy, however, was not so great. The author of the Leges Henrici Primi seems certain that the traitor is damned: Dante populated the innermost circle of Hell with traitors, and Thomas Turberville went to his death surrounded by tormentors dressed as devils.⁵⁴ The two penalties of hanging and disembowelling, whether by accident or design, recall the fate of Judas: the traitor hangs with Judas rather than Christ, and Judas was popularly believed to have been damned.

51. Adam of Usk, Chronicon (1377-1404), ed. and trans. Edward Maunde Thompson, 2nd. ed. (London: J. Murray, 1904) 42 and 198. W.R.J. Barron examines this parallel in some depth, though does not suggest that the details of the execution were instituted with it in mind (Trawbe and Treason: The Sin of Gawain Reconsidered, University of Manchester Faculty of Arts Publications 25 (Manchester UP, 1980) 62.

52. Great Chronicle of London 238.

53. See for example Robert Fabyan, The New Chronicles of England and France, ed. Henry Ellis (London, 1811) 675.

54. Leges 232-3, c.75 s.1a, Dante Alighieri, Inferno, trans. Allan Gilbert (Durham, N. Carolina: Duke UP, 1969) 290-1, canto 34 ll.55-67 (dual text edition), Barron, 'Penalties for Treason' 198 and J.G. Edwards, 'The Treason of Thomas Turberville, 1295,' Studies in Medieval History Presented to F.M. Powicke, ed. R.L. Hunt et al., (Oxford: Clarendon Press, 1948) 308.

Noblemen on the whole were treated less severely; their penalty might be commuted to beheading. Possibly it was considered that sufficient justice would be meted out in the afterlife;⁵⁵ the nobleman was on earth accorded great respect and this generally secured him a relatively dignified end.⁵⁶ This upheld the honour of the upper classes, but occasionally even a nobleman's treason was thought to be such that it earned him the full penalty.⁵⁷ This, more than anything else, emphasises the abhorrence with which treason was regarded; its seriousness could override class distinction and oblige the privileged nobleman, who 'would not be a pattern of virtue, and example of justice in his life,' to be an example of justice in his death.⁵⁸

55. See Bracton 32 and 306 for an opinion on social distinctions and the law.

56. See Beach Langston, 'Essex and the Art of Dying,' The Huntington Library Quarterly 2 (1950): 109-129 for an interesting account of how one great man met his execution in 1601.

57. See for example Hutchison, Edward II 150 for the fates of the Despencers.

58. Trial of Charles Stuart f.5^r col.2.

SECTION TWO

TREASON IN LE MORTE DARTHUR

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'To put it another way, every love relationship is based on unwritten conventions rashly agreed upon by the lovers during the first weeks of their love. On the one hand, they are living in a sort of dream; on the other, without realising it, they are drawing up the fine print of their contracts like the most hard-nosed of lawyers. O lovers! If you serve the other party breakfast in bed, you will be obliged to continue same in perpetuity or face charges of animosity and treason!'

Milan Kundera, The Book of Laughter and Forgetting 36.

Preliminary to Section Two:

Treason in Le Morte Darthur

In general, extended study of the role of law in literature, and indeed the interpretation and evaluation of literature by reference to law, has been more popular with critics dealing with French medieval texts than English books, though W.R.J. Barron has investigated treason in Gawain and the Green Knight and Hornsby has written on Chaucer's use of law:¹ and there have recently been several articles^{on} law and treason in medieval English romances, including several on Malory's legal allusions and ideas of treachery, as well as passing mentions of his legal ideas in other articles and works.² Whilst the law, in Malory's book at least, is not a major theme, it nevertheless demands some elucidation, because the themes and meanings of a medieval work can rarely be divorced from their historical context.

Malory was not ignorant about law. What is known of his life suggests that he was involved with law-making as well as law-breaking; he may have been an M.P..³ There are several incidents in his book which suggest he had a layman's knowledge of both criminal law and legal and extra-legal procedures, in addition to his portrayal of treason which reflects, to some extent, treason in English law. He occasionally analyses, develops and modifies the legal material he inherited

1. W.R.J. Barron, Trawbe and Treason esp. pp. 30-40, and Joseph Allen Hornsby, Chaucer and the Law (Norman, Oklahoma: Pilgrim Books, 1988).

2. See John Alford and Dennis P. Seniff's excellent Literature and Law in the Middle Ages: A Bibliography of Scholarship (New York and London: Garland Publishing, 1984), esp. items 267-329.

3. See P.J.C. Field, 'Thomas Malory: The Hutton Documents,' Medium Aevum 48 (1979): 214, and 'Sir Thomas Malory, M.P.,' Bulletin of the Institute of Historical Research 47 (1974): 26.

from his French sources; and his book also contains an element of military law and a certain amount of speculation on points of law which were outside the scope of English statute and had yet to come before the courts for legal decision as to their possible traitorousness.

Despite the inclusion of some legal material, Malory is nonetheless not writing a book exclusively about law and, even though treason is important to both plot and meaning, he is not writing a book exclusively about treason either. If treason is indisputably important to both the plot and theme of some portions of the book, it is not always in the forefront of the author's mind: there are long periods in which Malory does not mention treason at all--even at times when one might expect him to. But any interpretation of the Morte has to acknowledge the lack of consistency in Malory's interests, plots, the information he gives, even on occasion in his thematic handling of his material.

I have tried, though not always successfully, to avoid giving the false impression that 'Malory thought' certain things about 'Arthurian law and treason,' which suggests he was consistently and consciously attempting to portray a complete legal system as a thing of interest in itself. Malory's law and treason is synthesised from a variety of often conflicting English and French books, and supplemented by Malory's own knowledge of real life process, and like his very book (or books) is uneven. While Malory notes that Arthurian law is a historical entity, separate from English law, elsewhere Arthurian treason and law reflect the English system.

In the following section I have not assumed, even though Malory seems to think his readership are aware of the extent of English treason, that all the English crimes of treason which appear in the book are necessarily treasonable according to Arthurian standards. I have drawn attention to some incidents which are treason according to contem-

porary fifteenth-century law, and also to those crimes which, though they are not necessarily called treason in Malory's book, reflect the French tradition of treason, but I have not habitually classified anything as a treason unless Malory as narrator, or at least one of his characters, states or implies its traitorousness. However, in some cases, when a character calls such and such an act treason, this may say more about the character than it does about the act or the fictional legal milieu. Law and treason in Malory's book are subservient to literary effect: sometimes treason serves as a plot device, sometimes the word is employed as an insult, sometimes it designates a genuine crime in a synthetic legal system.

Despite this variety, however, it is my belief that the sets of crimes called treason in the Morte Darthur have, within their individual groupings, a kind of conceptual unity, which though it is not that of treason in real life, is nonetheless very much in keeping with the primarily personal and ethical, rather than political, emphasis of law and justice in Malory's book. In the following section I have indicated the scope of the crime of treason in the Morte Darthur, commenting where appropriate on each treason's historical origins and parallels.

Chapter Four:

Malory and the Treasons of French Law

4:1 Treason in French Customary Law

As in Anglo-Saxon law and English law of the High Middle Ages, the thirteenth century French coutumiers drew a distinct line between homicide and murder.¹ Homicide is a public, open killing, one as a result of an argument leading to a fair fight: murder is a secret or premeditated killing which is not the spontaneous result of a fight provoked by a verbal quarrel between killer and victim; a homicide committed at night; a killing in which the victim has been surprised, ambushed, or otherwise denied a chance at self-defence. St. Louis, in fact, observed 'Murtres si est d'ome ou de fame quant l'en la tue en son lit, ou en aucune meniere por coi ce ne soit en mellée.'²

The distinction between murder and homicide is important for our purposes, because the coutumiers consider murder to be a treason:

Traïsons si est quant l'en ne moustre pas semblant de haine et l'en het mortelment si que, par la haine, l'en tue ou fet tuer, ou bat ou fet battre dusques à afoleure celui que il het par traïson.³

'Nus murtres n'est sans traïson,' observes Beaumanoir, but he adds that there are other treasons besides murder:

1. This issue is treated in some depth in R. Howard Bloch, Medieval French Literature and Law (Berkeley, Los Angeles and London: U of California P, 1977) 33-7.

2. Les Etablissements de Saint Louis, ed. P. Viollet, vol. 2 (Paris: Renouard, 1888) 37, cited Howard Bloch 36. 'It is murder of a man or woman when one kills him in bed, or in any way so that there is no fight.' Trans. Howard Bloch 36 n.65.

3. Phillipe de Beaumanoir, Les Coutumes des Beauvaisis, ed. André Salmon, 2 vols. (1899-1900; Paris: A & J Picard, 1970) 1:430 c.837. 'It is treason when one does not show a sign of hatred, and hates mortally, so that by the hatred one kills or has killed, or beats or has beaten into unconsciousness, by treason, the one who he hates' (my translation).

Nus murtres n'est sans traïson, mes traïsons puet bien estre sans murtre en mout de cas; car murtres n'est pas sans mort d'homme, mes traïsons est pour battre ou pour afoler en trives ou en asseurement ou en aguet apensé ou pour porter faus tesmoing pour celi metre a mort, ou pour li deseriter, ou pour li fere banir, ou pour li fere haïr de son seigneur lige, ou pour mout d'autres cas semblables.⁴

Traïson consists primarily of crimes of 'unfair' conflict.⁵ To murder is to kill a man unawares: to ambush or to attack one who believes himself safe within the terms of a truce or a safeconduct, puts the perpetrator at an advantage (and implies his flagrant disregard for the authority of the lord or king who issued the safeconduct or truce). Treason by perjury to the detriment of one's victim suggests many things: there is the possible abuse of legal process, for example, as well as the fact of oath-breaking per se: but primarily, to provide false evidence against a man is to oppose him in such a way that he could find it difficult to rebut the charge. It is not necessary to succeed in having one's victim executed or disinherited and so on: it is enough that one should attempt to do so.

French customary law did not forbid conflict between fellows: one could engage in verbal or physical debate, even if this led to the killing of one of the disputants. In a mutual fight, however, the victim contributed, perhaps even consented, to the possibility of his own death: the killer's guilt was therefore the less. A death as a result of conflict en traïson, however, did not allow the victim to

4. Beaumanoir 1: 430 s.827. 'There is no murder without treason, but there can be treason without murder in many cases; for it is not murder without the death of a man, but it is treason to assault someone, or to injure someone during a truce or a safe-conduct, or by ambush, or to bear false testimony in order to put someone to death or in order to disinherit him or in order to exile him or to cause him to be hated by his liege lord, or for many other similar cases' (My translation).

5. Howard Bloch 36-7.

contribute or consent to a fight or his own death.⁶ Such conflict is therefore a violation of the principle of consent which partially underlies the distinction between murder and manslaughter. Death by murder violates the victim's right to know that malice is directed at him and his right to justifiable self-defence. And beyond this, there is also the 'false-seeming' of the perpetrator, who lives within the community with apparent good faith, whilst simultaneously harbouring malice towards others, a malice which is expressed through violence or cunning in such a way that it is not easily detected by others until it has achieved its end. The traitor is the cancerous element in the community, Chaucer's 'smylere with the knyf under the cloke.'⁷

The French customary definition of treason appears at first sight to be an anomaly in the European ideas of treason as a crime in violation of allegiance: the coutumiers are primarily speaking of treachery. Treason proper is a breach of a specific allegiance to a person, community, or ideal. Treachery has no such specific basis: one can be treacherous towards any or everyone, regardless of relationship or status. This is not to say that treachery precludes relationship: it does not. Treachery was attributed to the character of the traitor, because one can commit treason with treachery. But in England at least, one could be treacherous without being a traitor: in France, little distinction was made, in law, between the two. Beaumanoir in fact acknowledged little difference between a trickster and a traitor.⁸

6. Howard Bloch 37.

7. Chaucer, The Knight's Tale 1.1999. All subsequent line references to Chaucer are from F.N. Robinson, The Complete Works of Geoffrey Chaucer, 2nd. ed. (1957; Oxford UP, 1974).

8. Beaumanoir 1:502 c.992.

The French definition of treason is an elementary form of treason against the people, though it differs from the Roman Republican notion in one important respect. To murder or beat or deceive a common man, who perhaps has no position of importance, may not threaten the security and survival of the common weal in which one lives: traïson can therefore be interpreted as a violation of trust and good faith owed, through social contract, to fellow men as individuals rather than as a group.

4:2 Murder and Treason in England

Malory's most consistent and frequent departure from English law is his equation of murder with treason. There are four appeals of treason--that is, four court cases instigated at the personal suit of the accuser--for a crime of murder in Malory's book:⁹ and the Orkney clan's murder of Lamerak, at odds of four to one culminating in Mordred stabbing the knight in the back, is called treason (699.28); so is Mark's surprise killing of Bersules (578.30), his brother (633.25, 28), and finally the unarmed, unawares, Tristram (1173.16).

In the fifteenth century, while murder was treason in Irish and Scottish law,¹⁰ it was not in English law and, strictly speaking, never had been. Prior to the 1352 Statute, ambush, beatings, and killings done openly, as part of private warfare, or covertly, had

9. All subsequent references to Le Morte Darthur are taken from The Works of Sir Thomas Malory, ed. Eugène Vinaver and P.J.C. Field, 3rd. ed (Oxford: Clarendon Press, 1990) according to page and line numbers. Sir Blamour appeals Angwysshawnce in Arthur's court under the judgment of King Carados and the King of Scots (404.16-32); Bersules appeals Mark before Arthur (592.22-4); Archade appeals Palomides before Galahalt the High Prince (658.12-16); and finally Mador de La Porte appeals Guenever before Arthur (1050.1-2).

10. Baker 423, and see also Henryson's The Tod in A Choice of Scottish Verse 1470-1570, eds. John and Winifred MacQueen (London: Faber and Faber, 1972) 81, where the fox is regarded as a traitor for, amongst other things, killing a lamb.

occasionally been judged, in law, as treason.¹¹ These judgments, however, were not strictly acceptable in English law and were duly outlawed in the Statute of Treasons, although there remained isolated cases thereafter. Murder, in England, was not made treason until Henry VIII designated poisoning as such and penalised it with boiling.¹²

It is also questionable whether there was an English extra-legal equation of murder and treason. In Chaucer, writing not very long after the Statute was issued, there is an intimation that certain forms of murder, at least, could be extra-legally regarded as treason; he refers to the 'treasoun of the mordrynge in the bedde,'¹³ although Robinson suggests that this is an allusion to the Legend of Good Women, where Ypermystre is ordered to murder her sleeping husband. She describes herself as a traitoress;¹⁴ but, obviously, the murder is one which falls under the 1352 provisions for petty treason. Still, since murder--even in bed--was not legally treason in England, it is natural that Robinson would interpret Chaucer's comment as a literary, not a legal allusion; and this may not be the case. Chaucer spent some time in France, and may well have known of treason by murder in what was, by the late fourteenth century, archaic French customary law. His observation, in the Man of Law's Tale, on 'This false knyght, that hath this tresoun wrought,'¹⁵ substantiates this; it refers to the

11. Presumably French ideas of murder as treason, perhaps even through literature, had influenced the justices who dealt with such crimes.

12. Baker 423 n.31.

13. Knight's Tale 2001.

14. See Robinson's note to 1.2001 of The Knight's Tale (p.677), and c.f. Legend 2655-60 and 2699-702.

15. Man of Law's Tale 619.

murder of the sleeping Hermengylde, a killing which is premeditated, concealed, unfair and has an extra dimension of treachery in that the knight contrives to place the blame on Custance. And in the Nun's Priest's Tale the fox lies, concealed, awaiting Chauntecleer;

As gladly doon this homycides alle
That in await ligen to mordre men.
O false mordreour, lurkyng in thy den!
O newe Scariot, newe Genylon,
False dissymulour, o Greek Synon,
That broghtest Troye al outrelly to sorwe!¹⁶

Chauntecleer is called a king, but the main treachery of the fox consists of deceiving the bird with flattery; and this does not account for the association of the murderer with the traitors in the lines cited above.¹⁷

Still, that Chaucer knew of the French legal tradition does not prove an English tradition. What French influence there was in England, was sporadic, and was probably introduced through literature in which murder is depicted as a treason; the stanzaic Morte Arthur, for example, following the Mort Artu, equates murder with treason.¹⁸

16. Nun's Priest's Tale 3224-9.

17. Chaucer, however, was not ignorant of the English legal tradition. The fox refers to his abduction of the cockerel as a mere trespass (3420-2), which, were the bird and the fox human beings, would have been legally the case according to the 1352 Statute.

18. All line references to the stanzaic Morte are from Le Morte Arthur: A Critical Edition, ed. P.F. Hissiger, Studies in English Literature 96 (The Hague: Mouton, 1975): references, by page and line, to the Mort Artu are to Jean Frappier's La Mort le Roi Artu: Roman du XIII^e Siècle (Paris: Librairie E. Droz, 1936). In the stanzaic Morte Lancelot hears how 'Quene Genure the bright / Had slayne with grete tresoun / A swithe noble Scottisse knight' 936-8, which is drawn from the French's earlier 'la reine qui en traïson a ocis mon frere' 68.27-8 ('The queen who has killed my brother by treason,' my translation). The poet has evidently remembered the equation, since at no point during Lancelot's conversation with Bors in the French is treason mentioned.

That Malory finds it necessary to explain the Arthurian custom of defining murder as treason further suggests that by the fifteenth century at least there was no extra-legal English tradition to this effect: and the lack of an English tradition suggests in turn that Malory's equation of murder with treason is derived almost exclusively from French customary law as it is reflected in his sources and perhaps other French literature besides.¹⁹ Treason by murder is a commonplace of medieval French literature; there are many examples in Chrétien; in Malory's sources, Marc, for example, is appealed of treason for his murder of Amans; Guenièvre is likewise brought to court for the poisoning of Gaheris de Karaheu;²⁰ Malory, with some modifications, retains these incidents and the idea of treason they contain.

The killing of Gaheris and Gareth by Lancelot, however, is the most revealing of all of the treasons by murder in Malory's book, and the investigation of Malory's presentation of murder and treason can most profitably begin here.

4:3 Lancelot's Killing of the Orkney Brethren

In Malory's English source, the stanzaic Morte, Lancelot is

19. C.f. Earnest York, 'Legal Punishment in Malory's Morte Darthur,' (English Language Notes Sept. 1973) 17, and Howard Bloch 36 n. 61: 'Malory understood the archaic meaning of treason.'

20. See Chrétien de Troyes, Le Chevalier au Lion (Yvain), vol. 4 of Les Romans de Chrétien de Troyes, ed. Mario Roques (Paris: Honoré Champion, 1975) 38 ll.1231-1236, where Yvain is told 'Mes ce, commant pot avenir / que tu mon seignor oceïs, / se an traïson nel feïs? / Ja voir par toi conquis ne fust / mes sires, se veü t'eüst.' 'How has it come about that you killed my husband, if not by treason? My lord would never have been defeated by you, if he had seen you' (my translation). See also Tristan 1489 (Facsimile rep. of ed. by Jehan le Bourgoys of Rouen; London: The Scholar Press, 1976) f.cc.ii^v col.2-cc.iii^r col.1. P.J.C. Field in 'The French Prose Tristan: A Note on Some Manuscripts, a List of Printed Texts, and Two Correlations with Malory's Morte Darthur,' Bibliographical Bulletin of the International Arthurian Society 41 (1989): 285 cites fols. cc.i-kk.i as correlating to the 'Mark' section of Malory's sixth tale.

completely innocent of the treason of which he is accused by Gawain. Gareth and Gaheris attend Gaynor's execution without arms, and are killed: but not by Lancelot.²¹

In the French Mort Artu, however, Gauvain's accusation of treason against Lancelot for the killing of Gaheris has a factual basis. Gaheris has lost his helmet and is confused: Lancelot, without warning him to defend himself, cuts his head in two. The killing is therefore unfair and arguably a treason by murder. Lancelot's retinue dispute the accusation, of course: Boorz observes that since Lancelot killed Gaheris without concealment, but in a press of a hundred knights, it cannot be called treason but is an open homicide; furthermore the propriety of Gauvain's accusation is questioned--the process of exceptio--suggesting that his cry of treason is motivated purely by malice and vengeance and is therefore invalid.²² Lancelot's guilt is therefore ambivalent.

Malory's version of the episode includes matter from both sources; both Gareth and Gaheris refuse to bear arms against Lancelot, attend the execution unwillingly under Arthur's orders, and are then killed by Lancelot in the thick of the fight. It is this which occasions Gawain's sudden reversal from supporting Lancelot to hating him. Part of this hatred is caused by the manner in which Lancelot killed the brethren:

"Alas," seyde sir Gawayne, "they beare none armys ayenst hym, neyther of them bothe."

"I wote nat how hit was," seyde the kyng, "but as hit ys sayde, sir Launcelot slew them in the thyk prees and knew them nat" (1185.30-4).

Later this takes an additional dimension when Gawain, irrationally, concludes that Lancelot must have killed the brothers intentionally;

21. Stanzaic Morte 1940-1, 1962-3.

22. Mort Artu 161.21-9, Howard Bloch 42-46.

"what cause haddist thou to sle my good brother sir Gareth that loved the more than me and alle my kynne? And alas, thou madist hym knyght thyne owne hondis! Why slewest thou hym that loved the so well?" (1189.12-15)

Lancelot says he did not see them. Gawain replies

"Thou lvest, recrayed knight . . . thou slewyste hem in the despite of me" (1189.22-3).

He also, despite having earlier exculpated Lancelot of all blame for Aggravayne's death, begins to rebuke Lancelot for that;

"thou hast slayne three of my brethyrn. And two of hem thou slew traytourly and piteously, for they bare none harneys ayenste the, nother none wold do" (1199.7-10).

The treason of which Gawain speaks is similar to the French notion I discussed above. Lancelot, according to Gawain, killed the brothers deliberately and maliciously by means of an unfair advantage.

Malice, premeditation, and unfair advantage are the factors by which a 'slaying' is designated treason in other parts of the book. Earlier on Lancelot has commented on such a case: Gaheris's killing of Morgawse, he observes, 'is a grete myscheff fallyn by felony and by forecast treason, that your syster is thus shamfully islayne. And I dare say hit was wrought by treson' (613.13-6). What he means is that the killing was deliberate and wicked (a 'felony'), was planned in advance ('forecast'), and was perpetrated with unfairness and treachery ('wrought by treson'). He is correct, because Gaheris had watched to entrap his mother and her lover Lamerak, and kills Morgause, naked and unawares, in bed.

In Malory's book, however, Lancelot's innocence of treason by murder is firmly established, in part by reference to English legal tradition. Malory's distinction between treason and homicide more or less coincides with English law's distinction between murder and homicide. Murder, in English law, was defined as an unprovoked, premedi-

tated killing and was punishable by death; killings by misadventure and in self-defence were pardoned as a matter of course.²³ Malory correspondingly shows treason by murder as involving malice, premeditation, and unfair attack; it is also subject to the judgment of a court, and is potentially punishable with death. Homicide is the result of knightly fighting according to honourable rules, and is not justly subject to formal court process. The only example of homicide being classified as treason and being brought into court, in fact, is Archade's appeal against Palomides for the killing of Gonereyse (658.9-28). Palomides has killed Gonereyse, but he did so in a trial by combat before Galahalte the High Prince. Trials in the Court of Chivalry were recognised by English common law, and the victor could not be held culpable of the death of the defendant: however, Archade, in grief, may have assumed--as Lancelot later assumes with regards to King Mark--that the outcome of the judicium dei was somehow manipulated to Palomides' advantage, in which case Palomides could be thought to have killed Gonereyse unfairly and with, in a maner of speaking, treason.²⁴ The outcome of the duel, however, indicates that Palomides has committed no treason.²⁵

Extra-legal penalties are sometimes inflicted for homicide in Malory's book: Tristram, for example, is captured and imprisoned for the killing of sir Darras' sons in a tournament; he is innocent of murder and is granted a lesser punishment as a result. Tristram ex-

23. Baker 429.

24. Though, of course, it is equally as likely that Malory had not considered the legal implications of the battle or had forgotten--as the reader is likely to do--the circumstances of Gonereyse's death.

25. See Nadine Eynon, The Use of Trial By Battle in the Work of Sir Thomas Malory, unpublished M.A. Thesis (Saskatoon, 1974) 73-4 for a consideration of this incident.

plains his conduct thus:

"and they had bene the nexte kyn that I have, I myght have done none othirwyse; and if I had slayne hem by treson other trechory, I had bene worthy to have dyed."

"All thys I consider," seyde sir Darras, "that all that ye ded was by fors of knyghthode, and that was the cause I wolde nat put you to dethe" (552.21-6).

Many of the knights in the Morte Darthur, however, attempt to avenge with death not only murders of their kinsmen or friends but killings committed in a fair fight--even killings legitimately perpetrated during a war. This procedure of vengeance for homicide is however subject, at the discretion of the victim's kin or friends, to extra-legal process only.

The killing of Morgawse and, if Gawain's assumptions on Lancelot's motives are correct, Lancelot's killing of the Orkney brothers, are crimes of murder according to the law of Malory's day, and, by the standards of Arthur's day, are therefore treasons. It is the terminology, not the crime, which is different: Malory knows what murder is in English law.

Consequently Gawain is in Malory's version of the tale in the wrong. By the standards of English law Lancelot is innocent of murder, and this innocence by extension suggests that he is innocent of treason. The French version says that Lancelot did not recognise (connut) Gaheriet; this implies that had he known the identity of the man he kills, he would not have done so.²⁶ But nevertheless he kills a stranger en traïson, so Gawain's accusation is fundamentally accurate. In Malory, Arthur suggests that Lancelot did not recognise ('know') Gareth and Gaheris (1185.34); both Malory and Lancelot himself, insist that Lancelot did not see them:

26. Mort Artu 100.3.

in thys russhynge and hurlynge, as sir Launcelot thrange here and there, hit mysfortuned hym to sle sir Gaherys and sir Gareth, the noble knyghte, for they were unarmed and unwares. As the Freynshe booke sayth, sir Launcelot smote sir Gaherys and sir Gareth uppon the brayne-pannes, wherethorow that they were slayne in the felde. Howbehit in very trouthe sir Launcelot saw them nat. And so were they founde dede amonge the thyckyste of the prees (1177.31-1178.5).

If Lancelot did not see them, he can not have intended to kill them, nor would he know they were unarmed, and therefore he cannot have taken an unfair advantage. The killing is therefore perpetrated by misadventure rather than treason. Furthermore, Lancelot's killings of Arthur's other knights are said to be ones of self-defence:

I was forced to do batayle with hem in savyng of my lyff, other ellis I muste have suffired hem to have slayne me (1188.4-6).

Lancelot's killings of the Orkney brothers and Arthur's knights are therefore seen to be homicides according to the criteria of English law: they are not murders, and therefore they are not Arthurian treasons.

Not all murders, however, are committed by knights in unfair combat. There are three cases of poisoning or attempted poisoning in Malory's book: the plot against Arthur's life, which Pellinore overhears, and which is presumably instigated by the five kings and is to be carried out by one in Arthur's court (118.7-28); Melyodas' queen's attempt to poison Tristram, which leads to the killing of her own son (373.16-27); and Patryse's death by poison in the seventh tale. The first case is evidently a case of high treason by adhering to the king's enemies and conspiring his death; the second is also high treason--Tristram is Melyodas's heir--with a subsidiary element of murder; the latter case is merely one of treason by murder, and I would like to look at this in some detail.

4:4 The Poisoning of Sir Patryse

One cannot easily poison someone in spontaneous self-defence. It is of course possible to poison someone by accident, or to poison someone other than one's intended victim. This latter mischance happens to Pyonell, who poisons Patryse rather than his intended victim Gawain. However in English law it was said that

if an impoisoned apple bee laid in a place to poison I.S. and I.D. cometh by chance and eateth it, this is murther in the principall that is actor, and yet the malice in indiuiduo was not against I.D.²⁷

Because poisoning implies the necessary criteria of premeditation, it is obviously murder by the English standard and treason by the French. Following his source, Malory calls it treason; and Mador, as in the Mort Artu,²⁸ appeals Guenever of it.

There are, however, differences between the English and French stories. In the French, Guenièvre is presented with a fruit during the course of dinner, which she, unmindful of treason, presents to Gaheris de Karaheu; he dies. She is therefore materially guilty of his death in that she gave him the apple, but morally innocent of it in that she was unaware that it was poisoned.²⁹ It is observed that however she gave him the fruit, the deed is wicked: but if she knew the fruit was poisoned, she is guilty of a capital crime; of, in fact, premeditated murder or treason.³⁰

27. Bacon, 'Principall Rules' in his Elements of the Common Lawes . . . 65.

28. Mort Artu 69.15-18.

29. Howard Bloch 41.

30. Mort Artu 62.7-12.

Mador's wording of his appeal assumes that Guenièvre is morally guilty; she killed his brother 'desloiaument et en traïson.'³¹ The manner of the killing--poison--implies intent and therefore treason; while some of Arthur's knights half-grasp the possibility that the intent to kill may not have been Guenièvre's, most cannot formulate it; material guilt cannot be separated from the notion of guilty intent, and no-one is willing to risk his life as her champion. Thus it is that Guenièvre's intent, whether she premeditated murder, rather than whether she killed Gaheris, is on trial. And human judgment precedes the judicium dei which could prove her innocence: the knights of the court refuse to act as her champion since they equate material with moral guilt. Lancelot, agreeing to take the challenge through loyalty to her alone, does not deny that the queen was the instrument by which Gaheris received his poison; he instead denies that she gave him poison knowingly and by treason, that is, with malice and premeditation.

This is the difference that the court has almost grasped but never fully formulated; material guilt need not imply guilty intent. Once it is appropriately phrased, Gauvain suddenly realises that the queen is innocent as charged. Ultimately Lancelot's wording of denial reduces the case to the absolute right versus wrong demanded by the feudal judicial machinery, which was ill equipped to deal with shadowy cases of half-guilt such as Guenièvre's.³²

In Malory, Pyonell poisons apples and pears and leaves them for Gawain to eat. Guenever had the banquet prepared, but she does not herself offer a fruit to Patryse; instead the knight himself takes it.

31. Mort Artu 69.15, 'disloyally and with treason' (my translation).

32. See Howard Bloch 28-31 and 51-2 for a discussion on the implications of the poisoning of Gaheris de Karaheu.

Malory therefore circumvents the material guilt/moral innocence problem posed in his source; the only reason the Knights of the Round Table have for suspecting Guenever is that she 'made the feste and dyner' (1049.15-16; 18; 31-2 etc.) and may have done so to enable her to murder Patryse or someone else. The presumption of her material and moral guilt is based on circumstantial possibility: Guenever had the opportunity to poison Patryse. This looks forward to Arthur's summary conviction of Guenever for traitorous adultery on similar circumstantial evidence: and in both incidents the law is questionably just.

In the appeal of treason, however, Bors is persuaded to fight for Guenever, and prior to combat he straightforwardly asserts 'she ys in the ryght, and that I woll make good that she ys nat culpable of thys treson that ys put upon her' (1055.22-4) in reply to Mador's statement that the queen 'ded thys treson untill hys cosyn sir Patryse' (1050.17-8). And Lancelot, arriving to take Bors' place in the battle, succeeds in having Guenever released from Mador's quarrel. But he does not prove her innocence: he only acquits her of liability, because Mador's life is spared. It is the intervention of the Damsel of the Lake which proves Guenever's innocence: Pyonell is revealed as the guilty party, and he escapes to his own lands. There is no inquest, torture or execution as there is in the stanzaic Morte:³³ Malory employs supernatural 'machinery' as a medium of truth, and the outcome of the tale is advantageous to all who participate in it.

4:5 Related Crimes

Malory replaces the moral innocence/material guilt problem of his source with a more straightforward account of accusation and disproof.

33. Stanzaic Morte 1648-67.

More importantly, he also substantiates murder as treason by implying that murder involves a variety of breaches of trust. Malory introduces an element of false-seeming and treachery, beyond that implicit in the fact of murder, by presenting the idea that Guenever made her feast, ostensibly in love and the spirit of hospitality, to facilitate murder. This does not appear in the French book and the stanzaic Morte, where the meal is not provided by Guenever. Elsewhere in Malory's book the same breach of specific trust is implied through murder: Angwysshaunce, who is accused of killing by treason a foreign knight in his court, if he is guilty, has violated hospitality (404.31-2); so has King Mark in inviting, with apparent love, his brother and nephew to dinner with the express purpose of killing both; and Mark and Andred's treatment of Gaheris and Kay is equally inhospitable; 'ye ar false traytours, and false treson have ye wrought under youre semble chere that ye made us' (549.9-11). The crime of treason by murder is concealed conflict, but it is exaggerated when it is conflict concealed under a display of love.

Both Lancelot and Guenever, in addition to their supposed treasons, are perceived by their enemies to have committed further breaches of trust related to their alleged act of treason. Being appealed of the death of a knight causes Guenever's popularity to wane and allows Arthur's knights to observe 'as for quene Guenyver, we love hir nat, because she ys a destroyer of good knyghtes' (1054.3-4), a violation of her queenly obligation to maintain knights. Gawayne intimates that Lancelot is 'bothe false to the kynge and to me' (1200.19-20).³⁴ Gawayne has earlier refused to speak any shame of Guenever, and it is possible that he is not referring to Lancelot's traitorous adultery when

34. Chronique de la Traïson et Mort de Richart Deux Roy Dangleterre, ed. Benjamin Williams (London, 1846) 16 and 147-8.

he makes this comment; the falsity to the king may be Lancelot's killing of Arthur's good knights at Guenever's pyre, especially Gawain's brothers. Arthur himself has referred to this crime; 'thou haste slayne my good knyghtes and full noble men of my blood, that shall I never recover agayne' (1187.30-1). The implication is that Lancelot has killed Arthur's knights and thereby broken faith--though not traitorously--with his king. Morgan le Fay and King Mark, both traitors, are similarly seen as destroyers of Arthur's good knights. Lancelot, furthermore, is said by Gawayne to have violated a special faith in killing Gareth, whom he has knighted. Gareth thereby owes--and indeed shows--especial fidelity to his lord Lancelot.

The treason of murder is thus substantiated by the familiar idea of betrayal or broken trust as treason. As the author of St. Kenhelm has it, 'noman ne may to opur sonere tricherie do / þane þilke þat is him euere neiȝ and þat he trist mest to.'³⁵ In Malory's book these specific allegiances are elements of a greater obligation of good faith towards all human beings. To be human obliges one to act in love and charity towards one's fellows: to be, as Lancelot says, well intentioned towards others and to treat them as one would wish to be treated. Malory's crimes of treachery-treason are the antithesis of human kyn-
denes and 'perfect love' which in part constitutes a man or a woman's worship: the breach of a specific allegiance, even if it falls short of treason, reinforces the general failures in love and charity which are the fundamental basis of the French treasons in Malory's book.

35. 'St. Kenhelm,' in The Early South English Legendary, or Lives of Saints, ed. Carl Horstmann, Early English Text Society (London: N. Trübner, 1887) 348 ll.105-6.

4:6 Treason and Historicity

Law, in romance, is depicted in various ways: there is the romance of Gamelyn, for example, which depicts contemporary law with surprising accuracy, or even Bérout's Tristan, which integrates contemporary law into a pre-existing story.³⁶ It is rare, however, for a romancier to point out historical legal differences between his own time and the world he is depicting. This, however, is exactly what Malory does. On two occasions, without any prompting from his source, he observes 'alle maner of murthers in tho dayes were called treson' (405.5) and 'the custom was such at that tyme that all maner of shameful deth was called treson' (1050.2-3).

Presumably Malory was not aware that the equation of murder with treason he found in his French and French-derived English sources was an archaic French usage. There is no guarantee that he would necessarily be aware that the books he had read were several centuries old--they might have been relatively recent copies--nor that the legal material they contained were a thirteenth-century Frenchman's contemporary references. Knowledge of early French law was not usually amongst the qualifications of a fifteenth-century gentleman: Malory may have genuinely believed that the equations of murder and treason he discovered in his French books were Arthurian customs, and was therefore loath to falsify history by doing away with them.

The apparent historicity of the Morte is conveyed, not only through the predominant tense in which it is written, but in part

36. See Edgar F. Shannon, 'Mediaeval law in the Tale of Gamelyn,' Speculum 26 (1951): 458-464 and Pierre Jonin, Les Personnages Féminins dans Les Romans Français de Tristan au XII^e Siècle: Étude des Influences Contemporaines, Éditions Ophrys New Series 22 (Aix-En-Provence: Annales de la Faculté des Lettres, 1958) 59-105.

through Malory's own personal comments.³⁷ Malory requests prayers for Tristram's soul (375.15-29), for example, in the same way he requests prayers for his own 'delyveraunce.' Tristram, to Malory, had a historical existence: he lived and died; in inventing hunting and hawking terms he contributed to the society in which Malory and his contemporaries lived. But Tristram's hunting terms, and the class distinctions they reveal, are to Malory not proof of historical difference but of historical continuity: contemporary England is indebted to events which took place in Arthurian England.

Yet at the same time the reader is encouraged to accept a historical alienation between Malory's and Arthur's time. The morally distasteful adultery between Guenever and Lancelot is alienated: 'love that tyme was nat as love ys nowadayes' (1165.13). And on several occasions Malory points to legal differences in the definition of crimes and the procedure of the courts in Arthurian England. The reader, on occasions, is discouraged from reading the book in terms of fifteenth-century suppositions and judgments.

But this emphasis on historicity, if it sometimes allows alienation, is combined with Malory's presentation of Arthur, for example, in terms of fifteenth-century monarchical ideals, with occasional references to contemporary law, castles and places (Arundel, Winchester, London, Guildford), and his final and conscious paralleling of the Arthurian civil war and the Wars of the Roses. The urge to present historicity and encourage alienation exists alongside the desire to stress contemporaneity and historical similarity.

37. P.J.C. Field, Romance and Chronicle: A Study of Malory's Prose Style (London: Barrie and Jenkins, 1971) 144-5.

4:7 Malory's Defence of the King

The tendency to judge history by contemporary ideas was probably much more exaggerated in the Middle Ages, when, given the general lack of historical awareness of difference between societies, the criteria of judgment would naturally be those of the fifteenth century.³⁸ Arthur, therefore, is likely to have been appreciated or disapproved of, by Malory's readership, insofar as he fulfilled or failed to fulfil what was expected of a fifteenth-century king.

Now, the landowning gentry like Malory knew something of the law: the fifteenth century was legally as well as militarily contentious.³⁹ As his explanations show, Malory was aware that murder was not treason in English law and he expected his readers to know that too. Treason, in fact, to those caught up in the civil war probably had an especial relevance; the de facto act had not yet been passed and treason, and the possibility of committing it, were real and important possibilities to fifteenth-century people caught up in the Wars of the Roses. So if the habit was to judge kings in literature on the same terms by which real-life kings were judged, Arthur was liable to criticism because all of the cases of treason which are brought into his court are ones which involve murder or adultery by the queen, which are not treasonable, or at least have a dubious status as treason, by the yardstick of English

38. Arthur B. Ferguson, The Indian Summer of English Chivalry: Studies in the Decline and Transformation of Chivalric Idealism (Durham, North Carolina: Duke UP, 1960) 61-2 and 87, P.J.C. Field, 'Introduction,' Le Morte Darthur: The Seventh and Eighth Tales, by Sir Thomas Malory, The London Medieval and Renaissance Series (London: Hodder and Stoughton, 1978) 39.

39. See The Paston Letters and Papers of the Fifteenth Century, ed. Norman Davies, 2 vols. (Oxford: Clarendon Press, 1971-76). William Paston II and John Pastons II and III served as M.P.s: all also engaged in a variety of legal disputes (lvii-lx). See especially vol. 1: ltrs. 32 (pp.525-6), 368 (pp.597-8), 385 (p.620), 387 (pp.622-6), and 2: 686 (pp.300-302), 687 (pp.302-306) etc.

law. And real monarchs who arbitrarily extended the laws of treason beyond the respectable limits of the 1352 Statute, thereby violating their obligations to uphold law and justice, were regarded with some suspicion. Richard II was accused of confusing the realm with a proliferation of treason laws, Henry VI was reputedly surrounded by counselors who insisted that the definition of treason could vary at the king's will:⁴⁰ to extend the laws of treason, even by legitimate processes, could be considered to be a tyranny.

Of course, at least in extra-legal language, 'treason' and 'treachery' were largely interchangeable: Malory, for the most part, does not distinguish between treson and trechory, sometimes using both for cumulative effect, or more often using treson alone to denote everything from attempted regicide to flagrant deception. 'Treasoun' denotes treachery as well as a breach of familial loyalty in Gamelyn.⁴¹ And Chaucer, while he sometimes refers to treachery, also calls treachery a treason.⁴² In court, however, language was more precise:⁴³ it is no accident that Malory's two explanations of the customary Arthurian equation of murder and treason occur during actual trials in Arthur's court. The equation in the legal context of trial before the king is much different to an extra-legal equation, where legal language is used suggestively and the designation of murder as treason can be regarded informally.

40. Three Fifteenth Century Chronicles 94-6.

41. Gamelyn ll.165-8 in Middle English Verse Romances, ed. Donald Sands (U of Exeter P, 1986) 161.

42. Hornsby 126-39.

43. Edward Powell, Kingship, Law and Society: Criminal Justice in the Reign of Henry V (Oxford: Clarendon Press, 1989) 69-70.

It is therefore in justification of Arthur's legal role that Malory stresses the 'historical' equation of murder with treason: one must not suppose that the crime of treason in Arthurian law is the same as that in fifteenth-century treason law. Arthur as judge acts not outside the law, but according to it as it is interpreted in his own society. He is therefore fulfilling the late medieval ideal of the king as subject to the law.

4:8 Linguistic Distinctions

Throughout the book, in mentioning murder, Malory usually mentions treason: in mentioning treason, he frequently adds the words 'felony' or 'murder,' not necessarily to distinguish the crimes, not always for emphasis, but to describe a particular crime of treason more accurately. To paraphrase Beaumanoir, no murder is without treason, but there are treasons without murder, and Malory's language sometimes suggests this. Even at the very end of the book, Lancelot warns Gawain not to accuse him of any treason or felony--that is, no treason by murder (1201.28): the Arthurian designation is qualified by that of the fifteenth century so that there can be no doubt of the crime of which Gawain considers Lancelot to be guilty.

4:9 Explanation and Recognition

Malory rarely repeats his personal comments, though the explanation of murder and treason is one instance when he does so even though the multitude of extra-legal equations and accusations, nothing to say of two formal trials by combat, have established the custom long before his second explanation during the trial of Guenever for the alleged murder of Patryse. Presumably he explains again, not necessarily because he has forgotten his previous explanation and more or less consistent portrayal of murder as treason throughout the book, but because this particular case involves the trial of a queen and it is

therefore especially important that Arthur is seen to be proceeding in accordance with the law.

But there is an occasion when Malory, for literary effect, asks his readers to recognise both a contemporary legal allusion and to remember that murder is a historical Arthurian treason. Elayne of Ascolat threatens to appeal the 'false traytours' Lavayne and Bors of Lancelot's death, should he die (1086.15-8). What she means is she will appeal them of murder: and in fifteenth-century law, the appeal of murder was open to a woman only if the victim was her husband.⁴⁴ Elayne, of course, is not Lancelot's wife, although the desire to be such leads her to talk as though she is; she, as she admits on her death bed, has loved Lancelot to excess or 'oute of mesure' (1094.1):⁴⁵ this legal point is the one sure manifestation of this excess.

This incident is one example of how medieval readers, as I have suggested above, might be expected to read a text predominantly in terms of their own contemporary standards and even institutions: but it also reveals that Malory continues to apply the equation of 'shamefull deth' and treason independently of the direct influence of his sources, as if he was attempting to picture a legal system distinctly different from that of his own time. Murder, however, is not the only non-English crime of treason which Malory adopts: most of the treasons in Beaumanoir's definition appear, in a minor way, in Malory's book, and it is to these that I now wish to turn.

44. P.J.C. Field, 'Time and Elaine of Astolat,' Aspects of Malory, ed. Toshiyuki Takamiya and Derek Brewer, Arthurian Studies 1 (Cambridge: D.S. Brewer, 1981) 234. See also Magna Carta c.34 in Statutes of the Realm 1: 118. In the case of the appeal of murder, the theological idea of the unity of persons in marriage transferred some of the husband's legal rights to the wife. See Baker 395.

45. Field, 'Time' 234-5.

4:10 Treason by Ambush and Assault

Malory does not seem to consider ambush in warfare, (or a large scale fight approximating to it), and perhaps not in tournaments, as treason, but the ambush of one knight by another is a different matter. King Mark, for example, when one of his knights is forjousted by Uwayne, in spite

armed hym and toke hys horse and hys speare with a squyar with hym, and than he rode afore sir Uwayne and suddeynly, at a gap, he ran uppon hym as he that was not ware of hym. And there he smote hym allmoste thorow the body, and so there leffte hym.

So within a while there cam sir Kay and founde sir Uwayne, and asked hym how he was hurte.

'I wote nat,' seyde sir Uwayne, 'why nother wherefore, but by treson, I am sure, I gate thys hurte. For here cam a knyght suddeynly uppon me or that I was ware, and suddeynly hurte me.'

Than there was com sir Andred to seke kyng Marke.

'Thou traytoure knyght!' syde sir Kay, 'and I wyst hit were thou that thus traytourely haste hurte thys noble knyght, thou shuldyst never passe my hondys!' (547.1-15)

Other forms of unfair conflict are equally treasonable, such as Sir Brewnys Saunze Pitié's attack on Sir Bleoberys: Brewnys attempts to kill the prostrate Bleoberys, and, restrained by Sir Harry, agrees to behave: but when Harry lets him go, Sir Brewnys

made his horse to renne over sir Bleoberys and rosshed hym to the erthe lyke to have slayne hym. Whan sir Harry saw hym do so vylaunsly he cryed and sayde,

'Traytur knyght, leve of, for shame!'

And as sir Harry wolde have takyn his horse to fyght wyth syr Brewnys, than sir Brewnys ranne upon hym as he was halff uppon his horse, and smote hym downe, horse and man, and had slayne nere sir Harry, the good knyght. That saw sir Percyvale, and than he cryed,

'Traytur knyght, what doste thou?' (686.16-25).

Unsuccessful attempts to murder, even when no injury is inflicted in the victim, are also treason: Sir Phelot's wife persuades Lancelot to unarm himself and climb a tree to recapture her hawk; Phelot then arrives, armed and armoured, to kill Lancelot, who tells him 'that were shame unto the . . . thou an armed knyght to sle a nakyd man by

treson' (283.14-5).

The idea of ambush as treason goes beyond the military sphere into the bedroom; to lay a watch for a knight with the intention of shaming, capturing, or--obviously--killing him is, in Malory, sometimes regarded as treasonable. Following the stanzaic Morte, Malory has Bors warn Lancelot from going to the Queen's bedroom, 'I mystruste that the kynge ys oute thys nyght frome the quene bycause peradventure he hath layne som wacche for you and the quene. Therefore I drede me sore of som treson' (1164.26-9).⁴⁶ Treason is not mentioned at this point in the French. In Malory, this particular treason is associated with the usual aspect of malicious intent; Aggravayne wishes to shame Lancelot and his kin (1164.23-4), which has earlier characterised Andred, spying on Tristram, and Gaheris, spying on Lamerak, against whose family the Orkney clan have a long-standing vendetta.

What all of these forms of attack have in common is that the perpetrator contrives a situation, or takes advantage of a situation, where the victim has little or no chance at self-defence. Phelot, of course, seriously underestimated Lancelot's abilities as a knight: but this does not make his attack any the less a treason, because the treason which encompasses murder can encompass acts which fall short of murder, like attempted murder, assault and ambush. The nature of these kinds of treason is that the malicious intention should reveal itself through an unfair attack, an attack in which the perpetrator knowingly or purposefully takes advantage of odds in his favour, to kill, to attempt to kill, or merely to injure or beat--not necessarily, as Beaumanoir suggested, into unconsciousness--one whom he hates.

46. C.f. stanzaic Morte 1773-83.

There is an objective element to this form of treason, since it must involve unfair conflict: but as Lancelot's accidental killing of the unarmed Orkney brothers reveals, if there was no malicious intent, no 'forecaste,' there is, at least morally, no treason.

Whether a private, unspoken intent to commit treason in the future equates to treason in Malory's book is an awkward point, because Malory's characters are usually defined in terms of action. Even those treasons or alleged treasons which are revealed by word rather than by an overt deed do not show whether intent alone is a treason, since it was accepted by the fifteenth century that treason could be committed by words alone.

In general, however, it seems that the intent alone to commit treason is not treason. Even though Mark is said to be 'full of treson' and to have 'bethoughte hym of more treson' (633.24-5, 679.30) by Malory and is described by Lancelot as 'Kynge Foxe, as who saythe he faryth allwey with wyllys and treson' (615.30-1), none of these comments indicates that Mark commits treason by thinking about it, only that he does think about it and that he has a tendency towards treasonous acts: the fact of having committed treason in the past is sufficient grounds for others to suspect--and for Malory as author to know--that he will commit treasonous acts in the future, to the extent that 'treson' becomes as much a part of Mark's reputation as 'worship' is of Lancelot's. But it is not Mark's intentions or thoughts alone that designate him a traitor, but the fact that those intentions have been and will be manifested in deeds.⁴⁷

47. C.f. Howard Bloch 5: Saint Louis, he observes, did not consider that the mere intention to kill a man was worthy of punishment insofar as the would-be murderer had not manifested his intention in an overt deed.

Malory, in fact, seems to acknowledge the possibility that a man, whatever a man's thoughts or intentions, may not actually commit the treasonous deed he has planned. Pelleas, discovering Gawain and Ettarde in bed together, rides away, but then 'turned agayne and thought for to sle hem bothe' (170.20). He resists the first time because he 'woll never sle [Gawayne] slepyng, for [he] woll never dystroy the hyghe Ordir of Knyghthode' (170.23-5). Were Pelleas to actually kill them, the deed would be premeditated murder and perhaps therefore treason: but he does not kill them, and is not called a traitor for his intention to do so. That Malory does not mention treason, of course, may not mean that Pelleas is not a traitor: the author may not have been thinking in terms of treason. But there are no other incidents in the book where premeditated intent to murder is called treason unless it is eventually manifested in a murder or attempted murder: Mark is called a traitor for his treacherous invitation to Bodwyne, Anglydes and Alexander, because Malory, with authorial knowledge, knows that Mark has invited his relatives to visit him with the intent of killing two of them and that he in fact succeeds in killing one. Mark can therefore be described as the 'falsist traytour that evir was borne' in advance of the deed (633.28-9). Whether the intent, and indeed the preparations necessary, to commit treason are called a treason ultimately hinges on whether a treasonous deed is eventually committed as a consequence of those intentions; which is as much to say that while, morally at least, there is no treason without intention, intention alone does not make a treason.

4:11 Breach of Truce and Safeconduct

Beaumanoir's definition of treason includes injuring anyone during a safeconduct or a truce. Both the violation of safeconduct and truce could be treasons in military law, and the violation of safeconduct

itself appeared in English law, though largely to deal with piracy.⁴⁸ No-one in the Morte Darthur injures anyone during a truce, although there is one incident which could be interpreted as treason by breach of truce, and that is committed by the unknown knight who draws his sword to kill an adder during the ceasefire between Arthur and Mordred on Salisbury Plain: there

cam oute an addir of a lytyll hethe-buysse, and hit stange
a knyghte in the foote. And so whan the knyghte felte hym
so stonge, he loked downe and saw the adder; and anone he
drew hys swerde to sle the addir, and thought none other
harne (1235.20-4)

Now, in the stanzaic Morte it is implied that the knight is of Mordred's party, and Arthur's host attacks because they believe 'that treson had bene wroghte.'⁴⁹ In Malory's book one is not told which side the knight supports and whether therefore his treason is against Arthur or Mordred. His treason therefore has no direct object, and since it is not committed with malicious intent or bad faith, it falls short of treason by the standards Malory employs elsewhere. The deed in itself, however, would have been regarded as a treason in law and is in fact seen to have the objective consequences often expected of treason. Only the perpetrator's moral culpability is lessened through his innocent intent.⁵⁰

The treason of injuring someone during a safeconduct does not appear in Malory's book either, but there is one case of penalties

48. Bellamy, Law of Treason 128-30, and Powell 170-1.

49. Stanzaic Morte 3349.

50. C.f. Bacon, 'Principall Rules' 32. He observes that necessity, such as self-defence, may exculpate a man of blame for homicide, but cannot for treason: 'the law imposeth it vpon euerie subject, that he preferre the vrgent seruice of his Prince and Countrey before the safety of his life.'

being threatened for those who break a safeconduct, and two cases of murder in violation of safeconduct. Those young knights who, hearing the messengers of Lucius, 'wolde have ronne on them to have slayne them' (187.1) are threatened with death: 'anone the kynge commaunded that none of them upon payne of dethe to myssaye them ne doo them any harme' (187.3-5). Since Arthur has ordered the messengers to wait in his court for seven days for the outcome of his decision, the threat of the death penalty may suggest that a kind of safe+conduct has been issued, and perhaps that to break it would be a treason or at least a felony.

However, the two incidents of breach of safeconduct there are give no indication of the independent traitorousness of the crime, since both might be treasonable because they are murders. Balin agrees to be the 'warrante' of Sir Harleus le Berbeus in King Arthur's court: this means, presumably, that he will protect the knight both on the way there and in the court itself. However,

there com one invisible and smote the knyght that wente with
Balyn thorowoute the body with a spere.
'Alas!' seyde the knyght, 'I am slayne undir youre
conduyte with a knyght called Garlon' (80.10-13).

Balyn's 'conduyte,' however, binds himself but not anyone else: it is a safe+conduct in the sense that Balyn vows only to protect Harleus from attack. When Harleus is killed, the 'trechory' of Garlon is remarked upon Harleus' tomb (80.21-5), but this treachery would seem to indicate not a violation of 'conduyte' which Garlon was not bound to acknowledge anyway, but the fact of his riding invisibly and taking advantage of this to kill.

This is made clear later on when Peryne de Mounte Belyarde has vowed knight-service to Balin: 'Here I ensure you by the feyth of my body never to departe frome you whyle my lyff lastith' (81.3-5). Balin

has an obligation to be a good lord, which may involve protection of the sort he offered to Harleus, but there is no 'conduyte' as such: nevertheless Garlon, for his unfair killing of Peryne is said to be a 'traytoure knyghte that rydith invisible' (81.11-12). He is guilty of treachery to his victims and violation of his knightly obligations, rather than a breach of formal allegiance to a specific person.

Balin himself commits a murder by which is additionally a violation of the King's safeconduct. The Lady of the Lake demands Balin's head, because Balin had killed her brother: Balin, hearing of this, approaches her before the king, tells her he will kill her and then does so. Arthur is much displeased:

'Ye have shamed me and all my courte, for thys lady was a lady that I was muche beholdynge to, and hydir she com undir my sauffconduyghte. Therefore I shall never forgyff you that trespasse' (66.6-9).

Balin observes, however, that

'by inchauntement and by sorcery [the Lady of the Lake] hath bene the destroyer of many good knyghtes, and she was causer that my modir was brente thorow her falsehode and trechory' (66.11-14).

It is in retribution for the execution of his mother that he beheads the Lady before Arthur. This vengeance, however, is not seen to be a mitigating circumstance by Arthur, who banishes Balin from court.

Banishment as a penalty is implied in the Pentecost Oath, later on, for various offences including outrage, murder and the failure to 'fle' treason: the perpetrator shall forfeit his worship and his lordship of Arthur for evermore. The obligations specified in the Pentecost Oath and even the penalties it imposes for violation of those obligations seem to apply to all knights, and it is therefore possible that by the penalty imposed on Balin suggests that he is guilty of murder or treason. The treason might be that of violating the King's safeconduct, although this kind of violation of safeconduct, even if

it might have been a treason in French customary law, was not ordinarily a part of English common or statutory law which Malory and his audience are more likely to have been familiar with; and though military law could admit breach of safe-conduct as treason,⁵¹ Balyn's killing of the Lady does not take place in a time of open war.

It is possible, of course, that the 'sauffconduyghte' does not here carry the legal force the word usually implies: Vinaver observes that Malory's use of the word 'sauffconduyghte' is an inappropriate rendering of the French's 'conduit', meaning 'protection' rather than 'guarantee of protection.'⁵² What cannot be doubted is that Arthur interprets the killing as a gross insult to himself, at least partly because it is a violation of the protection he owes and has offered to the Lady: this however, given the reasons cited above, does not automatically mean it should be interpreted as a treason. Arthur calls it a trespass, which if Malory is using the term accurately, means it is less serious than a felony.

The only real reason for thinking Balin has committed treason at this point, since Malory does not say so, is that he has committed a killing which, by the standards set later in the book, might class as treason rather than homicide. Balin's killing of the lady does not give her a chance of self-defence: his later killing of the knight Garlon, at his meat, is perhaps equally treasonable according to the standard Malory later applies. Yet both incidents are allowed to pass without comment. Ultimately Balin's guilt, like the tale in which he appears, is

51. See 'The Statutes and Ordinaunces to be Keped in Time of Werre,' in The Black Book of the Admiralty, ed. Sir Travers Twiss, vol. 1 (London, 1871) 291 s.23.

52. Vinaver's note to 66.8, p.1306.

ambivalent.

4:12 Treason by False Testimony

To Beaumanoir, perjuring oneself to gain the execution or exile, of one's victim, or his forfeiture of his land and his lord's love, is a treason. In Malory, the first--vague--appearance of this sort of treason is called a treachery, and it is the Lady of the Lake who is responsible for it: she, as I indicated above, has Balyn's mother executed, presumably on a treason charge, since burning was the conventional medieval penalty for traitorous women. Balin at least thinks that the lady has been 'untrew,' or guilty of perjury and judicial murder.

In Malory's book, however, one need not be a perjurer to be a traitor by contriving the forfeiture or execution of another, preferably good, man. Andred is eager to cause rifts between Mark and Tristram, to have the latter, as Beaumanoir says, hated by his liege-lord: Andred's revelation of the lovers' adultery has Tristram convicted to death, a punishment which is eventually mitigated to exile. Andred is seen to be ultimately responsible for Tristram's exile, and is said to be a traitor: "he ys cousyn nyghe unto sir Trystram, and ever he hath bene a traytoure unto hym, and by hym he was exhyled oute of Cornwayle" (549.31-3) even though he has made no false testimony. His treason to Tristram, is partly a matter of treachery and unfair conflict, but it is also based in breach of familial loyalty, as Tristram implies: 'thou sholdyst be my kynnesman, and now arte to me full unfrendely' (431.26-8).

Such a failure in familial loyalty is elsewhere seen to be a part of treason--Mordred and Morgan are traitors who worsen their treasons in thereby violating the obligations of their kinship with Arthur--but generally speaking, malicious intent, usually combined with a conven-

tional treason such as attempted regicide or the like, determines whether disloyalty to family is called treason. Balin and Balan, who fight each other unwittingly, or even the two brothers who fight each other knowingly in a quarrel, and Bors, who abandons his captive brother Lionel to save a virgin from rape, are not called traitors; they, unlike Mordred, Morgan and Andred, had no desire to do evil to their kin.

Only on one occasion, by the French standard, does Andred commit a genuine French treason, in persuading his lover to tell Mark that Tristram is dead and buried, and 'or he dyed he besoughte kynge Marke to make hys cousyn, sir Andred, kynge of the contrey of Lyonas, of the whych sir Trystramys was lorde of. And all thys ded sir Andred bycause he wolde have had sir Trystramys londis' (499.1-4). This is false testimony in order to disinherit a man, which Beaumanoir classes as treason: Malory, however, says nothing of the sort. Presumably he is not aware of the French law's definition of treason, and includes the incident to substantiate the treachery and villainy that Andred elsewhere, through treason, has revealed.

4:13 Summary

Malory reflects the crimes of treason in French law, probably having discovered these in his sources: most of the French treasons, such as perjuring oneself to gain the death, disgrace or execution of one's fellow, along with attempted murder and assault, are presented as extra-legal treasons in the sense that they are subject only to knightly justice in combat outside a formal court. Murder as treason, however, is also subject to the formal court procedure of appeal. The French treason of assault during a truce or safeconduct does not appear, to any great extent, in Malory's book: the closest parallel is Arthur's

threat of death for those who 'myssaye' the messengers of the Emperor, possibly in breach of the king's safeconduct. Malory, however, is not consistent: Balin, who breaches Arthur's safeconduct of the Lady of the Lake, is banished: and it is not clear whether he is guilty of treason for breach of safeconduct, for murder, for both, or whether he is guilty at all. If there is treason by breach of safeconduct, however, its basis is lèse-majesté, insult to the majesty and authority of the King: Arthur feels that both he and his court have been shamed by Balin's killing of the Lady of the Lake.

Treason by unfair conflict--murder, attempted murder, ambush or assault--however, even if they imply hostility towards Arthur's court, are not treasons against the king. The distinction between treachery and treason, in Malory as in the French definition of traïson, is vague. The French treasons he adopts, which he portrays for the most part as, and possibly himself believed to be, genuine Arthurian historical customs, are fundamentally defined in terms of treachery, though in most cases he calls them treason and their perpetrators traitors. Often, however, Malory portrays treacherous unfair conflict between those in relationships of loyalty: to kill one's inferiors or guests, or to maliciously oppose one's kinsman exaggerates the gravity of the treason one has, or is said to have, committed. Unfair conflict, if the perpetrator is a knight, also violates one's loyalty to the ethics of knighthood. But the violation of one's obligation to behave as befits a knight is not the sole basis of treason by unfair conflict, because women, who are not knights, can be held culpable of treason for murder. Malory's portrayal of the treasons he adopted from France is one which is defined in terms of treacherous and malicious unfair conflict, in violation of charity, decency and honour, rather than a breach of a strictly defined specific allegiance.

Chapter Five:
Treasons of Love

5:1 Lovers' Service

The service of one's lover, in Malory's book, involves a fidelity of self as well as body. To serve through action, whether by military or legal support, or the giving of material or sexual rewards, is simultaneously an expression, as well as a cause, of love. While Malory seems to accept the old courtly tenets that to love a lady is to obey her and to increase one's character and worship through deeds of arms in her loyal service,¹ Malory's knight-servants are not subservient: they, when necessary, reprove their ladies and row with them. The formal notion of faithful service is, like marriage, an ideal of conduct in human relationships.

True service, in fact, may be a kind of courtly substitute for marriage when marriage between lovers is impossible. Finding that Guenever has taken the veil, Lancelot refuses to take a wife, but joins orders also: 'I shall never be so false unto you of that I have promysed. But the same desteny that ye have takyn you to, I woll take me to, for to please Jesu, and ever for you I caste me specially to pray' (1253.3-6). In canon law, the husband or wife of one who took orders was obliged to live in celibacy for the rest of his or her life:² Lancelot and Guenever's relationship is thus regulated by canonical marital ordinances and is in a very real sense equivalent to marriage.

1. C.S. Lewis, The Allegory of Love: A Study in Medieval Tradition (Oxford UP, 1938) 32-7.

2. See James A. Brundage, Law, Sex, and Christian Society in Medieval Europe (Chicago and London: U of Chicago P, 1987) 375-6 and 389.

5:2 Adultery and Infidelity as Treason in Literature

Both adultery and the infidelity of lovers is sometimes designated treason in both English and French romance and lyric poetry. There is the complaint of an old man, for example, which observes resignedly, that since he 'may not as [he] myght on [his] partye' his young wife has forsaken him; 'Youught is a traytoure.'³ A faithful woman is pictured as 'trew as turtyll on a tree / with-owt any treason.'⁴

Adultery and treason is equated in Malory's book: Sir Segwarydes twice calls his unfaithful wife a traitoress (394.35, 395.12). One's lover, male or female and regardless of his or her status can also be called a traitor for infidelity. Lancelot is accused of treason both for his actual infidelity to Guenever and for the infidelities she imagines.

The first time Guenever discovers that Lancelot has been unfaithful with Elayne, king Pelles' daughter, Malory observes that Guenever rebukes him greatly. Lancelot attempts to explain:

And than sir Launcelot tolde the quene all, and how he was made to lye by [Elayne], 'in the lykenes of you, my lady the quene'; and so the quene helde sir Launcelot exkused (802.19-21).

This 'excusing' reflects Church law, where it was accepted that only a man who knowingly slept with a woman other than his wife was considered an adulterer.⁵ Guenever is not Lancelot's wife, but the implication is that they have agreed to be lovers for all their lives, and this commitment is thus modelled on marriage to the extent that the laws

3. 'The Trials of Old Men' 11.5-6 in Rossell Hope Robbins, Secular Lyrics of the XIVth and XVth Centuries, 2nd. ed. (Oxford: Clarendon Press, 1955) 164.

4. 'The Beauty of His Mistress III' 11.11-12, in Robbins, Secular Lyrics 126.

5. Brundage 387.

regulating marriage are again seen to apply to their relationship.

The second time Lancelot is tricked into sleeping with Elayne, Guenever is less forgiving: though she initially believes Lancelot's moral innocence, she is obsessed by the possibility of a further material, and perhaps moral, lapse:

'I am sure that ye woll go to youre ladyes bedde, dame Elayne, by whome ye gate Galahad.'
 'A, madame,' seyde sir Launcelot, 'never say ye so, for that I ded was ayenste my wylle.'
 'Than,' seyde the quene, 'loke that ye com to me whan I sende for you' (804.5-11)

Lancelot's presence in Guenever's bed is the condition upon which Guenever's belief in Lancelot's moral innocence depends. Lancelot however is again tricked by magic and goes to Elayne's bed: Guenever hears him talking in his sleep in Elayne's chamber, and her precarious forgiveness exhausted, tells him,

'A, thou false traytoure knyght! Loke thou never abyde in my courte, and lyghtly that thou voyde my chambir! And nat so hardy, thou false traytoure knyght, that evermore thou com in my syght!' (805.26-9).

Guenever, true to her earlier statement, takes Lancelot's failure to come to her as proof of his moral guilt: this makes him, as far as Guenever is concerned, a traitor.

In that episode Lancelot's guilt is, if not proven, likely beyond reasonable doubt. On other occasions, however, informal accusations of treason are made on the basis of circumstantial or suggestive evidence. Guenever accuses Lancelot of being a 'false traytoure knyght' when she hears he has carried the token of Elayne of Ascolat in a tournament (1080.30). Similarly Tristram accuses Queen Isode of being a traitress to him for answering Keyhydyus' love letter:

'Madame, here ys a lettir that was sente unto you, and here ys the lettir that ye sente unto hym that sente you that lettir. Alas! Madame, the good love I have lovyd you, and many londis and grete rychesse have I forsakyn for youre

love! And now ye ar a traytouras unto me, which dothe me grete payne' (493.29-34).

If the letter and the love-token could constitute evidence for carnal infidelity, however, they do not in themselves prove it. This brings to mind Malory's later assertion that summary conviction and execution may be awarded to traitors on circumstantial evidence alone. Lancelot, Isode, and Keyhydyus cannot be executed, of course: their treason is necessarily extra-legal. But the way in which Guenever and Tristram arrive at their assumptions of their lovers' guilt are similar: they may believe that tokens of apparent affection such as the red sleeve and the letter suggest carnal involvement and therefore treason. Malory's characters tend to react emotionally, rather than logically, at the possibility that their lovers have betrayed them. It would be logical, after all, if Guenever and Tristram, their suspicions aroused by such evidence they possess, were to seek further evidence or proof of their lovers' possible guilt. They do not.

This suggests two possibilities. To wear the sleeve of another woman, or to write love letters to a third party, may be a violation of loyalty, a treason in itself, to one's true lover. Conversely, treason could consist of actual carnal infidelity, in which case those characters who cry treason on the basis of inconclusive evidence like Elayne's sleeve are paranoically overreacting.

The Isode-Tristram episode does not resolve the question of whether infidelity which stops short of carnal involvement is a treason or not: Lancelot and Guenever, are reconciled after the death of Elayne of Ascolat, when Guenever learns through Elayne's letter that she remains a virgin. This, combined with her death, is testimony of Lancelot's innocence of carnal infidelity: he has worn her sleeve, true, but Guenever's forgiveness suggests that his supposed treason lay not

solely in wearing the sleeve, but was a matter of the carnal involvement implied in his displaying of the love-token. Lancelot committed no treason: Guenever was mistaken.

In the above case, Malory seems to allow that extra-legal treason has fixed limits, rather than being a purely subjective matter: Lancelot is not a traitor just because Guenever says so. A similar thought is expressed by various objective observers throughout the book: to the narrator or other characters, carnal love, with one legally derived exception, would seem to be a necessary prerequisite of a correct accusation of treason by infidelity. Uther's adulterous intent towards Igrayne is said to be dishonourable by Igrayne, but is not said to be treasonable by Malory or anyone else in his book.⁶ Tristram is not called a traitor for his marriage to Isolde la Blanche Maynes, even though he almost forgot Queen Isode, because the marriage is never consummated: Lancelot indignantly calls Tristram a false knight to his lady, but perhaps Malory, who knows Tristram has no carnal knowledge of his legal wife, accordingly refrains from putting the word 'traitor' into Lancelot's mouth. And Percivale tells Mark that Tristram could love Isode sinlessly, that is without carnal involvement, with impunity. Perhaps most importantly, however, there is the exchange between Palomides and Tristram: Tristram, overhearing Palomides singing of his love for Isode, says "Sir, well have ye uttyrd youre treson" (781.20): presumably he thinks that Palomides' words are the evidence by which his treason of carnal involvement with Isode is revealed. Palomides however replies

"Sir, I have done to you no treson," seyde sir Palomydes,
"for love is fre for all men, and thoughe I have loved youre

6. C.f. Riddy's comments on the French Suite du Merlin, p. 38 and n. 13.

lady, she ys my lady as well as youres. Howbehyt that I have wronge, if ony wronge be, for ye rejoyse her and have youre desyre of her; and so had I nevir, nor never am lyke to have, and yet shall I love her to the uttermuste dayes of my lyff as well as ye" (781.21-7).

5:3 The Third Party as Traitor

As the passage I have quoted above implies, treason is not only a matter of lovers or spouses betraying one another: the third party is also a traitor to the wronged lover or husband. This is seen to be the case with Segwarydes and Tristram: Segwarydes calls Tristram a 'false traytoure knyght' for the latter's affair with Segwarydes' wife (395.19), and Tristrams accuses Keyhydyus for 'thys falshed and treson thou haste done unto me' when he discovers the letters Keyhydyus and Isode have written to each other (494.4-5).

It is of course possible that the supposed treasons of Palomides and Keyhydyus lie in the breach of their service to Tristram: Palomides, certainly, acknowledges Tristram as his lord, and it is implied that Keyhydyus has a similar sort of relationship with Tristram:

'I broughte the oute of Bretayne into thys contrey, and thy fadir, kynge Howell, I wan hys londis. Howbehit I wedded thy syster, Isode le Blaunche Maynes, for the goodnes she ded unto me, and yet, as I am a trew knyght, she ys a clene mayden for me' (493.35-494.3).

Keyhydyus is certainly thought to be obliged to Tristram and to have treated him badly: if nothing else, the relationship between Tristram and his two 'traitors' exaggerates the gravity of the crime he believes they have committed against him. But Segwaydes calls Tristram a traitor though there is not said to be a special relationship of service, lordship, gratitude or kinship between them.

Rather, the basis of treason by adultery is breach of pledged faith to one's lover or spouse: the guilt of the third party to the wronged lover or spouse is derived by analogy from various forms of law. Firstly, in canon law the unmarried man who slept with another man's

wife was classified as an adulterer both for sacrilege in violating the Church's sacrament and for complicity in the wife's violation of her oaths to her husband:⁷ and if he was an adulterer, he was a traitor. Secondly, the legal idea of the queen's lover's treason to the king may have determined the extra-legal notion that the lover commits treason against the spouse he or she cuckolds.

In Malory's book, of course, every treason has a variety of different foundations and implications. As well as suggesting a breach of specific fidelities, sexual infidelity like other treasons violates the oath by which a man becomes a knight. Segwarydes calls Tristram a traitor knight and Guenever says much the same thing to Lancelot: Aggravayne and Mordred, having entrapped Lancelot in the Queen's chamber, similarly impugn his knighthood. Partly it is an insult: but such insults are not inappropriate, since knights swear--in the Pentecost oath at least--to 'fle treson,' and wronging one's fellow man suggests a failure in love and kyndenes towards him: a lack, in fact, of general bon foi.⁸

5:4 Adultery as Treason in England and France

In England, by and large, when a poet calls his mistress or wife a traitoress, he is drawing on the same concept which underlies treason in law. There is no sense, however, that he expects her to be burned, at least not by men if not God, for her treason; adultery and infidelity are accepted extra-legal treasons, much as is treachery or trickery. The word implies the contempt of one convicted by law, and the conceptual similarity of breach of faith in both the legal crime and domestic

7. See n.14 to my final chapter below.

8. C.f. Maurice Keen, Chivalry (New Haven and London: Yale UP, 1984) 7 and 175.

misdemeanour, but the similarity ends there.

Sometimes, usually in France, occasionally in England, there is an association of formal penalty with infidelity:⁹ but this does not reflect legal procedure. In England, adultery, with the exception of adultery with the queen or the crown princess, was under the jurisdiction of the church courts and was not, in church or common law, regarded as a treason or punishable with the death penalty.¹⁰

French customary law admitted other cases of treason than the ones Beaumanoir specified: but the closest parallel to the notion that adultery is treason is abduction of a woman. Her husband or guardian may formally challenge her abductor, and the charge will hold if the woman was taken away against her will. An appeal of rape may be made. And rape, of course, ~~was~~ was liable to the traitors' penalty of drawing--always a hallmark of treason--followed by hanging.¹¹ But this is not exactly a case of treason by adultery even though it may involve a man's wife.¹²

5:5 Procedure and Penalty in Malory's Book

Now, in Malory's book the adulterer or unfaithful lover is not usually subjected to *formal process*: the *unfaithful lover* might be banished, like Lancelot, or less dramatically, simply abandoned, like Darras' mistress. Sometimes, as with Segwarydes and his adulter-

9. Christine de Pisan, The Treasure of the City of Ladies or the Book of the Three Virtues, trans. Sarah Lawson (Harmondsworth: Penguin Books, 1985) 171. Christine mentions burning and burial alive, which Lawson asserts were sometimes penalties for adultery: but she does not substantiate her claim.

10. Earnest York, 'Legal Punishment in Malory's Morte Darthur,' English Language Notes, Sept. 1973: 15.

11. Beaumanoir 1:429 c.824 and 1:467 c.925-29.

12. C.f. York 'Legal Punishment' 15 and n.5.

ous wife, the couple seem to stay together.

On occasion, however, the seducer or the unfaithful lover or spouse is threatened with death: Segwarydes initially threatens to kill his wife if she does not reveal the name of her lover, and he intends to deal with Tristram in a knightly manner by fighting him to the uttermost. But none of these threats are legal processes; there is no trial, no formal execution, and Tristram is not obliged to answer Segwarydes in arms: he in fact refuses. Ultimately,

all was forgyffyn and forgetyn, for sir Segwarydes durste nat have ado with sir Trystrames because of his noble proues, and also because he was neveu unto kynge Marke. Therefore he lette hit overslyppe, for he that hath a prevy hurte is loth to have a shame outewarde (396.11-6).

Sometimes, however, the threat of informal punishment is carried out: in the "Lancelot" there is an instance of adultery which is answered with beheading. Pedyvere suspects his wife of adultery, though she protests her innocence, and pursues her to kill her. Lancelot intervenes, although Pedyvere considers that he is interfering wrongly; by a ruse, Pedyvere tricks Lancelot into looking away and then beheads his wife. For this treachery, combined with murder of a woman, Pedyvere is called a traitor by Lancelot. He is then judged by Guenever, who on occasion is seen to be the judge of crimes against women; Pedyvere is sentenced to a pilgrimage of penance (284-286). In this case the injured husband is not seen to have a right to kill his adulterous mate, nor is adultery called a treason; the treason consists of the deceiving of Lancelot combined with the killing of a woman.

French customary law, however, allowed the husband in certain cases the right to kill with impunity his adulterous wife and her lover. If prior warning had been given to the adulterers, and their union forbidden by the woman's husband, he had the right to kill both if he

discovered them in flagrante delicto. It was not necessary, in fact, to discover the lovers in bed together: finding them in a private place was sufficient evidence that the adultery was continuing. French law therefore encouraged the husband to commit what, in other circumstances, would be treason by murder, since the killing would be a surprise, perhaps premeditated, attack in which neither of the victims could defend themselves. It was necessary, however, for the wronged husband to kill the lovers on the spot, with appropriate witnesses: if he delayed and killed them separately at a later date he would be considered guilty of treason by murder and the usual penalties of drawing and hanging would be inflicted upon him.¹³

This process, to an extent, is reflected in Malory's work, though there are no indications that Malory knew of the legal force of the French custom. In one case, in fact, he does not even link the adultery nor the consequent murders with treason. When Balin reveals the infidelity of Garnysh's mistress, Garnysh promptly kills both mistress and lover sleeping in bed. In the French, this might echo the cuckolded husband's legal right to do such a thing: the knight, mindless through despair, behaves as if he is the woman's husband.¹⁴ He, of course, is not, and in legal terms the infidelity would not therefore justify his killing of the lovers: he would be guilty of treason by murder. In Malory's book the killing is divorced from any legal context: Garnysh's slaying of the couple is the result of momentary shock and despair, and the episode is void of the irony and pity

13. Howard Bloch 54-8: A.H. Diverres, 'Tristan and Iseut's Condemnation to the stake in Béroul,' Rewards and Punishments in the Arthurian Romances and Lyric Poetry of Mediaeval France, ed. Peter V. Davies and Angus J. Kennedy, *Arthurian Studies* 17 (Cambridge: D.S. Brewer, 1987) 24-5. Beaumanoir 2:337 c.1637.

14. C.f. Vinaver's note to 87.26-7 (p.1319).

conveyed by his behaving as the woman's husband.

The second episode which reflects this customary law does make a connection with treason, but it is a matter of sexual infidelity alone. Pelleas loves Ettarde, who cannot bear him: Gawain offers to persuade her, seduces her instead, and Pelleas discovers them in bed together. He, as I observed earlier, resists the temptation to kill both in bed because he does not wish to shame and destroy the High Order of Knighthood: he may be fleeing treason. Ettarde however is guilty of a form of treason. When the Damsel of the Lake intervenes, enchanting Ettarde so that she falls in love with Pelleas, while Pelleas hates Ettarde; on seeing her, he exclaims, 'Away, traytours, and com never in my sight!' (172.13). This looks back to an imagined relationship which Ettarde, as far as Pelleas is concerned, betrayed. There was of course no relationship: Ettarde did not consent to love Pelleas, and therefore cannot have betrayed him, but Pelleas, even in hatred, cannot distinguish between the real relationship and an imaginary one. He feels as though he has been cuckolded; whether this is technically the case is irrelevant. Unlike Pedyvere's wife, Ettarde is seen to deserve death for her injustice to a good knight; she dies, appropriately enough, of love-sickness. Presumably the poetic justice of her off-stage death is more acceptable than a death imposed by the conscious decision of another; Malory and his knights regard execution with a greater horror than treason.

There is another occasion on which a man, rather than killing his wife and her lover Sir Manessen on the spot, captures both and plans to inflict death on both: Morgan le Fay discovers the cuckolded husband about to throw Manessen into a well, a fate which also awaits the adulterous wife. In terms of customary law, the knight would be

guilty of murder, because he did not kill the lovers on the spot; and Morgan, in the French, thinks Manessen deserves to die, which reflects her lawlessness. In Malory she does not seem to approve of the informal execution and asks Manessen if he is guilty; in both versions she rescues him when he insists on his innocence, and approves (in the French) and suggests (in Malory) that the cuckolded knight should be drowned.¹⁵

This would appear to reflect the principle that the wrongful accuser is liable to the penalties that would have been inflicted on the convicted defendant, which Malory independently depicts later on, having the defeated Mellyagaunce drawn out of the lists when his appeal of treason against Guenever fails to hold. Whether Malory considers drowning for adultery, or later for wrongful accusation, is a fitting, a just, or even a legal punishment is not stated explicitly. Morgan's status as queen might give her the right to arbitrarily judge, even out of court, disputes such as this, just as Arthur has the right to summarily execute Awnowre or impose a settlement on Outelake and Damas contrary to the outcome of a duel fought on their behalf. Certainly Morgan dispatches Manessen to Arthur's court believing that Arthur will be pleased at her deed, because she orders Manessen to tell Arthur that she rescued his knight not for love of him, but for love of Accolon. Elsewhere, the rescue of knights from death by execution is seen to be a good thing. Lancelot in fact rescues Palomides from a formal execution to which he has been judged by a jury of twelve knights: he has killed their lord in a tournament. In this case, however, Palomides' crime is probably a homicide, for which formal penalties are never awarded,

15. For references to the French, see Vinaver's notes to 152 (pp.1352-53).

so the judgment may be regarded as an unjust one.¹⁶

Adultery, however, is said to be a treason: Malory may not have consistently attempted to distinguish between legal and extra-legal treasons, supposing instead that all treasons could as a matter of course be punished by death, either in combat or by informal execution, in Arthur's days. If this is the case, Morgan therefore rescues Manessen because she thinks he is innocent of the crime of which he is accused: but the crime is a valid one, which is why she judges the accuser to the penalties he would have inflicted upon his victim.

There is fact one incident which suggests that adultery as treason can be punishable by formal process and execution. This occurs in the court of King Mark. Morgan le Fay sends a magical drinking horn, which is supposed to reveal the infidelity of lovers, to Arthur's court: Lamerak diverts it to Mark's court instead. Mark makes Isolde and a hundred other ladies drink from the horn, and only four drink without spilling anything. One of the ladies implicated with infidelity is Queen Isode; she, for reasons I will discuss in a moment, is probably guilty of high treason for her infidelity, which accounts for Mark's swearing 'a grete othe that she sholde be brente' but does not account for his inclusion of 'the other ladyes also' in this punishment (430.15-6).

Neither Malory nor his source calls the adultery of Isode nor the other women treason, but Mark's demand that they be burned suggests that their crime is treason, since burning was the usual punishment for traitoresses. York suggests that the designation of this punishment

16. C.f. Keen, *Chivalry* 7: Viscount Dillon, 'A MS. Collection of Ordinances of Chivalry of the fifteenth century belonging to Lord Hastings,' *Archaeologica* 57 (1900): 68. The Knights of the Bath were admonished never to allow a wrong judgment in their presence.

highlights Mark's vindictive character; in the fifteenth century adultery was not punished by death and king Mark is, by that standard, ⁴⁴ stepping outside the law.¹⁷

There is some reason to think, however, that Malory supposed that 'Arthurian law' admitted adultery by commoners, along with murder, as a crime of treason punishable by a formal execution. York implies that Mark acts outside the law because his barons veto his judgment.¹⁸ What the barons do, however, is not to say adultery cannot be punished by burning, but to object to the horn as an appropriate mode of proof:

they wolde nat have tho ladyes brente for an horne made by sorsery that cam frome 'the false soreres and wycche moste that is now lyvyng' (430.19-21).

Morgan's testimony is unreliable; the process is something like exceptio, the questioning of the motives of the appellant, rather than answering--or in this case judging--the charge.¹⁹ There might therefore be reason to think that Malory here accepted that adultery was a treason punishable in court by the appropriate traitoresses' penalty, and that he is again acknowledging that Arthurian law differed from the English law of the fifteenth century. He does not, however, point this out: he may not have consciously thought about it at all. But if the reader chooses to judge Mark by contemporary standards, well and good: it substantiates his villainy.

5:6 High Treason by Adultery with the Queen

The violation of the queen was high treason in both English and French law, and it appears to be treason in Malory's book also. There are exceptions: Accolon, for his affair with Morgan le Fay, is not

17. York, 'Legal Punishment' 16.

18. York, 'Legal Punishment' 16.

19. Pollock and Maitland 2: 587. C.f. Howard Bloch 39.

said to be a traitor to King Uriens. But then, Accolon is not in his service, Uriens is not a major character, and Morgan's attempt on his life is not called a treason either. Whilst it is possible to commit treason against a minor king, Malory does not draw attention to it in these cases, because it is not especially important. The treasons of Tristram and Lancelot against their respective kings, however, are.

Guenever is aware that her affair with Lancelot is illegal and that he is liable for it: she orders Elayne not to reveal the adultery to anyone, else 'hit woll be his deth!' (806.28). She means, though she does not explicitly say, that Lancelot could be executed for treason. Elayne answers her by making a reference to a technicality by which Lancelot would escape conviction in a court of law: 'As for that . . . I dare undirtake he is marred for ever' (806.30-1), meaning his madness. She is implying that, even if she did speak out, Lancelot's madness would save him from a shameful death because medieval madmen could not be convicted for felony (and treason is a felony), at least--according to one interpretation--if their affliction was such that they were denied moral choice.²⁰

But even before this conversation, Tristram's adultery with Queen Isode has been presented as being liable to the death penalty. Tristram lives in Mark's land and appears to be under Mark's command: he is subject to the king and his adultery with Isode is in terms of English law a treason against the king; according to Mark and his supporters,

20. Baker 427. Bacon however supports Elayne's observation by saying that madmen cannot be tried: 'Principall Rules' 57. But c.f. medieval trials of animals, esp. in E.P. Evans, The Criminal Prosecution and Capital Punishment of Animals (1906; London: Faber and Faber, 1987). Not everyone, however, agreed with the practice of trying and punishing criminal beasts: Bloch (33) observes that Beaumanoir considered it a waste of justice, on the grounds that animals lack moral sense and do not comprehend exemplary punishment (Beaumanoir 2: 481, c.1944).

such adultery is also treason in Arthurian law. The lovers are first discovered together 'in a wyndowe' (426.13) by Andred, who tells King Mark. Mark

toke a swerde in his honde and cam to sir Trystrames and called hym 'false traytowre' and wolde have stryken hym, but sir Trystrames was nyghe hym and ran undir his swerde and toke it oute of his honde. And than the kynge cryed:

'Where ar my knyghtes and my men? I charge you, sle this traytowre!' (426.14-20).

This is similar to French customary law's definition of flagrans delictus, at least if it can be presumed that the lovers are alone and in private: but since Mark has not previously had any proof of the lovers' adultery he has not warned them to discontinue. He therefore has no right, in French law, to kill Tristram. And, more importantly, there is nothing in English law, by which both Malory and his readers would judge Mark's conduct, to substantiate Mark's accusation; merely being alone with a woman does not prove adultery, and there existed no right, in England, to kill even proven lovers on the spot. Mark thus appears as a paranoiac tyrant.

Later, however, Tristram and the queen, after Sir Andred and a company of knights lay a watch, are again captured, this time unmistakably in the act of adultery. Tristram, the next morning, by the assent of Mark, Andred, and 'som of the barownes' (431.9) is condemned to death. The judgment is not unanimous and is therefore suspect--Malory makes a good deal of Mark's willingness to convict on his own authority, even though Arthur, and even Morgan, without any apparent qualms or disapproval on Malory's part are allowed, on occasions, to judge, even execute and exile on their own authority. The form of Tristram's penalty is not specified, but in context it is obviously awarded for treason by adultery with the queen. Malory however is characteristically tactful regarding his second hero's misbehaviour:

the 'grete charge' is voiced only by the villainous and therefore morally suspect Andred, who observes 'false traytur thou arte with thyne avauntynge!' (431.23-4) in reply to Tristram's 'complaynte' that he has done much for Cornwall and ought to be treated with honour not execution.

Tristram of course escapes his execution, but is later captured by Mark, who attempts to do with him what Isode has feared, (502.10-13), that is, destroy him:

[Mark] lete calle hys barownes to geve jugemente unto sir Trystramys to the dethe. Than many of hys barownes wolde nat assente therto, and in especiall sir Dynas the Senesciall and sir Fergus. And so by the avyse of them all sir Trystramys was banysshed oute of the contrey for ten yere, and thereuppon he toke his othe uppon a booke before the kyng and hys barownys (502.34-503.4).

Tristram is tried, a second time, presumably for the treason by adultery for which he was formerly condemned to death: but this time, because his supporters have their say, his penalty is mitigated to the legally acceptable alternative of exile.²¹

5:7 Abduction of the Queen as Treason

Tristram's treason is one of proven carnal adultery, but Malory appears to think that in the case of adultery with the queen at least, a sexual act is not a necessary prerequisite of a just charge of treason. Mellyagaunce abducts Guenever, having ambushed her; she calls him a 'traytoure knyght' (1122.8), partly because of the ambush but mainly because she senses a sexual threat:

Bethynke the how thou arte a kyngis sonne and a knyght of the Table Rounde, and thou thus to be aboute to dishonoure the noble kyng that made the knyght! Thou shamyst all knyghthode and thyselffe and me. And I lat the wyte thou shalt never

21. C.f. Richard II's treatment of Hereford and Norfolk in 1398 (Traïson et Mort 22-3 and 156-8).

shame me, for I had levir kut myne owne throte in twayne rather than thou sholde dishonoure me!' (1122.9-15)

Malory himself observes later that Mellyagaunce appeals Guenever 'to hyde hys owne treson' (1133.4). Lancelot himself implies a similar thing: when confronted with the circumstantial evidence of Guenever's bloodstained sheet, which gives Mellyagaunce the opportunity to lay an appeal of treason against the queen, Lancelot, while he cannot counteract the incriminating circumstantial evidence, attempts to intimidate Mellyagaunce by implying Mellyagaunce's own traitorous intent:

'ye ded nat youre parte nor knyghtly, to touche a quenys bed whyle hit was drawyn and she lyyng therein. And I daresay . . . my lorde kynge Arthure hymself wolde nat have displayed hir curtaynes, she beyng within her bed, onles that hit had pleased hym to have layne hym downe by her. And therefore, sir Mellyagaunce, ye have done unworshypfully and shamefully to yourselff' (1133.10-17).

Perhaps Malory considers that since intent to kill the king, at least insofar as it is manifested in an overt if unsuccessful deed, is treason, then by analogy the overt intent to violate the queen is treason also. The law, as far as I know, never had to make a ruling on this point.

However, abduction without a woman's consent could be prosecuted as a case of rape: and rape, of course, would be a traitorous violation of the queen.²² And objectively, this form of rape is a dishonour to the woman herself: Guenever herself realises that she is in danger of losing her honour, keeping her ladies and knights constantly about her as witnesses to her purity. Ultimately she pardons Mellyagaunce his offence in the preserving of her worship.

22. J.B. Post, 'Sir Thomas West and the Statute of Rapes, 1382,' Bulletin of the Institute of Historical Research 53 (1980): 24-5.

5:8 The Basis of High Treason by Adultery

In Malory's book, adultery with the queen is not a treason because of the possibility of disputed succession: as I observed earlier, in one case a sexual act is unnecessary to the committing of treason, and even in romance, if there is no sexual act there can be no offspring. And besides, Guenever and Isode never have children: the possibility that they might is never raised. Rather, the basis of treason by adultery with the queen is depicted as a matter of serious dishonour to the king and an usurpation of his rights. Aggravayne, revealing the adultery of Lancelot and Guenever to Arthur, observes:

'we know all that sir Launcelot holdith youre quene, and hath done longe; and we be your syster sunnes, we may suffir hit no lenger. And all we wote that ye sholde be above sir Launcelot, and ye ar the kynge that made hym knyght, and therefore we woll preve hit that he is a traytoure to youre person.'

'Gyff hit be so,' seyde the kynge, 'wyte you well, he ys non othir' (1163.7-13).

This inversion of hierarchy is represented on the image on the shield which Tristram, at Morgan's command, bears to Arthur: a knight stands atop the heads of a king and queen, signifying, like the statue of Arthur atop the twelve kings, their 'bondage and servage' (554.33). Lancelot, like Mordred later on, has 'oversette' the king. This disordering of hierarchy, of course, is a breach of allegiance, because the allegiance implied in service is that of the inferior's proper respect, obedience and gratitude towards his superiors: and one cannot be said to be obedient, respectful, or grateful towards a man one has 'oversette.' The rarest of treasons in law is, paradoxically, the treason which most closely approaches the English legal idea of the basis of treason.

5:9 The Culpability and Punishment of Queens

Now, apart from the incident where Mark threatens a traitoresses' death for Isode along with the other adulterous ladies, he makes no attempts to formally execute her: she is never tried for treason by adultery, perhaps because she is not a political threat. She is however punished: she is put into a leper colony (432.18):²³ and subsequently kept 'strayte,' perhaps under house confinement, by Mark so that she cannot contact Tristrans (433.6). Isode, on the evidence of Mark's threat of burning, is a traitoress: but her punishments do not accord with the penalties for treason in law.

The first intimation that Guenever can be considered culpable of treason for adultery comes with Mellyagaunce's accusation of her:

'A ha, madame!' seyde sir Mellyagaunte, 'now I have founde you a false traytouras unto my lorde Arthure, for now I preve well hit was nat for nought that ye layde thes wounded knyghtis within the bondys of youre chambir. Therefore I wille calle you of treson afore my lorde kynge Arthure. And now I have proved you, madame, wyth a shameful dede; and that they bene all false, or som of them, I woll make hit good, for a wounded knyght thys nyght hath layne by you' (1132.15-24).

Her crime, furthermore, can be brought to formal trial according to the procedure of appeal of the Court of Chivalry.²⁴ Mellyagaunce as appellant states his charge first: 'well I am sure there hath one of

23. Leprosy, in the Middle Ages, was thought to be a venereal disease, and is in one sense an appropriate place for one guilty of sexual misdemeanour; Henryson's *Cresseid* ends up in one (Macqueen 48). See also Brundage 385.

24. See for example the Duke of Gloucester's letter to Richard II describing the form of judicial duels in the Court of Chivalry in Dillon 61-66: the differences between real and fictitious procedures outweigh the similarities, but there are sufficient parallels to establish the connection in both of Guenever's treason trials. See Eynon 55-6, P.J.C. Field, 'Commentary,' *The Seventh and Eighth Tales* 261-7, ns. to ll. 2277-2476, Earnest York, 'The Duel of Chivalry in Malory's Book XIX' (*Philological Quarterly* 48, 1969) 186-191, and Maurice Keen, *Chivalry* 208.

hir hurte knyghtes layne with her thys nyght. And that woll I prove wyth myne hondys, that she ys a traytouras unto my lorde kynge Arthure' (1133.19-21). Guenever is guilty as charged: the injured Lancelot is her knight; and he has slept with her. Lancelot's wording of denial is careful and does not echo Mellyagaunce's: he says 'I say nay playnly, that thys nyght there lay none of thes ten wounded knyghtes wounded wyth my lady, quene Gwenyver, and that woll I prove with my hondys that ye say untrewly in that' (1133.30-4). Guenever is thus innocent according to the wording of Lancelot's denial. And eventually, Lancelot succeeds in proving his denial to be true.

Guenever is twice apealed of treason, for murder and for adultery. The third time, following Aggravayne and Mordred's attempt to entrap her and Lancelot in flagrante delicto, she is summarily convicted and sentenced to death by burning. Vinaver observes that Malory's source for the penalty of burning which would be imposed on Guenever were Mellyagaunce's accusation to hold is not known; neither the Conte de la Charrette nor Chrétien specify burning. Vinaver supposes that Malory derived her punishment from an earlier version of the Conte. The penalty for all of Guenever's supposed treasons, however, is burning, because Malory knows that this is the English penalty for traitresses.²⁵ Whilst in the Mort Artu the barons decide that Guenièvre should be burned 'car autrement ne doit reïne mourrir qui desloiauté fet, puis que ele est sacree,'²⁶ Malory omits this phrase. In his book the penalty is not a special one: it is the penalty prescribed in English law.

25. See Vinaver's note to 1237.6-7: Eynon 65.

26. Mort Artu 97.16-17: 'for a queen who was unfaithful ought not to die in any other way, since she is sacred' (my translation).

The trial and execution of queens and other royals is an occasional feature of non-Arthurian romance; in Octavian, for example, the empress is sentenced to burning, along with her children, for supposed adultery: in fact, it is the emperor's mother who has contrived her disgrace, and when this is discovered, the emperor's mother is duly convicted to death for treason. Both the empress and the emperor's mother escape their penalties: the empress is exiled, and the emperor's mother is in one version sentenced to die by burning; in another she is sentenced then kills herself.²⁷

It is, however, a questionable matter whether in reality a queen, or a king, could be tried and executed for treason. Occasionally there were intimations that a king could be tried--Richard II demanded he have a fair trial before his deposition--but no medieval kings were actually tried in their own courts. The king, in England, was probably considered to be beyond the jurisdiction of his own courts: the statute of 1341 ordained that the peers of the land should not be judged to forfeiture, exile, imprisonment, or outlawry except by their peers in Parliament, 'sauvez totefoitz nostre seigneur le Roi & ses heires.'²⁸ There were no equals or superiors to judge the king: the first English king to be tried for treason, in fact, was Charles Stuart: and he refused to acknowledge the jurisdiction of the court which tried him.²⁹

27. Octavio Imperator, ed. Frances McSparran, Middle English Texts II (Heidelberg: Carl Winter, 1979) ll. 223-38, 1951-56. The version of the poem ed. by Maldwyn Mills in Six Middle English Romances (London: Dent, 1973) retains the reference to suicide (ll.1770-79).

28. 'Excepting always our lord the king and his heirs.' 15 Edw.III Stat. I c.2 in Statutes of the Realm 1: 295.

29. Charles Stuart f.10^r col.2.

Whether a queen shared her husband's legal immunity is questionable; the statute which dealt with the trial of peeresses in Parliament made no exception nor provision for the queen.³⁰ It may all depend on whether the queen is thought to share her husband's sovereignty: if so her only secular superior was the king, who may therefore have had a theoretical right to judge her.

There is, however, little evidence in either English or French law that a queen could be legally liable for crimes of treason. Although from the twelfth century onwards it was a commonplace that it was treason to commit adultery with the queen, there is no evidence that English law's statutory definition of treason included the notion that 'queen consorts were . . . guilty of treason if they consented to the violation of their chastity by anybody but their husbands,' or that burning 'was the punishment for adulterous queens sentenced under Edward III's Statute of Treason of 1352'³¹ because whatever the romancers might have speculated, the 1352 Statute states that it is treason to violate the queen only; it does not imply therefore that the queen is liable, no more than the interdiction on levying war against the king implies that the king who levies war against his subjects is a traitor. This principle of mutuality was indeed argued in a later age:³² but the 1352 legists appear, in all respects, to have been strictly hierarchical. Only an accusation, conviction, and execution of a medieval English queen for high treason by adultery could reveal whether such a process was possible, either under the 1352 Statute or by declaration:

30. See 20 Henry VI c.9 in Statutes of the Realm 2: 321-2 or Statutes at Large 601.

31. Diverres 26-7.

32. Charles Stuart f.4^v col.1.

but to my knowledge there is none.

Admittedly, one of the several articles of alleged treason against Anne Boleyn was adultery, but it is difficult to say whether Anne was accused of this under the provision of the 1352 Act; one historian has stated that if this was the case, Henry had extended the provisions of the Statute far beyond that which the original legists had intended.³³ And besides, Henry VIII's idea of what constituted treason was far broader in scope--and far more arbitrary--than the conservative medieval notions: Henry's legal practices may not always be indicative of medieval legal possibilities.

The only notable medieval English case of queenly adultery, worsened in fact by a consequent deposition and probable murder of the deposed king, was that of Queen Isabella with Roger Mortimer; if the queen, as well as her lover, was liable for treason by adultery, then Isabella should, by rights, have been executed along with her lover.³⁴ As it was, however, she was not. Even in France, the evidence as to the culpability of members of the royal family for treason by adultery is inconclusive: Phillipe le Bel's daughters-in-law, though their lovers were subsequently flayed, castrated, drawn and hanged, were merely imprisoned and had their heads shaved--a penalty for mere adultery from canon law, not the royal laws of treason.³⁵

Now, Malory, unlike many other romanciers, seems to be aware that the trial and execution of monarchs is a peculiarity: he observes

33. Bellamy, Tudor Law of Treason 40-1.

34. 'de Mortimer IV, Roger,' in The Dictionary of National Biography, ed. Sidney Lee, vol. 39 (London: Smith, Elder & Co., 1894). Mortimer was accused before Parliament a variety of treasons including 'causing dissension between Edward II and his queen.'

35. Brundage 388-9, Diverres 27 n.28.

Such custom was used in tho dayes: for favoure, love, nother affinité there sholde be none other but ryghtuous jugemente, as well uppon a kynge as uppon a knyght, and as well uppon a quene as uppon another poure lady (1055.12-15).

And the law was such in tho dayes that whatsomever they were, of what astate or degré, if they were founden gylty of treson there sholde be none other remedy but deth (1174.20-3).

Malory, in describing the 'historical' application of the death penalty to all estates is assimilating the evidence he has already included in his book and is looking forward to other incidents, such as Arthur's threat to execute Lancelot; Lancelot is, after all, king of France.

The first explanation implies that Malory considers that, in his own time, a queen might be exempt from the correct penalty generally ascribed by law--'righteous judgment'--only because of favour, love or affinity, that is, her connections, rather than because of any legal immunity as a result of her status. The second explanation merely states that it was the law that all found guilty of treason, queens or not, shall undergo the death penalty. If this contradicts fifteenth-century ideas--and the fact that it is an explanation suggests that it does--it might suggest that Malory expected his readers to believe, or at the very least himself believed, that it was unlikely that a contemporary queen would be burned.

Still, what a romance writer thought, or even what he thought was general public opinion, on a questionable legal point, does not reveal what a court, faced with a real-life case, would have decided. And ultimately, in a case such as this, only a legal precedent can prove the law. That Queen Isabella was not tried or burned might suggest that English law did not provide for the execution of queens, but Malory's observation that queens, from favour or affinity, might be exempted from penalty may be the truth: Edward III may not have

wanted to shame or burn his own mother. Malory cannot illuminate the law: but he can provide an insight into what medieval people thought about it.

5:10 Process in The Court of Chivalry

In Malory's book, a trial by combat is presided over by a king if there is a judge at all. The king need not be Arthur: he wishes to delegate Angwysshawnce's trial to Lancelot (an oblique reference to Lancelot's being King of France), but since Lancelot cannot make it, installs King Carados and the King of Scots as judges instead. Now this is in accordance with the procedure of the duel of chivalry, which had to be presided over by a king or his delegated official.³⁶

In the Morte, this form of trial has the function of conforming to trial by peers or superiors: kings and queens who are tried have as their secular judge one equal in degree (though possibly greater in status according to the feudal hierarchy of high king and petty kings which Malory portrays) to them and, as far as the judicium dei needs a worldly judge, one with the right to formulate judgment. Only Tristram, in fact, is judged to death and later, exile, by the 'barownes' who, since Tristram is king of Lyones, are not his peers: but it is made clear that King Mark, who is, participates in the judgment also.³⁷

Now, since Guenever's two trials take place more or less according to the procedure of the duel of chivalry, Arthur is her judge in both cases. According to natural law, Arthur is his wife's domestic superior: as high king, he is also her only political superior. He alone has the right, indeed, an obligation, to be her judge, a fact

36. Dillon 62.

37. Or in fact his superior: Andred, in attempting to appropriate Tristrams' lands, implies that Mark has jurisdiction over them: perhaps Tristram holds his lands from Mark.

Malory acknowledges when Arthur observes 'the case ys so I myghte nat have ado in thys mater, for I muste be a ryghtfull juge. And that repentith me that I may nat do batayle for my wyff' (1050.5-7).

The author of the stanzaic Morte is not bothered by trial by peers or superiors; his Genure could be tried by combat or by an inquest of knights, though as in Malory, the judgments on royals in Octavian are all given by kings.³⁸ The trial of queens, in romance, does not give any insight into what was the law; there was no proven law, and consequently there are only a variety of opinions on how such a trial might be conducted.

And in fact, Malory's references to the procedures of the civil, rather than English common law, may partly circumvent the problem of whether a queen could be tried at all. The laws of arms, as Keen observes, were sovereign in that they bound men of all allegiances, and it is not such a great step, in romance, to portray all ranks as being equally bound.³⁹ This idea that a monarch is subject not only to the law, but to the procedures of the law of arms, may be the basis of Mador's observation to Arthur that "thoughe ye be oure kynge, in that degré ye ar but a knyghte as we ar, and ye ar sworne unto knyghthode als well as we be" (1050.18-20).

5:11 Malory's Procedure of Summary Conviction

Guenever's final conviction for treason by adultery differs from the procedures of her first two trials, which were instigated by more or less formal appeals and were therefore, in accordance with the

38. Or to be more exact, they are all given by kings in Mills' ed. of Octavian, ll. 205-225 and 1771-2. In McSparran's ed. the judges are merely 'ryche syres' l.224. C.f. stanzaic Morte 923-25.

39. M.H. Keen, The Laws of War in the Later Middle Ages (London: Routledge & Kegan Paul; Toronto: U of Toronto P, 1965) 51 and 239.

Arthurian laws, referred automatically to trial and judgment by combat. Guenever is finally sentenced to death under a special procedure of proof and summary conviction. This fictitious 'historical' procedure is a hybrid of French, English, and military law, and for reasons I will give later, appears to have been one of Malory's most deliberate legal elaborations.

The French Mort Artu's representation of Guenièvre's trial draws extensively on French customary law, much of which Malory dispenses with: it is worthwhile therefore to compare the French version with Malory's text. In the French, Agravaïn is coerced, by Arthur, into revealing Lancelot's treason: Arthur then orders them 'mes fetes ce que ge vos di, qu'il soient pris ensemble, se vos poez.'⁴⁰ Guenièvre and Lancelot are trapped in the Queen's chamber: Lancelot has bolted the door, and they are thus not seen in the act of the adultery (though the author leaves no doubt as to their culpability).⁴¹ Since the lovers are alone and in a private place, however, their capture accords with customary law's definition of flagrans delictus and they can therefore be rightfully presumed guilty: Arthur, as wronged husband, has a right to kill both on the spot. He does not, and Guenièvre therefore has a legal right to a trial: Arthur, in ordering his barons to summarily judge her to death, is guilty of judicial murder. Because murder is a treason in French law, the commoners justly accuse the king of treason: and it is because Guenièvre has not been tried that the Pope intervenes and orders Arthur to take her back. There is no doubt that Arthur, in imposing summary conviction on Guenièvre, acts outside

40. Mort Artu 87.31-2: 'but do as I tell you, if you can, so that they are taken together'(my translation).

41. Mort Artu 92.6-8.

his legal rights: and his status as a king is thus seriously undermined, which detracts from the lovers' guilt.⁴²

Malory's legal changes deflect such criticisms of monarchical misrule from his Arthur: Arthur's refusal of a trial, in one sense, reflects his own adherence to the letter of the law.

The conversation between Aggravayne and Arthur in Malory's version goes like this: Aggravayne reveals, and offers to prove, to Arthur that Lancelot is a traitor to the king's person. Arthur replies

'I wolde be lothe to begyn suche thynges but I myght have prevys of hit, for sir Launcelot ys an hardy knyght, and all ye know that he ys the beste knyght amonge us all, and but yf he be takyn wyth the dede he woll fyght wyth hym that bryngith up the noyse, and I know no knyght that ys able to macche hym. Therefore, and hit be sothe as ye say, I wolde that he were takyn with the dede' (1163.12-19).

Because the 'noyse' put upon Lancelot involves treason, if it is formulated as an appeal, Lancelot has in Arthurian law a legal right to a trial by battle (c.f. 405.2-4), which he, in right or wrong, will not refuse: and which, given his might, will not be according to Arthur a reliable form of proof of his guilt or innocence.

Arthur's demand that Lancelot be taken with the deed is less harsh than it seems, because Malory adds that Arthur's actual motive for refusing a trial by combat is to spare Lancelot:

For, as the Freynshe booke seyth, the kynge was full lothe that such a noyse sholde be uppon sir Launcelot and his quene; for the kyng had a demynge of hit, but he wolde nat here thereof, for sir Launcelot had done so much for hym and for the quene so many tymes that wyte you well the kynge loved hym passyngly well' (1163.20-5).

This makes sense only if one assumes that Arthur does not at heart disbelieve in the efficacy of the judicium dei: his observation on Lancelot's ability to overcome right is not, after all, based on any

42. C.f. Howard Bloch 55-62.

proven incident. Arthur may in fact forbid Aggravayne to lay the 'noyse' as a formal accusation which must lead to a duel, because he knows that the duel might reveal Lancelot's culpability: producing evidence, as Arthur knows, is no easy option. Arthur therefore successfully arbitrates between his own obligations of gratitude to Lancelot and his own obligations to administer the law.

With Lancelot and Guenever's capture in the Queen's chamber, Arthur continues to administer the law according to correct form. Malory, aware that Lancelot and Guenever are not according to Arthur's first order 'taken with the deed' in the sense that they are seen and captured in the act of adultery, extends 'taking with the deed' to include capture with the menour:

the law was such in tho dayes that whatsomever they were, of what astate or degré, if they were founden gyilty of treson there shuld be none other remedy but deth, and othir the menour other the takyng wyth the dede shulde be causer of their hasty jougement (1174.20-25).

Capture with the menour or manner was to Giles Jacob

where a Thief having stolen any Thing, is taken with the same about him, as it were in his Hands; which is called Flagrante delicto. . . . Such a criminal is notailable by Law: and anciently if one guilty of Felony or Larceny had been freshly pursued, and taken with the Manner, and the goods so found upon him had been brought into Court with him, he might be tried immediately without any Appeal or Indictment . . .⁴³

Therefore by the standards of English law, Arthur's demand for capture with the deed is a valid way of avoiding the Arthurian right to appeal

43. 'Manner,' New Law Dictionary.

and trial by combat.⁴⁴ Malory, however, goes further, implying that in Arthurian law capture with the menour circumvents the need for trial at all. Guenever is not tried: her 'hasty jougement', or summary conviction, echoes the English and military law which permitted summary conviction for publicly notorious treason.⁴⁵ Arthur acts in accordance with the Arthurian law Malory synthesises from English and French law.

But the Arthurian law itself is questionably just. The idea of 'taking with the deed' implies flagrans delictus: or, as the Leges will have it, accusations of adultery in which witnesses see the joining of the offenders' sexual organs are more authoritative than if the produced evidence is purely circumstantial.⁴⁶ The Leges does not admit circumstantial evidence as proof of sexual misdemeanour unless the lovers have been previously detected and warned to discontinue their liaison:

Similiter pugnare potest homo contra eum quem cum desponsata sibi uxore post secundam et tertiam prohibitionem clausis hostiis uel sub una coopertura inueniet, siue cum filia sua

44. It is also the rationale behind Lancelot's request to Aggravayne and Mordred to be allow him to depart on condition that he appears before Arthur next morning. If he is not captured with the deed, he must be appealed: and the appeal of treason, in Malory's book, is automatically referred to trial by combat:

'and ye woll departe and make no more noyse, I shall as to-morne appeyre afore you all and before the kyng, and than lat hit be seen whych of you all, other ells ye all, that shall deprave me of treson. And there I shall answeyre you, as a knyghte shulde, that hydir I came to the quene for no manner of male engyne, and that woll I preve and make hit good uppon you wyth my hondys' (1168.4-10).

Lancelot wants his captors to lay a formal appeal, to which he has already formulated an equivocal reply: he effectively says that he came to Guenever's room without any intent to do evil (which appears to be true, since he promises Bors he will not be away very long). But if, having arrived, Lancelot changed his mind and went to bed with Guenever--which the French book, though not Malory, says is the case--the very wording of his denial could yet prove his innocence in a judicial battle.

45. Keen, 'Treason Trials' 99-101, Laws of War 40.

46. Leges 258-9 c.82 s.9a.

quam de sponsa genuerit, siue cum sorore sua que de sponsa sit, siue cum matre sua que patri suo fuerit desponsata.⁴⁷

And even in French law, lovers captured in incriminating circumstances were presumed guilty of adultery only insofar as they had received prior warnings to forgo each other.⁴⁸ Whilst there is evidently sound reason for thinking that a thief pursued from the scene of a crime and subsequently caught with the goods on his person is guilty of the initial theft, the English law of the menour allowed for doubt: the thief was obliged to stand trial. Lancelot and Guenever, suspected of adultery, are merely in circumstances where adultery could take place. There is no proof that it does.

I am not saying that one should see Arthur's commitment to law as suspect because he treats Lancelot and Guenever according to the Arthurian procedure for the menour, when by the standards of English law they are not captured in the menour at all. Malory's other deviations from the English law of the menour suggest that he had in mind a procedure quite different from the English (or perhaps was using the word suggestively rather than technically). It is likely that Lancelot and Guenever's capture is capture in the menour in the sense of the word as Malory uses it: the Arthurian law itself is simply unsatisfactory.

Both Lancelot and Gawain point to this insufficiency: they do not deny Lancelot's presence in the queen's chamber, but they argue that this is not proof of adultery, just as the sleeve of Elayne of Ascolat, or Isode's unvised letters to Keyhydyus, are only a possible, but an

47. Leges 258-9, c.82, s.8: 'In the same way a man may fight against a person whom he finds with his wedded wife, after the second and third prohibition, behind closed doors or under the one covering, or with his daughter whom he begot on his wife, or with his sister who was legitimately born, or with his mother who was lawfully married to his father' (Downer's translation).

48. Diverres 25 and Howard Bloch 55.

unproven, indication of treason by sexual misconduct rather than being treasons in themselves. Because of the doubt as to whether adultery has taken place, they urge, there should be a trial by battle. This is as much to say that human investigation cannot provide a sure judgment, and therefore the case should be referred to the infallible judicium dei.

Arthur, however, adheres to the letter of the law in that he is empowered by the law, if he so chooses, to accept Lancelot's presence in the Queen's room as proof of treason. And this is what he does: 'bycause sir Mordred was ascaped sore wounded, and the dethe of thirtene knyghtes of the Rounde Table, thes previs and experyenses caused kynge Arthure to commaunde the quene to the fyre and there to be brente' (1174.26-9). These 'experyences,' however, prove that Lancelot was present in the chamber, not that he had committed adultery: Lancelot, in fact, uses the same evidence to assert that he is not guilty of adultery:

'For they that tolde you tho talys were lyars, and so hit fell uppon them: for by lyklyhode, had nat the myght of God bene with me, I myght never have endured with fourtene knyghtes, and they armed and afore purposed, and I unarmed and nat purposed; for I was sente for unto my lady, youre quyne, I wote nat for what cause, but I was nat so sone within the chambir dore but anone sir Aggravayne and sir Mordred called me traytoure and false recrayed knyght' (1197.20-7).

Malory's refusal to say whether Lancelot and Guenever were 'abed other at other maner of disportis' (1165.11-12) can be put down to his embarrassment or disapproval or both. But his ambivalence is the only means we have for judging the justice of Arthur's assumption of their guilt on the evidence he possesses. The 'proofs and experiences' Arthur admits do not reveal even to the reader whether Lancelot and Guenever were committing adultery, and therefore, as Gawain rightly

observes, the evidence against Lancelot and Guenever is not so incriminating as to rule out the possibility of their innocence (1174.31-1175.18). It is conceivable, as Gawain argues, that Guenever wished to reward Lancelot for his good services, and did so privately 'in eschewyng and dredyng of slaundir.' The only reason the reader has for assuming that Lancelot and Guenever are guilty of traitorous adultery at the time of their entrapment, is that they have previously committed adultery. That, however, does not mean that they are guilty on this occasion. This is important.

There is no doubt that Arthur, at his own discretion, can award summary conviction or refer the case to trial by combat. Gawain advises trial by combat. Lancelot, addressing his own retinue, suggests that Arthur can opt either for summary conviction or trial by combat:

'thes knyghtes were sente by kynge Arthur to betray me, and therefore the kynge woll in thys hete and malice jouge the quene unto brennyng, and that may nat I suffir that she shulde be brente for my sake. For and I may be harde and suffirde and so takyn, I woll feyghte for the quene, that she ys a trew lady untyll her lorde. But the kynge in hys hete, I drede, woll nat take me as I ought to be takyn (1171.13-20)

According to Lancelot--and Lancelot's word is rarely without authority--Arthur's motive for adjudging summary conviction is a result of personal emotion not objective justice. Though he acts within his legal rights, his refusal to allow a trial by battle is morally unjust.

English law reserved trial by combat for cases in which the limitations of human inquiry provided no alternative means of establishing guilt or innocence.⁴⁹ In Malory's book appeal to the supernatural for judgment, through the *judicium dei*, or through the intervention of characters like the Damsel of the Lake, has been a primary feature of

49. See Gloucester's letter to Richard in Dillon 62.

both the thwarting of treason and the judgment of it. Now, both Gawain and Lancelot argue that Arthur should allow a trial by combat to establish Guenever's innocence of traitorous adultery. Arthur ignores Lancelot's request altogether, and replies to Gawain thus: Lancelot, Guenever's champion, 'trustyth so much uppon his hondys and hys myght that he doutyth no man' (1175.20-1). The judicium dei would not be, given Lancelot's might, a reliable indication of the innocence it would appear to prove. Arthur's ostensible motive for refusing a duel is, as he presents it, a result of a desire to see legal justice properly done.

Arthur's motive, however, is ambivalent, because he has no good reason for supposing that Lancelot is capable of overcoming right: his earlier observation to Aggravayne suggests that this is what he believes but Malory as I noted earlier suggests otherwise. Arthur, however, refuses trial by combat when Gawain advises it on the supposition that Lancelot is capable of overcoming right. He has no proof except Lancelot's killing, in the wrong, of the fourteen knights outside Guenever's bedchamber, which itself presupposes Lancelot's guilt of adultery. In effect, Arthur accepts, regardless of the doubtful evidence, that Guenever and Lancelot are guilty and is prepared to execute them on this belief alone. And this supposition can derive only from Arthur's private knowledge of the lovers' affair.

According to Malory, Arthur has a deeming of the lovers' affair. As far as the reader is aware, this knowledge comes from four possible sources. Firstly there is Merlion's prophecy in the first tale, which like his prophecy concerning Mordred, seems to have been forgotten. Secondly there is the gossip and rumour of the court, which has for some time dictated that Lancelot and Guenever should act cautiously. While medieval law attached great importance to reputation, however,

it generally also required proof of ill-doing in the form of witnesses to overt deeds or through the judicium dei. In Malory's book rumour is seen to be ultimately an unreliable testimony to guilt: Guenever is evil spoken of, unjustly as it turns out, during the Pyonell episode. Arthur's third source of information appears to be Morgan le Fay, who sends him a shield upon which is depicted a knight standing upon the heads of a king and queen, and a damsel who enigmatically interprets this for him (556-7). Fourthly, there is King Mark's slanderous letter which

spake wondirly shorte unto kynge Arthur, and bade hym entermete wyth hymself and wyth hys wyff, and of his knyghtes, for he was able to rule his wyff and his knyghtes.

Whan kynge Arthure undirstode the lettir, he mused of many thynges, and thoughte of his systyrs wordys, quene Morgan le Fay, that she had seyde betwyxte quene Gwenyver and sir Launcelot, and in this thought he studyed a grete whyle. Than he bethoughte hym agayne how his owne sistir was his enemy, and that she hated the quene and sir Launcelot to the deth, and so he put that all oute of his thoughte (617.6-16).

It is possible that Malory is thinking of an 'off-stage' incident in mentioning Morgan's 'words,' but it is equally likely that he has confused the damsel who interprets Morgan's shield with her mistress.

Either way, Morgan's testimony, along with Mark's, is unreliable on the grounds Arthur admits: they are his enemies. Arthur's ultimate reasons for supposing that Guenever and Lancelot are guilty are therefore suspect, and certainly unproven: his refusal of trial by battle is therefore unjust because his judgment is potentially incorrect, and for all we know, is incorrect. The previous adultery which we, as readers, are aware has taken place does not prove this specific adultery, and it is only incontrovertible proof of this adultery which can substantiate Arthur's suspicions of previous adultery. Like Guenever in the sleeve episode, Arthur jumps to conclusions.

That he does so is understandable: like Guenever arbitrarily accusing Lancelot, he is in emotional turmoil. But Arthur's status as king and fount of justice makes his situation much different from Guenever's. He is obliged by his station to be an objective judge: and while on one level he is, judging his wife--not without grief--to the stake on the evidence he possesses, his own long-suppressed reaction to his 'prevy shame' nevertheless determines that he interprets as proof the evidence against his wife and friend. Arthur avenges his personal shame through perhaps unconscious manipulation of the law. He does nothing illegal: but he is not just in the Bractonian sense of wishing to give each his due, because he has not truly proven that Guenever and Lancelot have committed the crime which is legally deserving of death.

In the excusing of Arthur, it could be said that the king has earlier in the book made judgments based on the defendant's reputation alone: and one could, in medieval England, be condemned for notorious treason. But reputation is often misleading: and there is no public 'overt act' by which Lancelot and Guenever's private adultery is rendered publicly notorious.

But Arthur's manipulation of the law is not a condemnation of Arthur as king: had Malory desired that effect, a translation of the Mort Artu's portrayal of the king's illegal attempt to burn Guenever without trial would have sufficed as well if not better than the story Malory presents. Rather, Arthur's failure to be truly just is a criticism, a depiction of his own failure to live up to the moral, if not the legal, ideals of his own status, and it is the first of his errors

of judgment which contribute to his own downfall.⁵⁰

5:12 Summary of Chapter Five

Treason by sexual infidelity is in terms of Malory's portrayal of related laws and procedures, the most interesting and complex form of the crime in the Morte Darthur. It is a comprehensive hybrid of elements from canon law, extra-legal and romance tradition, legal speculation, French, English, and military law, which Malory projects into the past as a reasonably consistent body of Arthurian custom.

Treason by sexual infidelity can be committed by lovers or spouses against their partners: its basis is partly a violation of domestic allegiance which is thought to exist in a committed relationship even if that relationship has not been formalised in marriage. However, the third party is thought to be a traitor to the wronged lover or husband by analogy with the definitions of adultery in canon law and the definitions of treason against the king by violation of the queen in English and indeed French treason law.

The treason of lovers--especially adulterous lovers--to each other is an extra-legal misdeed, though it appears to be quite tightly defined, consisting of carnal knowledge of one other than one's true lover. It is therefore possible to say that some extra-legal charges of treason by infidelity are unfounded. The carnal infidelity of wives, however, is on one occasion seen to be punishable by legal penalty, but if it is a crime in law it is generally resolved out of court. The wife might be informally executed (which seems to be illegal) or might be reconciled with her husband: the third party is usually confronted

50. C.f. Wilfred. L. Guerin, 'The Tale of the Death of Arthur': Catastrophe and Resolution,' Malory's Originality: A Critical Study of Le Morte Darthur, ed. R.M. Lumiansky (Baltimore: The Johns Hopkins Press, 1964) 264.

in knightly combat. There is little difference between the extra-legal punishments and solutions to adultery and the infidelities of lovers, except that in a love-relationship the man is equally liable to reprisals for infidelity.

Adultery with a queen, however, is consistently seen to be subject to various forms of legal proceedings and Malory employs sophisticated and complex legal references in dealing with this kind of trial. The queen, as well as her lover, is subject to trial and punishment for her consent to adultery: her crime is a breach of the domestic allegiance of marriage, aggravated by the status of her husband into high treason. The queen's lovers, on the other hand, are variously interpreted as guilty of 'oversetting' the king: the allegiance of the knight-servant, in Malory, is cast in terms of gratitude and subordination to command from one's sovereign, and adultery with the sovereign's wife, being ungrateful and insubordinate, thus contradicts and violates allegiance. As well as a dishonour to the king, however, adultery with the queen is equated with military resistance by King Mark, who correspondingly persecutes Tristram while imposing, for the most part, mild penalties on his wife.

With the exception of rape by abduction, the crime of high treason by adultery consists of carnal knowledge of the queen, though Arthurian law as Malory presents it empowers Arthur to summarily convict, at his own discretion, those captured in circumstances in which adultery could have taken place. It is the means of proof, however, rather than the crime itself, which has arbitrary limits: this is a theme which has earlier appeared in Mark's court, where the barons do not refute the traitorousness of common adultery, but refuse to accept Morgan's magical horn as adequate proof of the ladies' guilt. Arthur's

own definition of proof, however, is ethically and perhaps politically unacceptable: the disseverance of the king and law from justice, if it is not a new theme, is one which contributes to Arthur's own tragedy.

Chapter Six:

Military Treason

6:1 Treason Under The Laws of Arms

Matters of arms were not the business of English common law, but were justiceable under military law. This was based on the civil law and it encompassed a wider range of treasons than English common law. For example, while the English statutory definition of treason excluded the taking of prisoners for ransom, military law included it; only the king, under the civil law, had the right to declare war, so the taking of ransom or spoil in a war begun without authority could be regarded as a treason.¹

A state of war, according to the laws of arms, existed when one rode with banners unfurled, or, during a siege, if one fired artillery; this held for international and civil war.² Given that a state of war provably existed, there were specific treasons which could be committed. Levying war upon the king was an obvious one, (though this could be tried under common law insofar as the king, in reply, did not unfurl his own banners), along with desertion, surrendering castles--especially for payment--without an appropriately lengthy defence, and--perhaps--betraying a brother-in-arms to the enemy, which formed part of the charges against Ralph Grey in 1464.³ Several of the Ordinances of War also include crimes penalised with the traitors' death of drawing and hanging. These were imposed, for example, if a layman touched the consecrated Host or the vessel in which it was contained;

1. Keen, 'Treason Trials Under the Laws of Arms,' Transactions of the Royal Historical Society 12, Series 5 (1962): 91.

2. Keen, 'Treason Trials' 93-4.

3. Keen, 'Treason Trials' 90.

or if a soldier took prisoner a traitor and did not hand over the man to the King, Constable or Marshal; or when a man caused an 'affraye' in the host.⁴

Occasionally Malory's idea of treason seems to owe something to the Ordinances, such as Arthur's observation to Lancelot that 'thou haste layne be my quene and holdyn her many wynters, and sytthyn, lyke a traytoure, taken her away fro me by fors' (1187.32-4). Malory has elsewhere presented forceful abduction of the queen as a treason in itself. Here, however, Malory may also be echoing the ordinance of war which stated that he who rescued a lawfully convicted man from his execution should suffer the penalties due to the one he has rescued.⁵ And since Guenever is a traitoress, Lancelot could, for rescuing her, be punished with a traitor's death: he is therefore 'like a traitor.' This presumes, of course, that the battle at Guenever's pyre has established a state of war: but Malory, throughout his book, utilises aspects of the law of arms without accurately reflecting the jurisdiction of the Court of Chivalry.

6:2 Treason by War in Malory's Book

In military law, English law, and in French law, levying war against the king was treason. In Malory's book there are only two wars which, directly or by implication, are designated as treasonous. The first of these is, in narrative terms, minor in the extreme: following his French source, Malory has Sir Saphir appeal the Earl de la Plaunche 'afore the kynge, for he made werre uppon oure fadir and

4. See the ordinances of Richard II and Henry V in the Black Book of the Admiralty 453 ss.1 & 2, 454 s.10, 459 ss.1 & 2 462 s.10, 464 s.17, 466 s.22, 468 s.30, 470 s.35.

5. The Black Book of the Admiralty 469 s.30.

modir. And there I slewe hym in playne batayle' (661.11-12).⁶ This may have been an appeal of high treason, since Saphir and Palomides' father, Asclabor, is said to be a king (169.28, 733.14).

That Mordred is a traitor through, amongst many other things, levying war against the monarch is obvious by the standards of English and military law by which Malory, through legal allusion, invites the reader to judge him. Mordred besieges Guenever in the Tower of London; 'he made many assautis, and threw engynnes unto them, and shotte grete gunnes' (1227.24-5). This may illustrate Mordred's lack of chivalry, but it also emphasises, through the law of arms, that a state of war exists: and that war is directed, in this instance, against the queen. It is therefore, in law, an indisputable high treason for which Mordred, in the book, is roundly condemned.

These two incidents are the only clear cases of the treason of levying war in the whole book. The wars of the lesser kings against Arthur in the first tale have a dubious status as treason, not only because Malory never overtly refers to the kings as traitors, but because one cannot say for sure whether Lot and the other kings owe allegiance to Arthur or not. In fifteenth-century law the kings are capable of committing treason against Arthur because they are 'Englisshe, Walshe, Irisshe' and therefore 'oweth liegeaunce to our liege lord the Kyng.'⁷ But the geographical boundaries of English allegiance in the fifteenth century need not correlate with those Malory depicts in his book, and for this reason I would at this point like to survey the various kinds of allegiance to Arthur.

6. See Vinaver's note to 661.10.

7. See the Ordinances of Henry V in the Black Book of the Admiralty 470 s.35.

6:3 Malory and Allegiance to Kings

Despite the fact that Arthur swears to his people to be a just king, their allegiance to him does not seem to be conditional on his fulfilling his oath to them (although the rebellious English, transferring their allegiance to Mordred, imply with no justification that Arthur has been a bad king). The indications are that the people of England owe Arthur territorial allegiance generally associated with the Rex Dei Gratia. Political theory had it that the king became truly the king from the death of his predecessor, which necessarily implies a king given authority by God rather than the people.⁸ This is reflected in the Morte when Ector and Kay kneel to Arthur after he has first pulled the sword from the stone: he 'shal be the rightwys kyng' (14.21-2) in the sense that he will be properly recognised and crowned, but he is Ector's 'lord Arthur' (14.36) prior to his recognition and acceptance by the people. And the commons too, having finally accepted that it is by God's will that Arthur is to be their king, 'knelyd at ons, both ryche and poure, and cryed Arthur mercy bycause they had delayed hym so longe' (16.15-7). It is because he is empowered by God rather than the people that the people must ask forgiveness for not recognising him: Arthur is king de jure before he is formally accepted by his subjects. Arthur's authority may be confirmed by the people in that they recognise his true claim,⁹ but ultimately his authority, revealed through lineal descent, nomination, and the miracle of the sword in the stone, derives from God. One need not therefore have sworn allegiance to the king--and Malory's commons are not said to swear allegiance--in

8. Kantarowicz 370-1.

9. See Schramm 141-78 for an interesting account of the history of election to kingship.

order to be his subject: allegiance is fundamentally territorial.

Who owes territorial allegiance to a king is defined by geographical boundaries. The inscription in the anvil upon which the sword which proves Arthur's claim to the throne reads 'WHOSO PULLETH OUTE THYS SWERD OF THIS STONE AND ANVYLD IS RIGHTWYS KYNGE BORNE OF ALL ENGLOND' (12.34-6). Arthur's eventual territory, however, is much greater than all England;

within fewe yeres after Arthur wan alle the Northe, Scotland, and alle that were under their obeisaunce, also Walys. A parte of it helde ayenst Arthur, but he overcam hem al, as he dyd the remenaunt (16.37-40)

Aftir the deth of Uther regned Arthure, hys son, which had grete warre in hys dayes for to gete all Inglonde into hys honde; for there were many kyngis within the realme of Inglonde and of Scotlonde, Walys, and Cornuwayle (61.1-5).

Whether Arthur's 'overcoming' of the rest of Britain is a conquest of foreign territory or an assertion of de facto as well as de jure kingship over men who, though rightfully his subjects, refuse to acknowledge him is not stated with any certainty; all we are told is that Arthur defeats and subdues the various kings. There is a feeling that since he is Arthur, he 'ought to be aboven all othir Crysten kynges for of knyghthode and of noble conceyle that is allway in' him (188.16-7). But being morally deserving and having an hereditary right to be someone's overlord are not the same thing at all.

The extent of Arthur's territory all depends on the boundaries of the 'Inglonde' of the inscription on the anvil. It would not be very striking, though it would be legally pertinent, to inscribe 'WHOSO PULLETH OUTE THYS SWERD OF THIS STONE AND ANVYLD IS RIGHTWYS KYNGE BORNE OF ALL ENGLOND, SCOTLONDE, IRELONDE, WALYS, CORNUWAYLE, AND ALLE THAT ARE UNDER THEIR OBEYSAUNCE.' However Malory may, on occasion, be guilty of the deplorable English habit of referring to

every country in the British Isles as England. Wales is certainly not England even though Malory seems to equate the two in that Arthur goes there with the express purpose of holding another coronation at Carlyon: part of Wales at least appears to be under Arthur's governance. North of the Trent is almost certainly supposed to be under Arthur's rule, since he appoints Sir Brastias as warden there. Whether north of the Trent includes Scotland is impossible to determine in this context. There is said to be conflict between the North and Uther as well as Arthur: but whether the northerners oppose the English kings as traitors, ones who rightfully owe allegiance, or as external enemies who owe no allegiance, is an awkward matter.

Cornwall, or at least part of it, would appear to have been under Uther's governance, along with Wales. Arthur's claim to the North, however, is implied by Merlin. He tells Arthur to speak to the rebel kings, some of them Northerners, 'as their kyng and chyvetayn' (18.20) which suggests that Arthur is king de jure over the extended England which encompasses Scotland, Ireland and Wales, even if the resistance of the kings makes it impossible to establish his de facto kingship; that will come later, and Arthur will overcome the kings whether they wish it or not.

Arthur's overlordship of the North may be implied when Ulphuns, accusing Arthur's mother Quene Igrayne of treason, observes that she is

the causar of youre grete damage and of your grete warre, for and she wolde have uttirde hit in the lyff of Uther of the birth of you, and how ye were begotyn, then had ye never had the mortall warrys that ye have had. For the moste party of youre barownes of youre realme knewe never whos sonne ye were, ne of whom ye were begotyn; and she that beare you of hir body sholde have made hit knowyn openly, in excusynge of hir worship and youres, and in lyke wyse to all the realme. Wherefore I preve hir false to God and to you and to all youre realme (45.16-26).

The barons Ulphuns mentions may be the British kings, like Lot and his

faction, suggesting that they by rights owe Arthur the allegiance of high-ranking subjects.

However, Lot and his faction, unlike Ulphuns' 'barownes,' are aware of Arthur's parentage. Merlin tells them that he is Uther's son 'borne in wedlok, gotten on Igrayne, the dukes wyf of Tyntigail' (18.1-2).¹⁰ Still, that Ulphuns believes the 'barownes' are ignorant of Arthur's lineage may be his mistake or Malory's inconsistency; it may not mean that the barons cannot be equated with the other British kings, especially since at this point the only wars that have taken place are those between Arthur and Lot's faction, which, initially at least, are said to be based in the kings' ignorance, and then disbelief, in Arthur's lineage.

A further comment which may suggest that Arthur has a rightful claim to the allegiance of all the British kings is Arthur's own observation to King Mark that 'ye oughte to do me servyse, omayge and feauté, and never wolde ye do me none, but ever ye have bene ayenste me, and a dystroyer of my knyghtes' (594.32-5): finally Arthur 'withholds' him, that is, accepts his service. Whether this incident is evidence for Arthur's de jure kingship over all Britain, however, might depend on chronology.

10. The kings take this to mean that though Arthur was born in wedlock, it was the marriage of Igrayne and Tyntagil; Arthur is thus the child of an adulterous union between Igrayne and Uther, and according to Canon law is therefore a bastard. This is important, because even though Uther and Igrayne later marry, if Arthur had been born before their marriage, English law would not legitimise him. And if he was illegitimate, he could not rightfully become king. Merlin puts them right; Arthur was conceived after the death of the duke, and Uther and Igrayne married long before his birth: Arthur is therefore legally legitimate. This persuades some of the kings, though not others: they believe Merlin is a witch and therefore not to be believed. See Sir John Fortescue, De Laudibus Legum Anglie, ed. S.B. Chrimes, Cambridge Studies in Medieval History (Cambridge UP, 1942) 47 & 101, Baker 400-01, Brundage 544.

The narrative chronology of Malory's book suggests that Arthur's withholding of Mark takes place after Arthur becomes Emperor. Everyone in the West therefore owes Arthur allegiance. But Malory suggests that the Roman War and part of the 'Book of Tristrans' are 'historically' concurrent (195.8-10; c.f. 609-610). If Arthur 'withholds' Mark before he discovers or proves his claim to the Roman throne, one could argue that Arthur as English king has a claim to the allegiance of at least one of the Cornish kings regardless of his Empire. It is impossible to determine, however, the precise time, in relation to Arthur's discovery of his claim to the Empire, at which Arthur withholds Mark: and even if this was possible, there is no guarantee that Malory remembers that his Tristrans story and his Roman War are supposed to be historically concurrent; no guarantee that Arthur's ascension to the Emperorship has any effect on the rest of the book at all.¹¹

To attempt to discover the allegiances of the British kings in the early part of the book is to distil from the scant information Malory gives conclusions it is ill formed to supply. Merlin's observation to Arthur that he should speak to the rebel kings as 'their king and chyvetayn' is more or less the only solid indication that Arthur has a claim on the allegiance of other British kings. And yet, this is exactly what critics have assumed: Ellis calls Royns, for example, a traitor, because he wages war against Arthur, but Royns could be called a traitor only if he owed Arthur his allegiance. Ellis, however, does not attempt to discover his allegiance.¹²

11. C.f. Moorman 4-6.

12. Deborah Ellis, 'Balin, Mordred and Malory's Idea of Treachery' English Studies 68 (1987): 68.

Only one of the British kings is directly said to have previously been connected with Arthur, and that is King Lot. He initially appears at Arthur's coronation feast, and Arthur welcomes him, thinking he has come 'for grete love and to have done hym worship' (17.19). This could mean nothing more than Lot, as a neighbouring king, arrives to show that he is an ally, not a subject-king, and that, as a high-status guest, he is honouring Arthur by his presence. But much later on, Malory observes that Lot 'of late tyme before . . . had bene a knyghte of Kynge Arthurs, and had wedded the syster of hym' (77.3-5). The service of the knight to his lord, however, is freely given, rarely territorial: Lancelot himself is seen in Arthur's court and apparent service long before Arthur becomes the Roman Emperor with a legal claim on Lancelot's territorial allegiance as King of France. Lot's service to Arthur reveals nothing about the extent of the territory under Arthur's rule.

6:4 The Status of Arthur's Wars with the Lesser British Kings

The only incident which might indicate that the war with the Eleven kings amounts to treason occurs after Lot's death, when all of his host are 'takyn and slayne' (77.18) which might suggest summary punishment for notorious treason, like that often meted out on the battlefields of the wars of the Roses: but it might also mean 'some were captured and some were killed.'¹³ Set against this is the fact that Lot and the other kings are given decent burials, not exhibited in pieces on Tower Bridge: but this might say more for Arthur's magnanimity than the kings' innocence of treason.

13. I am grateful to Mr. P.J.C. Field for pointing out this possible reading to me.

In the war with the five kings, the kings set upon Arthur at night, which provokes, in panic, a shout of 'treson!' (128.11) from Arthur's forces: Arthur responds 'Alas! . . . We be betrayed!' (128.12). But the cry of treason has nothing to do with the possible allegiance of the five kings to Arthur: rather, Arthur's forces, in panic, account for the Kings' ambush by supposing that they have been betrayed by one of their own host, just as 'treason!' was cried at the battle of Barnet in 1471, when part of the Lancastrian force, lost in the mist, circled around to confront their own side.¹⁴

The third inconclusive association with the kings and treason comes with King Royns. He challenges Arthur in a particularly humiliating manner, demanding his homage in the form of his beard, and then invades and burns Arthur's lands. The only indication that he might be a traitor comes with the damsel bearing the sword which can be drawn only by one free of all treason, treachery, felony and villainy: she has been to Royns' court wearing the sword and departs similarly encumbered. But it must be remembered that all of Arthur's permanent court fail to prove themselves free of treason by drawing the sword as well: yet they are not necessarily guilty of political treasons. The same may be true of Royns.¹⁵

Treason, however, is a 'grete charge' and one that Malory in general does not make lightly. The eleven kings at least are given honourable motives for resisting Arthur and Malory may not therefore wish to stigmatise them as traitors. Initially the kings refuse to recognise Arthur's authority is because they believe him to be a 'ber-

14. William Seymour, Battles in Britain and their Political Background 1066-1746, vol. 1 (London: Sidgwick and Jackson, 1989) 159.

15. C.f. Ellis 68.

dles boye that was come of lowe blood' (17.23-4); that is, he has no claim to the throne. Later on, this reason disappears in the kings' objective of avenging the shame of losing their first battle: chivalric motives displace political ones, and military prowess is almost seen as a justification for military opposition:

'A, sir Arthure,' seyde kynge Ban and kynge Bors, 'blame hem nat, for they do as good men ought to do. For be my fayth,' seyde kynge Ban, 'they ar the beste fyghtyng men and knyghtes of moste prowesse that ever y saw other herde off speke. And tho eleven kyngis ar men of grete worship; and if they were longyng to you, there were no kynge undir hevyn that had suche eleven kynges nother off suche worship.'

'I may nat love hem,' seyde kynge Arthure, 'for they wolde destroy me.'

'That know we well,' seyde kynge Ban and kynge Bors, 'for they ar your mortall enemyes, and that hathe bene proved beforehonde. And thys day they have done theire parte, and that ys grete pité of their wylfulnes' (34.32-35.8).

Lot's host are honourable opponents of the first degree, worthy of admiration for their deeds even if the aim of those deeds is regrettable: they would be worthy retainers if they would hold with Arthur rather than against him.

The third reason Malory gives for Lot's military opposition to Arthur is that 'Arthure lay by his wyff and gate on her sir Mordred, therefore kynge Lott helde ever agaynste Arthure' (77.6-7). ^{This} sounds suspiciously like Malory's excuse for a character he obviously admires: he remarks at one point 'Alas! that [kyng Lot] myght nat endure, the whyche was grete pité!' (77.1-2). Malory retrospectively interprets Lot's war as a knightly reply to a specifically personal insult, his attempt to reprimand one whom he considers to be an immoral king. And while, as Vinaver says, vengeance for adultery would hardly have been a satisfactory justification for a war or rebellion in a French romance,¹⁶

16. See Vinaver's note to 77.5-7.

several of Malory's wars are both caused, directly or indirectly, and justified by the monarch or his inferiors' sexual misconduct. The Duke of Tintagil resists King Uther as a result of his adulterous intent towards Igrayne: Arthur, pursuing Lancelot to Benwick to avenge the deaths of Gaheris and Gareth, justifies his war by telling his army that he wishes to avenge himself on the knight who has 'beraffte hym hys quene' (1186.28).

The idea that a man or a monarch's misconduct can justify treason committed in retribution for that misconduct was familiar in the fifteenth century. Cade's rebels attempted to justify what were, in law, treasons. Once the king had resolved to sort out the legal and administrative corruptions which were ruining the people, they promised, they would go home: they were in their own view reformers, not rebels. Though they had executed the Chancellor as well as apparently levying war on the king, the rebels appeared to think that the corruption of their victims was sufficient to justify treasonous acts.¹⁷ It was not, of course: whilst Hereford justified his deposition of Richard II on the grounds of the king's immoralities and diverse depredations, had Richard captured Hereford in the act of warring against him--or, since plotting deposition was treasonable in 1399--had parliament rejected Hereford's claim and reinstated Richard, no amount of pleading that Richard was an unjust tyrant would have saved Hereford from an ignominious death. The law admitted the victim's abuse of office as a justification for the perpetrator's treason only when it had to. Literature, Malory included, presents a more lenient view.

The revolt led against King Mark by Dynas the Seneschal is not called or treated as treasonable. It is provoked by the misconduct of

17. Three Fifteenth-Century Chronicles 96-7.

King Mark, who, like King Lot, has a grudge against the man who has slept with his wife. As he explains later, he 'may not love sir Trystram, because he lovyth my quene' (679.20-1), but whilst adultery can justify an open and honourable conflict, it cannot justify Mark's underhanded and consistent treachery in attempting to dispose of Tristram: he attempts to have him killed in a tournament, expresses dismay at his wounds, promises to be his doctor and then puts him into prison. Since Tristram has committed adultery with Isolde, the punishment is objectively a lenient one, but on this occasion there is no new proof of Tristram's crime nor a trial, so whatever Tristram's actual guilt, Mark acts outside the law. And, of course, much more important than any of this is the feeling that Tristram's good deeds and knightly worship is such that any misdeeds that are not overtly shameful in a knightly sense should be forgiven, forgotten, or at least ignored. Thus, when Mark imprisons Tristram, Dynas and his supporters defy such a treacherous king and give up all the lands they hold of him (677.6-9) and resort to arms.

Now, Arthur has wronged Lot and it may not therefore be wrong that Arthur should be punished. Perhaps Malory had in mind the old feudal déni de justice which was never quite forgotten in either literature or life, even if the law had no truck with it. Romances other than Malory's reflect the idea that the misprision of the victim can justify the traitor's act: in Gamelyn, for example, the hero, in a mock trial, hangs the corrupt King's Justice who has unjustly attempted to condemn him.¹⁸ Gamelyn thus commits high treason: the justice was in the execution of his office (as the Statute goes) when Gamelyn killed him.

18. Gamelyn 879-886 in Sands 180.

And the poet, in passing, acknowledges that the killing is treason, since Gamelyn obtains a pardon for this and other crimes from the king.¹⁹

But it is on ethical grounds, by ethical justice, rather than through law, that Gamelyn's actions are justified. He still has to seek a pardon from the king for his crimes. In Malory's case, Dynas' rebels may remain legally culpable despite their ethical justifications for resistance. Diffidatio, under strict feudal law, would allow Dynas to escape without legal reprisal; as it turns out, there is none, because Mark tells the rebels he has been ordered by the Pope to go on crusade; they then disband. There is no mention of treason: no penalties are imposed. This, however, may not be a result of the rebels' diffidatio.

Mark himself does not recognise the validity of diffidatio as a withdrawal of allegiance; 'I trow,' he says, referring to his crusade, 'that is fayrer warre than thus to areyse people agaynste youre king' (680.1-3). As far as Mark is concerned, he is still the rebels' king even though they, having yielded up their service and their lands, are no longer his vassals: Mark believes in deferential, territorial allegiance. This is very much in accordance with fifteenth-century ideas of allegiance to the king: diffidatio, in the late Middle Ages, was not sufficient to absolve one of the duties of territorial allegiance, and legal penalties could therefore be imposed for treason.

Earlier in Malory's book penalties are in fact imposed for treason despite the perpetrator's diffidatio: Mark kills Bersules, who has defied him, for the treason of transferring his service to Mark's supposed enemy Tristram (578.20-25). But Mark's justice is by means of

19. Gamelyn 889 in Sands 180.

murder, not law: for this reason alone the penalty is unjustifiable. Mark could have legally imposed penalties on Bersules according to fifteenth-century law: but in Malory's book Bersules and Dynas' defiance and treason is morally justified. So Lot, by extension, may be a traitor in law but morally innocent of treason in so far as Arthur has wronged him. And Malory, of course, generally judges his characters' treasons according to their moral, rather than their objective, culpability.

It may be misleading, however, to conclude from this that Malory does not consider the early wars against Arthur to be treasonous because the rebels have honourable motives and Arthur is guilty of misconduct. This glorifies King Lot: it is possible that this is why he is not depicted in the villainous terms common to medieval portrayals of traitors. But King Royns is not directly designated a traitor either, even though he has no honourable motives, no justifiable reason for insulting Arthur, demanding his homage, and overrunning his lands.

Another possible reason for Malory's failure to designate the rebel kings as traitors is this: though they by rights owe Arthur their allegiance (allowing, for arguments' sake, that this is the case) most of them have never acknowledged it. This may make a difference, at least to Malory if not in law. The evidence, however, is as usual inconclusive. Arthur, for example, has never sworn fealty, done homage, and paid tribute to Rome. Arthur, having like Henry IV examined the Chronicles,²⁰ discovers he has a claim to the Roman throne: his refusal to pay tribute is therefore reasonable, and he then attempts to prove his claim by declaring war on Lucius. It is during

20. Hutchison, Hollow Crown 224.

this war that Lucius refers to Arthur as a traitor (219.12). This could suggest that it is not necessary to have sworn allegiance, or at least acknowledged one's allegiance, to a king to be considered a traitor to him: or it could imply that Lucius is overstepping his authority. Given that Lucius' moral character is not favourable, it seems more likely to imply the latter.

As I observed earlier, it is normal for readers to assume that Arthur has a right to the allegiance of all the British kings: 'Everybody knows that the King of England is their feudal overlord,' as White will have it.²¹ By waging war against him, they are therefore Arthur's traitors. That Malory does not say they are traitors may not have any significance; perhaps the treason is implied by reference to fifteenth-century law in which levying war was treason. But one still cannot produce conclusive evidence proving that the lesser kings owe Arthur allegiance: and the fact that none of the kings are designated as or treated as traitors is perhaps the strongest evidence that they do not. If this is the case, Malory's conception of Arthur is therefore as a great conqueror of hostile and aggressive nations, not as a king who subdues hereditary territories under his de jure rule. Malory's Arthur may be an imperialist (though he fights only in just wars by the standards of military law) as opposed to one who rescues his own land from disorder for 'default of good governance.'²²

But in the later books, military opposition to one's king, at least if his actions fall short of tyranny, is not seen to be a good thing even if it might not be a treason. Lancelot, who has a certain

21. T.H. White, The Once and Future King (1958; Glasgow: Fontana, 1982) 233.

22. Keen, Laws of War 66-7.

amount of authority as the greatest knight of the Arthurian world, is reluctant to fight Arthur even when Arthur overruns his lands; he considers that he owes the king who knighted him an irrevocable loyalty. When he concedes that he must fight for his 'lyff and ryght' (1191.2), he wishes that Arthur should leave the field; when he does not, Lancelot actively works to keep him horsed and at one point saves his life. While it appears to be ethically permissible to resist the king in arms in some circumstances, it is more virtuous and infinitely preferable to forbear.

6:5 Private Warfare

In the Morte Darthur, the king does not possess the sole right to declare war; only King Mark, with vast ingratitude, kills his own brother for treason by on the grounds that waging a war in which the king is not present is a 'theft' of his honour: a crime of lèse-majesté. In theory Mark is justified by military law: but Malory makes it quite clear that Mark's conduct is ethically unacceptable; 'Alas, for the goodnes and for hys good dedis this jantyll prynce Bodwyne was slayne!" (633.29-30)

Malory's definition of war is not consistently indicative of the law's. Malory employs warre to denote large-scale armed conflict as well as 'just' wars instigated by a sovereign king: war, to him, is a matter of armed conflict between two men or thousands. Such private warfare, as well as being fitting to the nobility's pursuits of arms, has in Malory's book a legal function which necessitates that it should not be regarded as a treason. In the absence of the English procedure of inquest, private warfare is the alternative to single combat in the resolution of land disputes. There is said to be 'grete warre' between Outlake and Damas (138.33); and King Anyawse's disinherited gentlewoman landholder, when the king dies, begins 'to warre uppon [her

successor], and hath destroyed many of [her] men and turned hem agaynste [her], that [she has] well-nyghe no man leffte' (957.18-21). Though private battles were fought in the fifteenth century over land disputes,²³ battle was a last resort and, depehding on the extent of the casualties, was justiceable as trespass or felony: it was not however a treason unless specifically levied against the king, and Malory is perhaps reflecting English common law in this respect.

In military law, taking a prisoner for ransom was an act of war; the peacetime captor therefore traitorously usurped the king's sole right to declare war:²⁴ but in Malory's book there is no sense at all that imprisoning a man is an usurpation of the king's military prerogatives. There are two forms of 'imprisonment' in Malory's book in addition to the taking of prisoners in a 'just' war. When a knight in what appears to be peacetime defeats another knight, the victor occasionally demands oaths or other services from the defeated party: as prisoners, for example, they might be obliged to go to court, sometimes to put themselves in the king's mercy for whatever crimes they may have committed (see for example the Red Knight of the Red Lands, 337.22-28). It is loosely a kind of 'imprisonment' similar to capture-in-arms in warfare, but such imprisonment is not a treason, perhaps in reflection of English law, but maybe because the victor does not ransom his prisoners for money.

The second form of imprisonment, incarceration, has an ambivalent status in Malory's book. In law, imprisoning one's countryman was not a treason, though it was considered a violation of the victim's

23. See for example The Paston Letters 1: ltr.334 (p.546) and ltr. 342 (pp.559-60).

24. Cuttler 31-2.

legal rights and an expression of disorder.²⁵ Generally, in the Morte Darthur, incarceration is not regarded as a treason: sometimes, as with Darras' imprisonment of Tristram, it is considered justifiable. On other occasions, however, imprisonment by one's fellow knight is considered to be unjustifiable, and knights feel obliged to rescue their fellows: usually the jailer, in this instance, tends to be a villain.

Whether imprisonment is regarded as a treason in itself depends on the motives and actions of the jailer. As with sir Dynas, a reputation for capturing knights and keeping them in dire straits can contribute to the jailer's reputation for treason. Morgan le Fay's capture of the sleeping Lancelot is motivated by lust: she and her cronies tell him to choose one of them as a lover; when he refuses he is imprisoned. Lancelot later implies the traitorousness and treachery of her actions: 'I was adrad of treson, for I was late begyled' (260.9).

In circumstances like these, the possible guilt of the accused and the status of the jailer is more or less irrelevant: Tristram~~§~~ is imprisoned by Mark, 'by his owne assente and the traytourses of Magouns' (676.22-3). This imprisonment is regarded as a treason on Mark's part, partly because it is unlawful and a violation of the loyalty of kings to their own role, but also because it is treacherous. This is especially noticeable in Mellyagaunce's entrapment and imprisonment of Lancelot: both have agreed to do no villainy to the other before the duel, as the process of appeal in the Court of Chivlary specified,²⁶ but unfair play prior to a duel was not in military law

25. John Cheke, The Hurt of Sediton, 1549 (Menston, England: Scolar Press, 1971) D.iiV.

26. Gloucester's letter to Richard II, in Dillon 62.

considered to be a treason. In Malory, however, it is:

ever he that faryth with treson puttyth ofty n a trew man in grete daungere. And so hit befelle uppon sir Launcelot that no pere ll dred: as he wente with sir Mellyyagaunce he trade on a trappe, and the burde rolled, and there sir Launcelot felle downe more than ten fadom into a cave full off strawe (1134.30-5)

It is the treacherousness or honesty of the jailer which determines whether imprisonment is associated with treason or not.

6:6 Desertion

Desertion, however, may well be a treason; in one case it is certainly a capital crime. King Lot and his host make an ordinance that 'who that seeth any man dresse hym to fle, lyghtly that he be slayne; for hit ys bettir we sle a cowarde than thorow a coward all we be slayne' (35.20-2). Treason, in the Ordinances, is generally recognisable through the penalty of drawing as well as death: but Malory is wary of such shameful ends in general and Lot appears to have summary execution in mind.

On the other hand, it may be implied that desertion is sometimes justifiable; during the Roman war, Priamus' retinue defect to Arthur, whom they recognise as their 'kynde lorde;'

And sythyn they sente to the deuke thes same wordis:

'Sir, we have bene thy sowdyars all this seven wynter, and now we forsake the for the love of oure lyege lorde Arthure, for we may with oure worshype wende where us lykys, for garneson nother golde have we none receyved' (238.29-239.4).

Seven years, even by medieval standards, is a long time for a soldier to go without pay; and it is because the contract between lord and man has not been honoured that the men assume they have a right to withdraw their service.

6:7 Knightly Treasons Outside War

The extent of this kind of treason is the most enigmatic form of the crime in Malory's book. Malory employs the phrase 'traitor knight' about twenty-eight times: phrases like 'traitor king' are used much less often, but both would appear to indicate that one can betray the obligations of one's status.

The breaking of one's oath, or indeed, one's solemnly given word, was not treason in English law: in the King's court breach of contract was liable to legal process, and breach of pledged trawbe was liable to action in the Church courts.²⁷ In English and French literature, there is a tendency to treat perjury or faithlessness to one's word or promise as a treason, although usually an extra-legal one: Chaucer in particular seems especially interested in this type of treason.²⁸

In general, however, Malory tends not to treat breach of one's solemnly given word or indeed sworn oath as a treason. Once the traitorousness of trawbe-breaking is implied: having fought with Arthur until he is at a disadvantage, 'Accolon began with wordis of treason' (143.35), requesting the king to yield. Accolon has promised Morgan le Fay that he will grant no mercy to his opponent: he may therefore be traitorously breaking his promise to Morgan. But this is not certain; Malory may have mistranslated his source,²⁹ since elsewhere perjury is associated with treason rather than being a treason in itself.

27. Hornsby 42-3.

28. Hornsby 125.

29. As Vinaver suggests in his notes to 143.35.

King Mark, for example, at least three times breaks his sworn word. He swears to Kay that he will never be against errant knights and will be a good friend to Tristram, though he is not: he swears to Arthur 'by my fayth and by the fayth that I owe unto God and to you, I shall worship [sir Tristrams] for youre sake all that I can or may' (609.3-5) and subsequently proves false: and Malory observes that 'Kynge Marke . . . bethoughte hym of more treson, not withstondynge he graunted unto sir Percivale never by no maner of meanys to hurte sir Trystram' (679.29-32). Though such perjuries are undoubtedly a part of Mark's cumulative reputation for treason, they are not directly described as treasons; Lancelot observes that he is 'called so false and full of felony that no man may beleve' him (610.12-3); the sense of felony here is close to, but it is not quite equated with, treason.

Perjury of the oath by which a man becomes a knight is a different matter. But this in itself needs some qualification, because it is evident that one can breach the Pentecost Oath, for example, without becoming a traitor: the knights are admonished

never to do outerage nothir mourthir, and allwayes to fle treson, and to gyff mercy unto hym that askith mercy, uppon payne of forfiture of their worship and lordship of kynge Arthure for evir more; and allwayes to do ladyes, damesels, and jantilwomen and wydowes socour: strengthe hem in hir ryghtes, and never to enforce them, uppon payne of dethe. Also, that no man take no batayles in a wrongful quarell for no love ne for no worldis goodis (120.17-24).

It is also said that 'ye sware that ye shuld not have ado with none of youre felyship wyttyngly' (546.27-8).

Of all of these outlawed crimes, refusing to give mercy, failing to aid ladies or maintain their rights by default, fighting knowingly in a wrong quarrel or with one's brother-in-arms are never said to be, nor are treated as, treasons. Gawain and Pellinore both fail to aid ladies, and both are judged by Guenever, but not to death: Gawain is

merely exhorted to be especially in the service of ladies; Pellinore is rebuked. Failure to live up to the knightly ideal as specified in the oath is certainly dishonourable: but it is not always treason.

Rape, murder and treason, however, are said to be treasons against knighthood. Perys de Foreste Savage, for example, is said to be a distresser of women, raping and robbing them. Lancelot describes him in these words:

'is he a theff and a knyght? And a ravyssher of women? He doth shame unto the Order of Knyghthode, and contrary to his oth. Hit ys pyté that he lyvyth!' (269.22-5)

'A, false knyght and traytoure unto knyghthode, who did lerne the to distresse ladyes, damesels and jantyllwomen!' (269.35-6).

Robbery of women is implicitly forbidden in the clause of the Pentecost Oath which says a knight must maintain a lady's rights, which presumably could include the right to peaceful possession of her property: rape is specifically outlawed and is said to be punishable with the death penalty, which is in fact imposed on Perys by Lancelot in single combat.

Perys, however, is not a knight of the Round Table: he has not sworn the Pentecost Oath. That he is punished according to the Oath probably suggests that Malory considers that all knights in his book are bound by similar kinds of oaths or obligations. This is substantiated by the points of similarity in the chivalric oaths and obligations which Malory portrays, and the admonitions given to real-life knights:

ye schall love god above all thinge and be stedfaste in the feythe and sustene the chirche and ye schall be trewe un to yowre sovereyne lorde and trewe of yowre worde and promys & sekirtee in that oughte to be kepte. also ye schall sustene wydowes in ther right at every tyme they wol requere yow and maydenys in ther virginite and helpe hem & socoure hem with yowre good that for lak of good they be not mys-governyd. Also ye schalle sitte [in] noo plase where that eny iugement schulde be gevyn wrongefully ayens eny body to yowre knowleche Also ye schall not suffir noo murdreris nor extortioners of the kingis pepill with in the Contre there ye

dwelle but with yowre power ye schalle lete doo take them and put them in to the handis of Justice and that they be punysshid as the kyngis law woll.³⁰

The general concept of knightliness is expressed through the similar obligations of each specific order.³¹

However, the penalties which are assigned to breach of faith in the real and fictitious orders differ. At the chapel door the king's master cook is supposed to tell the new made knights of the Bath that

yf ye be untrewre to yowre sovereyne lorde or doo ayens this hye and worshipfull ordir that ye have takyn myne office is that y muste smyte of yowre hele be the smalle of yowre leggis and herefore I clayme yowre sporis the whiche I pray yow remembir thys in yowre mynde.³²

In Malory, the only time spurs are mentioned in a legal context is when they can be seen on the heels of the hanged knights whom the Red Knight of the Red Lands has put to a shameful death: presumably the implication is that, since they still possess their spurs, the knights have done no wrong and have been put to an unlawful death.

In real-life, however, the penalty of forfeiture of one's spurs was not the sole punishment for breach of faith or treason. The knight who committed a common law crime underwent the common law penalty for that crime as well as the penalty for his treason to his knighthood. Andrew Harcla concluded a treaty, presumably outside his authority, but much to his advantage, with the Scots. This was construed as 'aiding the King's enemies' and was therefore a treason which anyone, yeoman, peasant, or woman could have committed. Harcla, for his treason against the king, was executed: but that treason was addition-

30. 'How Knyghtis of the bath shulde be made,' in Dillon 68.

31. Keen, Chivalry 7, 9-10, 70-1.

32. 'Knyghtis of the bath' in Dillon 69.

ally construed as a crime against his knighthood for which he was bereft of his spurs and was said to be unknighthooded, rendered a knave.³³

This may throw some light on Malory's own idea of knightly treason. Murder, adultery, and high treason, and possibly certain forms of treachery like ambush and other unfair conflict in combat, are treasons in themselves regardless of the status or sex of the perpetrator or instigator. Most of these treasons are additionally said to be treason to the knighthood of the knightly perpetrator: Lancelot is called a traitor to his knighthood for the supposed treason by murder of Gareth and Gaheris, and for his affair with the Queen. i.c.

Malory does not seem to have consistently associated rape or felonious theft with Arthurian treason except in the case of Perys, where the robbery was of women.³⁴ But it is impossible to say that robbery of women is a treason only when perpetrated by knights, since there are no non-knightly robberies of women, specifically designated as felonious or traitorous, in Malory's book (and even if there were, given Malory's questionable legal consistency, this might not tell us very much). The robbers on the field of Salisbury are not knights, nor do they rob women. The same is true of rape: the giant of the Mont St. Michel, who is not a knight, is a rapist and is killed like a traitor. Death, it might be remembered, is the penalty imposed for rape in the Pentecost Oath. But he is also a murderer, and murder--despite the penalty of exile in disgrace specified by the Pentecost Oath--is seen to be punishable with death in the Morte.

It is likely that Malory, having specifically designated murder as Arthurian treason, sporadically associated English felonies (except

33. Keen, Chivalry 175-6, and 'Treason Trials' 89.

34. C.f. for example Melyas de Lysle's theft of a golden crown (884).

possibly theft) with Arthurian treasons, and rape was of course a felony in English law. However, rape, despite what Andreas Cappellanus advised knights to do if they desired a peasant woman,³⁵ is not a act Malory condones in his knights: his own moral disapproval, more than any legal considerations, was probably the deciding factor in his putting a cry of treason against Perys into Lancelot's mouth. Perys is a traitor to his knighthood in particular because he has flagrantly violated the knightly moral obligation to protect women: but one cannot say for sure whether rape is a 'common-law' treason like murder in fictitious Arthurian law.

6:8 The Basis of Knightly Treason

The basis of treason to knighthood is not a matter of breaking one's knightly oath. As I observed earlier, treason to knighthood is an additional betrayal implicit in any treason committed by a knight, because knights must 'flee treason.' There is a parallel with fornication: fornication is always a sin for a clergyman as well as a layman: but the guilt of the clergyman, insofar as he is sworn to celibacy, is greater. But it is necessary to point out that Malory's knights do not always think of knight-treason as mere perjury, no more than a cuckolded spouse gets upset solely because his or her partner has perjured their marriage vows.

Brewnys Saunze Pitié rides his horse over the prostrate Bleoberys, and sir Harry calls him a 'traytoure knyght' (686.19). Harry--unlike *u.c.* Lancelot to Perys--does not remind Brewnys that he is perjuring himself. And this is sensible enough, since some of Malory's knights, while morally bound by the obligations of their knightly status, are made

35. Field, Seventh and Eighth Tales 19.

knights without swearing oaths.³⁶ But one can still betray one's knighthood, because the very fact of being a knight suggests that one has thereby agreed to conduct oneself according to the obligations that status implies.

Worship, in Malory, is a vast and vague concept, including all that is good about knights; it is supremacy through honour, loyalty, ability in arms, status, reputation and self-esteem; it might to some (though Malory does not seem to approve) include wealth and worldly standing. Treason, however, is the antithesis of worship. A knight's reputation for treason, like worship, is not one which can always be said to derive from any specific act of treason. Lancelot, for example, is a worshipful knight in that he actively behaves in accordance with the Pentecost Oath and the body of knightly obligations; he fights for the rights of ladies as well as refraining from violating those rights. But his consequent 'worship' is cumulative, created as much as anything by the way in which other knights speak of him. Treason is pretty much the same. Dynas, for example, unfairly ambushes knights and imprisons them if they refuse to fight for him: Mark is a murderer, an ambusher, and he betrays his inferiors; Brewnys Saunze Pitié rides knights underfoot and escapes from fair conflicts on fast horses. All are called traitor knights, often repeatedly; it is the reputation, as much as the deeds, which makes real their traitorousness.

Ultimately every action, whether treason or not, which does not contradict the reputation for treason, villainy and evil, can in fact contribute to it. Thus Mark's treason can be stressed because he, in

36. See, for example, Gareth (299.32). The Knights of the Bath did not swear to abide by the obligations of their Order: their agreement to abide by those rules seems to have been implicit in their becoming knights. See 'Knyghtis of the bath' in Dillon 67-9.

the wrong, kills Bersules in a judicial duel: while he is certainly guilty of Amant's murder, he has not killed Bersules with treason, but Lancelot observes 'Alas! . . . That I myght nat gyff the one buffette . . . for tho two knyghtes that thou haste slayne traytury!' (594.16-9). Lancelot means that, since Mark is a notorious traitor, he must have employed some treacherous though invisible means to kill Amant in their judicial duel. There is no proof of this, of course: but one who is proven a traitor, in Malory as in other romances, can be reasonably assumed to commit treason all the time. He becomes, in practice, a scapegoat for all inexplicable ills. Malory, however, does not go so far as the author of Athelston. There, the king, enraged that his pregnant queen should ask for bail for suspected (though in fact innocent) traitors, kicks her in the stomach; her child miscarries. The author, unbelievably, blames all of this on the traitor who is shortly to be proven guilty: 'thus may a traitour baret raise / And make manye men full evele at aise.'³⁷

To what extent treason affects one's knighthood, however, depends very much on what sort of treason it is, and perhaps even moreso, who is talking about it. Treasons like adultery can be seen as lesser violations of one's knighthood, and generally it is an injured or a hostile party who makes use of the phrase 'traitor knight' in this context. It is more than an insult: adultery is a legal treason and is another form of deception which might be considered morally unfitting to a knight.

But--and it is an important qualification--the traitor knight's motives for sleeping with another man's wife need not imply malicious intent towards the cuckolded husband. Lancelot's intention, and

37. Athelston 294-5 in Sands 139.

probably Tristrams' too, is not to shame Arthur and Mark: Lancelot observes, quite truthfully, that he has always been well-willing towards Arthur, Tristrams' itemisation of all the good services he has done Mark, although pompous, is truthful. Their adultery is not a conscious form of concealed and therefore unfair conflict: thus whilst certain characters like Mark and Aggravayne and Mordred imply that adultery is a treason to knighthood, the lack of malice towards the victim would seem to persuade Malory otherwise. He himself never calls adultery a treason to knighthood: nor does he or any of the 'good' characters imply that Lancelot is a lesser knight for his adulterous affair.

Treasons in conflict, through murder, ambush, or similar treacheries, however, automatically implicate the knighthood of the perpetrator. They are wilful attempts to gain supremacy through deception and treachery, overcoming one's own lack of military prowess or cowardice, by short-circuiting, with amoral cunning, the personal dangers of fair combat. To act thus is a bitter parody of true knighthood and a treason of high degree, and one accused of such a crime must offer a defence. It is to prove himself innocent of such a charge that Lancelot comes out of Benwick to confront Gawain.

High treason does not seem to imply betrayal of one's knighthood very much, though most of the real knightly orders saw high treason as a violation of a knight's fidelity to his status.³⁸ Both Aggravayne (who is a 'bad' character with therefore questionable authority) and Guenever (who is a 'good' character and therefore has some authority on right and wrong), commenting on the treasons of Lancelot and Melly-

38. See 'Knyghtis of the bath' in Dillon 69 as cited above: Keen, Chivalry 175-6.

gaunce against Arthur, remark on the special bond of allegiance between a knight and the king who has knighted him. To commit treason against such a king implies ingratitude, perfidy, a disregard of a very special 'affinity' which aggravates the knight's legal treason. But it does not always imply treason to knighthood. While Arthur at one point tells Accolon it is a greivous thing for a knight to fight against his lord, Accolon's treason does not seem to undermine his high knightly status: one gets the feeling that it is because he is a good knight that Arthur forgives him so readily.

6:9 Trial and Punishment of Knightly Treason

The Knights of the Bath, as the quote above indicates, had an obligation to hand over evil-doers to the king's justices for judgment and punishment.³⁹ Malory's knights, if they have the same obligations to fordo wrong judgments and do justice on evildoers, have a different jurisdiction. They sometimes capture traitorous knights and bring them to the appropriate court of chivalry: Lancelot does this to Pedyvere, who is judged by Guenever, and Gawain's punishment for accidentally killing a lady whilst refusing to give mercy to her lover is decided by an inquest of ladies presided over by Guenever. Such a court would appear to exist, if only episodically: and there are other incidents which suggest, sometimes through legal diction, that a knight's report of his adventures on return from his quest may be subject to formal verification through witnesses.⁴⁰

39. 'Knyghtis of the bath' in Dillon 68.

40. See for example the end of 'Sir Launcelot du Lake,' where Gaheris, Kay and many other knights 'bear record' of Lancelot's deeds 286-7. C.f. 'Rekenen' and 'Rekening' in John A. Alford, Piers Plowman: A Glossary of Legal Diction, Piers Plowman Studies 5 (Cambridge: D.S. Brewer, 1988).

But there is no consistent recourse to a court of knights nor a law of chivalry to define and try knight treasons: Malory's knights are, effectively, the justices of Arthurian England. Informal combat, with the minimum of legal preparation, would appear to be as valid and as legal as any formal appeal in court: Malory's knights are not only arresting officers, but appellant, judge, jury, and sometimes executioner for those knights guilty of treasons against knighthood. The fair fight, in court or out of it, is a remedy for all criminal and civil cases.

Knight-treason, because it is not provably an independent treason in itself, does not appear to have penalties special to knights: as I observed earlier, the penalties specified in the Pentecost Oath are not consistently inflicted. Treason against one's knighthood, depending on what sort of 'common-law' treason occasions it, can be tried and punished by formal or informal combat, by death on the battle^{field}, by reasonable circumstantial or notorious evidence and summary judgment to execution, or it may not even be tried at all, being punished by the moral judgment of peers: the traitor gains a bad reputation and shame and villainy is spoken of him. Just as a knight's treason against knighthood is implicit in an independent crime of treason, a knight's punishment for his treason to knighthood is part of the punishment he receives for the objective crime.

6:10 Summary

There are few military treasons in Malory's book, and those he does present are ambivalent in status. Warring on one's king is sometimes treason: sometimes it is not, depending on one's motives and justifications. This is true also of desertion and the imprisonment of men in peacetime.

Whilst on occasion Malory alludes to the ordinances of war and the laws of arms, his portrayal of what is and is not military treason owes less to law than to the fifteenth-century popular notion that treason can be justified by the immorality of its victim. The idea that incarceration is sometimes treasonable, at other times not, depending on the motives and means of the jailer, is consistent with the treatment of various forms of intentional treachery as treason in the rest of the book. This, however, is not derived from law.

Whilst treason to knighthood is the worst crime of which an Arthurian knight can be accused, it is the most elusive to identify. It would appear to consist of breaking the oath by which one became a knight by committing an objective legal or extra-legal treason such as adultery, high treason, murder or assault, in violation of the clause which admonishes knights to flee treason. Often, however, the treasons committed by a knight are seen to be treasons to his knighthood, not because he has broken his oath, but because he is morally bound to fulfil the obligations of his status whether he has sworn to them or not. These obligations include fidelity and adherence to the rules of fair conflict: to, in effect, 'flee treason.' Only rape and highway robbery appear to be treasons exclusive to knights, but they are not provably so: treason to knighthood can therefore be generally seen as a side-effect of customary Arthurian legal and extra-legal treasons.

Treason is the antithesis of worship: one has worship by conducting oneself according to the ideal mode of knightly behaviour, but one is a traitor by consciously deviating from it, often as a result of cowardice or physical weakness, for one's own gain. Treason to knighthood is generally punished, however, by one's consequent bad reputation, or by worshipful errant knights rather than through legal process in court. Unlike in real-life, there is no specific punishment for

betraying one's knighthood for those convicted of common-law treasons by formal process. Mellyagaunce, in fact, is spared the humiliation of posthumous drawing at the request of the Knights and Lords of the Round Table, because he is one of their comrades.

Chapter Seven:

Petty Treason

Malory neither alludes to nor reflects the English legal definition of petty treason.¹ Morgan attempts to murder her husband Uriens, true; but the aspect of petty treason this involves is overshadowed by the fact that Uriens is a king and Morgan's deeds are therefore high treason. The closest equivalent to petty treason in Malory's book is the traditional chivalric treason of betrayal of one's lord.

7:1 Allegiance to a Petty Lord in the Morte Darthur

Allegiance to lesser lords, in Malory's book, is not unlike allegiance to one's king, being loosely divided into two forms based on knight-service without tenure and knight service which involves tenure and homage and fealty. Knight-service would appear to be a condition of tenure but one can serve a lord without holding land, as one could in the bastard feudalism of Malory's own day.

Knight service incorporating tenure is best expressed in the "Tale of Gareth." Beawmaynes is told

"Fayre knyght," seyde the Grene Knyght, "save my lyfe and I woll forgyff the the deth of my brothir, and for ever to becom thy man, and thirty knyghtes that holde of me for ever shall do you servyce" (306.22-5)

The Red Knight, similarly defeated by Gareth, echoes the same idea:

"sle me nat, and I shall yelde me to the wyth fyffty knyghtes with me that be at my commaundemente" (310.1-3)

which later takes the form of an offer of homage:

the Rede Kyghte com before Bewmaynes with his three score knyghtes, and there he profyrd hym his omage and feawté, he and his knyghtes to do hym servyce (310.22-4).

1. C.f. Hornsby's comments on Chaucer's treatment of petty treason (128).

Gareth wins the lands and service of his knights by right of conquest: the vassals of the lords he defeats acknowledge him as their suzerain, and all of his underlings agree to obey him:

'My lorde, sir Bewmaynes, my body and this thirty knyghtes shall be allway at your somouns, bothe erly and late at your callynge, and wothir that evir ye woll sende us.'

'Ye say well,' seyde sir Bewmaynes. 'Whan that I calle uppon you ye muste yelde you unto kynge Arthure, and all youre knyghtes, if that I so commaunde you' (308.4-9).

Part of Gareth's acceptance of the service of his men would appear to be that they and their vassals 'yield' to Arthur as Gareth's overlord. As Gareth's men the various knights are to 'holde' with Arthur rather than, as they have done previously, hold against him by destroying good knights.

Gareth's damsel thinks it is horrifying that a good knight should be 'obedyent' to a kitchen boy; it is, since she is not aware of Gareth's lineage, an inversion of hierarchy, because service, in Malory's book, is construed in terms of inferior status: the inferior owes obedience rather than the feudal retainer's duty of loyalty. All of the knights Gareth defeats, along with their own knights, fulfil the conditions of their service by obeying his summons to come to his wedding at Michelmas; there they do homage and fealty and agree to hold their lands from Gareth for ever more, and emphasise their subjection by willingly taking upon themselves a number of subservient though honourable offices such as chamberlain, carver, and chief butler.²

Knight-service without tenure is less easily definable. Throughout the book knights offer their services, or acknowledge the lordship of

2. C.f. 'The maner and the fourme of the Coronacion of kyngis and Quenes in Englelonde,' in Dillon 53-4, where similar tasks of serving the king at his banquet are allocated to the earls of the realm.

another knight, for one of several reasons. Firstly there is respect or love, the desire to serve one who is reputed good: this is Palomides' motive for twice offering his service to Tristram: 'I shall do you servyse afore all other knyghtes' (697.13) and 'my lorde sir Trystram . . . I woll do you knyghtly servyse in all thynges as ye woll commaunde me' (697.25-6), because Tristram is 'a good knyght; and that ony other knyght that namyth hymselff a good knyght sholde hate you, me sore mervayleth' (697.16-8). The same respect, inspired by Lancelot's great courtesy and virtue, underlies Palomides assertion that he will be 'Launcelottis knyght whyles that I lyve' (742.21-2).

A second reason for offering knight-service is gratitude: the knight offers his service to a man or a lady because they have done him a good turn, as with Lancelot's promise to Elayne to be her 'owne knyght' (1090.2) all the days of his life, or Sir Elynogrys' reference to Palomides as his lord when Palomides wins Elynogrys' lady on his behalf (733.30), and Tristram's thanking of Angwysshawnce for his 'good lordeship' during Tristram's convalescence in Ireland, to which the knight adds the hope that he will be able to do Angwysshawnce service 'at som sason that ye shall be glad that ever ye shewed me your good lordshyp' (391.28-30).

The idea of knight-service without tenure in Malory's book still includes the idea of obedience; the servant is under the 'commaundement' of his lord. Palomides, for example, requests the adventure of the Red City from Tristram, who grants it on condition that Palomides returns in time for the jousts at Lonsep; at the tournament, it is Tristram who gives the orders which Palomides, initially at least, obeys; and when Palomides misbehaves, striking down Arthur when he looks at La Beal Isode, it seems to be within Tristram's authority to reprimand him:

ye ded nat worshypfully when ye smote down that knyght so suddeynly as ye ded. And wyte you well ye ded youreself grete shame, for the knyghtes came hyddir of there jantylnes to se a fayre lady, and that ys every good knyghtes parte to beholde a fayre lady, and ye had nat ado to play suche maystryes for my lady (745.5-10).

Later on, Tristram also reprimands Gareth, who is in his party and who calls him lord (752.30-753.2). Lancelot too seems to have authority over his own retinue of knights--of whom he is called the leader--threatening to kill any of them who should murder Tristram when he gains more worship than Lancelot himself (785.2-13).

In return for doing service, the inferior has the fellowship of his lord, the advantage of his support in adversity or opposition, and the likelihood of gaining great worship by being in his company; there is not, as far as I can see, any necessary aspect of financial reward, though Lancelot ultimately divides his lands amongst his retainers, and Tristram plays host to Palomides for two months. Ultimately, referring to another knight as one's lord can mean anything from being in a permanent retinue like Lancelot's, or, at the most vaguely defined end of the scale, a statement of gratitude and obligation for a superior's altruistic deed.

7:2 Treason to a Lord in Literature

Feudal felony, or treason to a lord, was not included in the 1352 statute. Nevertheless, it is included in some later romances, of which Gawain and the Green Knight is the most interesting example. By accepting the hospitality of Bertilak, Gawain accepts him as a kind of temporary lord to whom he owes certain obligations: 'I am wyge at your wylle to worch youre hest, / As I am halden perto, in hyge and in

loge, / bi riȝt.'³ Similarly in Sir Gawain and the Carl of Carlisle hospitality creates mutual obligations between host and guest, the most important of which, in the poem at least, seems to be the guest's obedience to his host.⁴

Gawain's obligations towards Bertilak in Sir Gawain and the Grene Knight, however, are two-fold: firstly there is the obligation of respect and obedience due to Bertilak as host-lord; secondly there is his obligation to remain loyal to Bertilak and his own word in faithfully rendering up his winnings in the exchange-game to which they have agreed.

There are intimations that it is treason to violate either of these obligations. Gawain refuses to commit adultery with the host's wife, because

He cared for his cortaysye, lest crabayn he were,
and more for his meschef ȝif he schulde make synne,
And be traytor to pat tolke pat pat telde aȝt.⁵

Later, having been discovered in possession of the girdle which he should have, on his own promise, given to his host, he casts it from him and says:

'For care of py knobbe cowardyse me taȝt
To acorde me with couetyse, my kynde to forsake,
pat is larges and lewté pat longez to knyȝtez.
Now an I fawty and falce, and ferde haf be euer
Of trecherye and vntrawpe.'⁶

The latter treason is a complex one, involving a lack of loyalty to the host, the breaking of a given word, as well as a betrayal of knight-

3. Sir Gawain and the Green Knight, ed. J.R.R. Tolkien et al., 2nd. ed. (Oxford: Clarendon Press, 1987) 1039-41.

4. Gawain and the Carl of Carlisle 11.449-69 in Sands 365-6.

5. Gawain 1773-5.

6. Gawain 2379-83.

hood. Adultery, however, is a treason only because it would involve a betrayal of the lord-host.

These treasons are however extra-legal and are seen to be punishable only in the extra-ordinary circumstances of the beheading game, a variation on the depiction of the misdeeds of knights being punished by other knights in informal combat which is familiar from chivalric romance. Bertilak suggests that had Gawain been disloyal by committing adultery, he would have been beheaded, but the small disloyalty of retaining the girdle in self-defence merits only a small cut: gradations of guilt demand gradations of punishment.

This is a crude analysis of the poem which does not do it justice; but for the present purposes it is sufficient as an example of how one poet at least acknowledged treason of sorts against a lord of sorts.⁷ Other English romances flirt with the idea but do not go so far as to call it treason. In Gawain and the Carl of Carlisle Kay and the Bishop are discourteous to their host, whilst Gawain is obedient: but the triviality of the discourtesies--shutting the host's horse out in the rain for example--fall too short of the seriousness of treason to be designated as such.⁸

To be loyal to one's lord is a virtue Malory seems to appreciate, but he presents it more in terms of fidelity which is implicitly praised--as with Lancelot's own retinue--rather than through the overt or implicit condemnation of disloyal retainers. While there are plenty of men who are disloyal to their sovereign lords, infidelity to a petty lord is not a frequent theme in Malory's book.

7. See Barron's Trawbe and Treason for an extended analysis of treason in the poem.

8. Gawain and the Carl of Carlisle 11.303-30, in Sands 360-1.

Of the two kinds of service, service based on tenure plays an incidental role in the book, and if Malory occasionally refers to this kind of service in conjunction with high traitors such as Morgan or Mellyyagaunce, it is not seen to create an allegiance which can be treasonably betrayed. A judicial duel is fought between Bors and Prydam le Noyre to establish a dispossessed woman's claim to lands: Bors wins, and addresses

all tho that hylde landis of hys lady, and seyde he sholde destroy them but if they dud such servyse unto her unto her as longed to their londis. So they dud her omayge, and they that wolde nat were chaced oute of their londis (960.5-9).

Refusing to serve one's rightful lord--or lady, in this case--could in feudal law be punished with forfeiture as happens here:⁹ when Bors threatens to 'destroy' the tenants, he may mean not by killing them but by depriving them of their livelihoods. Still, if this episode suggests feudal felony, it does not suggest treason.

The allegiance implied by knight-service, however, may be traitorously violated. Palomides, who is Tristram's knight, is called a traitor for two supposed betrayals of his lord, once in arms and once through his love for Tristram's mistress Isode. Keen, remarking on the thirteenth century chivalric theorist Raymon Lull, observes

the strongly archaic flavour of [his] conception of the ultimate treasons: to slay your lord, or to lie with his wife, or to surrender his castle.¹⁰

But in Malory's book, Palomides' treason is consistent with the kinds of treason Malory portrays elsewhere: that its object is the perpetrator's lord is merely another element of betrayal. The fifteenth-century

9. Leges 152-3 c.43 s.4..

10. Keen, Chivalry 10.

conception of the gravity of attacking one's lord, even in a chivalric context, is much slighter than that implied by the author of the Leges, where lafordswike is secular law's equivalent to canon law's sin against the Holy Spirit.¹¹

The indirect cause of Palomides' misconduct is his envy of Tristram's enjoyment of Isode's sexual favours: 'in his harte, as the booke saythe, sir Palomydes wysshed that wyth his worshyp he myght have ado wyth sir Trystram before all men, bycause of La Beall Isode' (738.4-7). Although Tristram seems to have the right to oppose Palomides (738.20-1) Palomides cannot openly oppose Tristram 'wyth hys worshyp' because Tristram is his lord. Palomides therefore opposes Tristram covertly, claiming weariness and deserting to Arthur's party in the tournament. When Tristram leaves the field to return disguised, Palomides does the same, which allows him to attack Tristram: Lancelot intervenes, taking the fight from Palomides, who hopes 'sir Launcelot sholde beate other shame sir Trystram' (752.8-9). When Tristram is rescued, Palomides then attacks him again but is knocked off his horse. Malory observes twice that no-one on Tristram's party knew of his treason.

Palomides, however, attempts to conceal his opposition to Tristram, and follows Tristram's fellowship to their lodgings, which is when he refuses to leave at the command of his disguised lord, since Tristram has not discharged him. He pretends fidelity, though Tristram is initially not taken in:

'A, sir, ar ye such a knyght? Ye have be named wronge! For ye have ben called ever a jantyll knyght, and as this day ye have shewed me grete unjantylnes, for ye had allmoste brought me to my dethe. . . .'

'Alas,' seyde sir Palomydes, 'ar ye my lord sir

11. Leges 232-3 c.7.

Trystram?’

‘Yee, sir, and that know you well inow’ (755.1-9).

After Palomides says he changed sides because he thought Tristram had done the same, Tristram appears to believe him and courteously forgives him.

Isode, who witnesses the entire incident, is not so courteous. She tells Tristram that she saw ‘how [he was] betrayed and nyghe brought unto [his] dethe’ (755.34-5), adding that Palomides wilfully sought and fought Tristram, for which he is a ‘felonne and a traytoure’ (756.1).

Palomides’ felony and treason, however, ^{are} ~~is~~ a hybrid^s of^t various kinds of Arthurian treason: Palomides is certainly guilty of treachery, premeditation, secret hatred and ‘concealed’ conflict, which culminates in his having Tristram almost killed. This is worsened by his subsequent attempt to appear to be Tristram’s friend rather than his foe. Palomides’ crime, in fact, seems to approximate to the French treason of harbouring secret malice to the extent of having someone beaten. His crime has similarities with treason by attempted murder and assault elsewhere in Malory’s book, and in keeping with this, Palomides is seen to take an unfair advantage in allowing Lancelot to take his place against the incognito Tristram,

bycause sir Launcelot was farre hardyer knyght and bygger than sir Palomydes . . . therefore he hoped that sir Launcelot sholde beate other shame sir Trystram, and thereof sir Palomydes was full fayne (752.4-9).

There is a comparable encounter between Lancelot and three of his kinsmen, who together attack their lord in a tournament for ‘grete hate and despite that they had unto hym’ (1071.28). Their conduct is shameful, but perhaps not strictly treasonable since it is a spontaneous, rather than planned attack, for which Lancelot is prepared. Neither, in consequence, are Lancelot’s kinsmen morally guilty of treason towards their lord: Malory makes it clear that they are not aware of his iden-

tity (1071.30) and their attack on him is therefore accidental and no crime--which is how Palomides has earlier attempted to exculpate himself of moral guilt.

Palomides, however, knowingly attacks Tristram in a manner which might be considered treacherous whatever his relationship with his victim. One might recall that it is said that Mark traitorously attempts to have his retainer Tristram killed in a tournament. And Bors is aware of the gravity of attacking one's lord, even in ignorance of his identity:

'Full hevvy am I of my mysfortune and of myne unhappynesse. For now I may calle myselff unhappy, and I drede me that God ys gretely displeasyd with me, that He wolde suffir me to have such a shame for to hurte you that ar all oure ledar and all oure worship; and therefore I calle myselff unhappy (1083.18-23).

But the seriousness of Bors' misdeed is relative: Bors interprets his attack on Lancelot as evidence for, rather than the cause of, God's displeasure, because Bors himself was not aware of his lord Lancelot's identity. Palomides, however, is aware of Tristram's; and it is this which makes him morally, as well as objectively, guilty of treason.

Palomides and Tristram are eventually reconciled, but while Palomides is staying with Tristram, he wastes away for love, and finally Tristram overhears him singing of La Beal Isode. This exhausts Tristram's patience; he considers killing Palomides unarmed--reacting in his jealousy rather like his uncle Mark, in fact, although the thing which distinguishes them is that Tristram, for his honour and Palomides' renown, is wary of committing treason by murder. He instead accuses Palomides of treason:

"I have harde youre complaynte and of youre treson that ye have owed me longe, and wyte you well, therefore ye shall dye! And yf hit were nat for shame of knyghthode thou shouldest nat ascape my hondys, for now I know well thou haste awayted me wyth treson" (780.27-781.1).

Tristram's accusation predicates relationship; Palomides has 'awayted,' 'long owed' him treason which consists of the desire for, and as far as Tristram knows, the possession of, Isode.

Despite Palomides' assertion that he has never enjoyed Isode's sexual favour--without which, as Palomides points out, there can be no treason--Tristram demands a fight. It is not clear, however, whether the proposed duel is intended to fulfil a judicial function. The duel they agree to fight does not seem to be intended to prove whether Palomides is guilty of carnal knowledge of Isode, because Palomides expects to be killed. Were the battle judicial, Palomides, who has no carnal knowledge of the queen, could confidently expect to live, since he is not guilty of treason as it is defined elsewhere in the book. Nor does the duel seem to be determinative of Tristram's culpability in wronging his knight-servant as Palomides suggests (781.23-5): it seems rather to be a battle motivated by Palomides' pitiful desire for death and Tristram's desire to vent his jealousy and silence Palomides for good.¹²

The duel is, unusually in Malory's book, subject to preparations: Palomides fetches four knights and several sergeants of arms to 'beare recorde' of the duel (783.20): but this, rather than indicating that the duel is to have a judicial function, seems to be Palomides' response to Tristram's taunt that he has previously failed to turn up to a fight. This time Palomides brings witnesses. Tristram, however fails to turn up, and the duel is postponed until the two meet by chance.

During their eventual battle, Tristram gets Palomides at an advantage, and tells him to pick up his weapon and fight on; Palomides will

12. Eynon classifies their eventual battle as a single combat fought over a non-legal issue (160).

not, and says

'myne offence to you is not so grete but that we may be fryendys, for all that I have offended ys and was for the love of La Beall Isode. . . . And sytthyn I offended never as to her own persone, and for that offence that I have done, hyt was ayenste youre owne persone, and for that offence ye have gyvyn me thys day many sad strokys . . . wherefore I requyre you, my lorde, forgyff me all that I have offended unto you!' (844.21-34).

Palomides echoes his earlier assertion that he has committed no treason, but admits this time that even by sinlessly loving Isode he has offended Tristram. Tristram requites Palomides' 'offence' with 'sad strokys' (844.30): their combat is seems ultimately retributive of a proven offence (Palomides' confessed love for Isode) rather than determinative of a suspected treason (whether Palomides has sexual knowledge of Isode). This offence may be insult to or disrespect for one's lord: it does not appear to be treason. This may suggest that one can only commit treason against one's lord when he is the victim of a treason one could commit against anyone else, such as carnal infidelity. The betrayal of allegiance to one's lord is therefore an aggravating circumstance of an independent crime rather than a crime in itself.

7:3 The Consequences of Petty Treason

Treason against one's lord, in Malory's book, appears to be an extra-legal crime in that it is punished by shame or knightly combat rather than formal proceedings, which would seem to reflect the diminished importance of betrayal of one's petty lord in late medieval English law. But if betraying a lord has no formal legal consequences, Malory depicts it as materially disadvantageous to the perpetrator. Palomides discovers the misfortunes of lack of patronage: in refusing to follow Tristram when he decides to fight with Arthur's party during the tournament at Lonsep Palomides forgoes the worship he could have won

on Tristram's side, which prompts Tristram to observe 'has ye done as I ded, ye sholde have had worshyp' (763.8-9). And later on, convicted and unjustly condemned to death by an inquest of knights for the killing of their lord, Palomides realises 'yf I had not departed from my lorde sir Trystram as I ought not to have done, now myght I have bene sure to have had my lyff saved' (776.2-4). Though they are not legally enforced, nor indeed depicted with any consistency, the ties of fidelity between knights are nonetheless basic expressions of love between men and are therefore fundamental to the kind of society Malory wishes to suggest.

Chapter Eight:

High Treason

Malory only once uses the phrase 'hyghe treson,' which refers--with questionable legal accuracy by English standards--to Guenever's supposed adultery with one of her wounded knights (1135.14). Nevertheless, in addition to adultery, there are many recognisable crimes of high treason in his book. I have dealt elsewhere with treasons such as waging war against him and committing adultery with the queen, along with marginal treasons such as desertion and breaking of safeconduct, but there are other crimes of high treason besides these, which I will deal with here. What constitutes treason against a king in Malory's book, however, can depend very much on which king: the two major kings, Arthur and Mark possess dissimilar ideas of what constitutes treason against each of them. In the following chapter, therefore, I have examined treason against Mark and Arthur separately, referring as necessary to the various treasons to lesser kings.

8:1 Service to the King

Arthur's subjects are largely defined in territorial terms, as I discussed earlier, but may render feudal service based on land-holding and sealed by homage and fealty. At Arthur's coronation the lords who hold of the crown are made to come in and 'do servyse as they oughte to do' for their lands (16.25); the sovereigns of Myllayne give Arthur vast gifts and a promise to be 'sudgetes untyll hym for ever, and yelde hym servyse and sewte surely for hir londys' (243.23-5), offering a vast rent of a million in gold every year for the fief of Myllayne, for which they will 'make homage unto Arthure all hir lyff tymes. Than the kynge by his counceyle a conduyte hem sendys so to com in and know hym for lorde' (244.1-3).

Sometimes land-tenure is seen to be a part of the third form of willing subjection to one's king, knight-service. The knights of the Round Table, shortly after it has been brought to Arthur's court, are advised by Merlin to 'aryse and com to kynge Arthure for to do hym omage; he woll the better be in wylle to mayntayne you' (99.1-3) which they all do. Later on the king then 'establysshed alle the knyghtes and gaff them rychesse and londys' (120.15-6). The service this implies is familiar from feudal tenure, where knights and others could hold lands by performing services appropriate to their rank.¹

However homage and fealty is not an automatic part of knight service even if a grant of land is involved. After the Roman War, Lancelot's hereditary lands (189.30-190.1), which Arthur has won by right of his Roman conquest, are confirmed to Lancelot by Arthur;

'Loke that ye take seyng in all your brode londis, and cause your lyege men to know you as for their kynde lorde, and suffir never your soveraynté to be alledged with your subjectes, nother the soverayne of your persone and londis. Also the myghty kynge Claudas I gyff you for to parte betwyxte you evyn, for to mayntene your kynrede, that be noble knyghtes, so that ye and they to the Rounde Table make your repayre.'

Sir Launcelot and sir Bors de Ganys thanked the kynge fayre and seyde their hertes and servyse sholde ever be his owne (245.16-26).

Arthur grants the lands so that Lancelot and his kin can afford to participate in the activities of the Round Table, for which Lancelot and Bors promise him service but do not do homage or fealty. Now, kings, in the Morte, can and do give their homage to other kings; Mark gives his to Arthur, and Royns' demands Arthur's homage. Homage, however, is not a condition of the grant of France to Lancelot.

1. Although Baker points out that it was possible for a man to hold lands by rendering service unrelated to his rank: a knight could for example hold lands by villein service (197).

Lancelot is not, however, made a 'sovereign' king. Legal sovereignty was possessed only by a monarch who had no secular superior;² in warning Lancelot never to allow his subjects to lessen his sovereignty (a kind of lese-majesty), Arthur could be admitting that Lancelot has no superior. Arthur adds, however, that the sovereign of 'your persone and londis' should similarly not be threatened. Pochoda takes these two references as an example of the fifteenth-century distinction between the King's official role or body (soveraynté) and his personal body and goods as opposed to the Crown's.³ Unfortunately, Arthur says 'soverayne of your persone' not 'soveraynté,' which suggests that Arthur is referring, impersonally, to himself; he is Lancelot's sovereign king, with jurisdiction over Lancelot's body and his lands, and Lancelot has an obligation to maintain his own subjects' loyalty towards Arthur.

Despite Arthur's lordship over Lancelot as king, Lancelot's possession of France may not be conditional on his continued knight service. Arthur never attempts to repossess Lancelot's lands even when Lancelot is exiled and therefore unable to render service. But this may also indicate that Malory has completely forgotten about the system of tenure he has earlier presented, and is thinking in terms of his own time, when it was possible to consider oneself the owner, not the holder, of land.⁴ This suggests that land-tenure, in Malory's book, is not of itself especially important and is certainly is not the sole

2. Bellamy, Law of Treason 10-11 and for a discussion of the notion of sovereignty, Walter Ullman, 'The Development of the Legal Idea of Sovereignty,' The English Historical Review 250 (1949): 1-33.

3. Pochoda 90-91.

4. Baker 201.

basis of allegiance.

Knight-service is less a matter of working to earn lands and riches, or of payment for land and riches already given, than a vocation, a desire to serve one who is morally excellent or deserving. Tristram, for example, tells Arthur that he wishes to do him service--which includes saving his life--but nevertheless refuses to reveal his name; at first he serves incognito. Of course, if one has done good service for another it is right that the lord in gratitude should offer rewards, whether as favour, titles, a place at the Round Table or riches and lands, and very wrong that the ungrateful superior should refuse such rewards. Thus when Tristram is exiled from Cornwall, he itemises the good service he has done for Cornwall and reproves Mark for rewarding him with evil.

Conversely, the exemplary lord can reprove his disloyal knight: Arthur observes that he has advanced Lancelot and his kin more than any other knights and has thus not deserved Lancelot's treason. The doing of service and the receiving of rewards are a mutual relationship of giving, mutual gratitude, in which each party can be reprovved for ill-gratitude. But this is an expression, almost a symbol, of the goodness or the badness of the lord or the knight, the way in which he lives up to or fails in the courtly ideal of generosity both in goods and spirit and body.

The obligations of knight-service to a king are not ones tied up in specialised offices, though such offices to some extent exist as titles more than functions, such as Kay's office of Seneschal. Knight-service is a personal form of loyalty, involving being under a king's command, but mainly in doing good services for him. This might involve saving his life, saving his queen, opposing those who are against him, and in a more general sense being a useful knight-errant

who deals out justice, opposes wrong-doing, and returns to court to tell of his deeds. Effectively it is to 'holde' with Arthur, and indeed with Mark, be one of his affinity, as the numerous lords and knights who are not of Arthur's affinity recognise when they wish to 'have ado' with any knight of King Arthur's.

Whilst Malory's knights can commit treasons against any other man or woman insofar as their actions are malicious and treacherous, treason or even unfounded accusations of treason against a king always implies a specific relationship of allegiance (predominantly, though not always, that of knight-service) between perpetrator and victim. Tristram is willingly under Mark's 'commaundement,' along with Bodwyne, Amant and Bersules: Lancelot, Balin, Mordred, Morgan, Accolon and Awnowre all in various capacities owe allegiance to Arthur; and Helyas and Helyake are Harmaunce's knights.

8:2 Treason and King Mark

Mark is both a king and a traitor. As a king, he with some justification believes that Tristram, by virtue of adultery with Isode, has committed treason against him. However, he also designates as a traitor his brother Bodwyne, for waging war, because Mark considers that Bodwyne should have sent for him to fight, 'for hit had bene reson that I had had the honoure and nat you' (634.2-3). Mark, of course, means that Bodwyne has committed lèse-majesté by the theft of worship that rightfully belongs to the king.

This, insofar as it involves declaring war without the king's permission, could be a treason in military law. Bodwyne's war, however, if it is technically traitorous, is loyal in spirit, because he is repelling invaders. Mark's ingratitude for Bodwyne's good deed, coupled with the fact that declaring war on one's own authority was not a trea-

son in English law, condemns Mark on both ethical and legal grounds. The condemnation goes further when Mark attempts to kill Bodwyne's young son Alexander for his father's crime, and later on persists in referring to the innocent boy as a 'young traitor.' Alexander may well have an obligation of allegiance to Mark as both king and uncle, but the English did not consider that the children of supposed traitors could be executed for their parents' crimes: Malory--along with a good part of his audience, one would assume--is understandably indignant at Mark's highly illegal conduct.

Now, Mark's personal treasons are varied. He is a murderer, he offends the code of knighthood by fighting unfairly, he is said to betray Tristrams, he breaks his word, counterfeits letters, and he indulges in all forms of treachery, deception, and false-seeming. Mark, effectively, does not consider himself bound by the law. His barons and knights think otherwise, and oblige him to abide by their judgments--for example, the barons exile rather than execute Tristrams, and Sadok, ordered to fetch Alexander to Mark, decides to allow him to go free on condition he should avenge Bodwyne's death, telling Mark the boy has been drowned. Mark has no support for most of his actions.

The barons, after Tristrams' initial condemnation to death, are increasingly unwilling to concede to Mark's desire that Tristram be punished by death by any legal process; they exile him then actively resist Mark's imprisonment of him. Since there is no way that Mark can get his own way by following the dictates of customary law, he ignores it, dictating the content of the crime of treason, proof, and the manner of punishment without reference to communal custom, be it law or modes of trial.

The ethics of honourable conflict, and the disparaging of unfair conflict, appear to carry the force of communal consent or customary law: Mark, however, places his will above that law. He cannot achieve what he wants--usually someone's death--through the law, which demands fair combat and therefore the chance of a reasonable self-defence by the accused, a chance to prove innocence. Mark kills Bodwyne primarily because 'thys prynce was bettir beloved than he in all that contrey, and also this prynce Bodwyne lovid well sir Trystram' (633.21-3). Mark is seen elsewhere to be consistently eaten up with envy; he is an enemy to all good knights simply because they, by being good knights, shame him by comparison. His killing of Bodwyne is thus seen to be psychologically motivated rather than a matter of adherence to legal justice.

Whatever legal authority Mark might have had for considering Bodwyne a traitor according to the definition of the crime in military law or English law is dissipated by the manner of the crime's punishment; Mark lures Bodwyne and his family to dinner, under semblance of love, contrives a quarrel and stabs the prince with a dagger. He is therefore guilty of common murder intensified by the treachery of violating hospitality. Mark, not Bodwyne, is seen to be a traitor: he acts as law incarnate, employing law as a mask for his own vengeance, personal fear, and political convenience. Mark, effectively, is a tyrant.

Unsurprisingly, this insistence on the supremacy of his own will is associated with a belief in monarchical regality. Mark is much taken, along with his supporter Andred, with the idea of the immunity of kingly status to opposition or punishment. This, naturally, is based on the inferior's supposed duty of deference and subjection to the status of a king.

Mark and Andred, confronted by the irate Gaheris and Kay, use Mark's status to save themselves from the harm they fear; 'Hit ys kynge Marke of Cornuwayle, therefore be ye ware what ye do' (549.7-8), and 'concoider that I am a kynge anynted' (549.14). The king commands power and, to Mark at least, the king demands special privileges by virtue of being king; it is a sacrilege to kill him as one might an ordinary knight.

Now, Malory is no egalitarian; he often emphasises hierarchy and a man's rightful place in it. Nevertheless, he seems to think that a king has his superior position and the respect and deference of his inferiors only if he deserves it. The king is justified by works and as well as grace: the king is deserving, not solely by being God's regent, but if he is good or generally good in his own actions. Certainly part of this goodness derives from a king's desire to be thought good by behaving in accordance with the law and the principles of justice which rule everybody else. In fact, Malory's kings are subject to the law to the extent that they can be tried and convicted for breaking it; and Gaheris, along with everyone else who calls Mark a traitor, firmly implies that Mark, despite his status, is below the law like everyone else.

It is perhaps more vital, in fact, that the king rather than a mere knight should acknowledge the law. Gaheris goes as far as to justify regicide: 'thou arte a kynge anynted with creyme, and therefore thou sholdist holde with all men of worship. And therefore thou arte worthy to dye' (549.16-8). Men of worship comply with, and actively enforce, justice, through the law. To hold with men of worship was an obligation of kings, since all kings must be advised well by the good men of the realm; implicit in this comment is the idea that the

king is not an absolute power, but one who participates, acknowledging the customs of the realm and adhering himself to those who have best fulfilled their roles within the confines of that custom.⁵

Mark, however, is actively opposed to men of worship, because they represent consensus, the rule and enforcement of justice by which they achieve their reputations. Mark attempts to make his personal will law by breaking the law, which opposes him to worshipful men who are ruled by bon foi and justice. He is thus unpopular and politically insecure: he attempts to stabilise his position by destroying those worshipful men who are popular and powerful enough, or who have sufficient reason, to oppose him. An accusation of treason is a useful pretext for removing those who do or might oppose him. He accuses Amant of treason for defying him and deserting to Tristram's cause: he accuses Sadok of treason for not killing the 'young traitor' Alexander as he has said he has done; he suspects Tristram of treason after he feels threats in Lancelot and Arthur's letters.

Some of these treasons at least have a lawful façade. Although defying and disobeying the king was not a treason in itself in fifteenth-century England, aiding his enemies of course was; and threats to the king could be construed as imagining his death. Thus both Sadok, for saving Alexander, and Tristram, for being in contact with Arthur and Lancelot, could be regarded as consorting with the king's enemies. However, though the crimes are valid in English law, a contemporary reader, as well as a modern one, might notice that all of those whom Mark considers to be enemies--the child Alexander especially--are those Mark has wronged and are therefore, by his estimation, potential enemies. There is no overt act, as English law required, to prove

5. Bracton 19, Fortescue 86-7, and Powell 29-38.

their enmity: Tristram as an exile is technically but not actually an enemy; Arthur treats Mark remarkably kindly; Lancelot, if he threatens him, at least makes those threats conditional on Mark's behaviour; and Alexander is a child who has done no wrong.

Ultimately, however, Malory resorts to ethics rather than laws to justify those who betray Mark. Mark deserves no better, because he is himself a tyrant and a traitor; his own hypocrisy condemns him. This is a construction along the lines of justifiable regicide; if the king is a bad king, his subjects can depose or kill him with impunity. The immorality of the victim, as I observed earlier in conjunction with Gamelyn and Cade's rebels, justifies the perpetrator's treason. And, in Malory's book, if the king is a villain and a traitor he has no right to accuse men of treason; just as Lancelot, appealed of treason by Gawain, reminds Gawain of his own treason, or for that matter, when Lancelot objects to Mellyagaunce's appeal of Guenever by remarking on Mellyagaunce's treasonous intentions.

In English law, from early on, there was no barrier to the sorts of persons--regardless of their moral condition--who could lay accusations of treason; objections could be made, certainly, if the appellant was laying his appeal maliciously, but the very existence of the King's approvers--men charged with serious crime who attempted to mitigate their penalties by informing on their colleagues--reveals that even the most corrupt could legitimately lay charges. Only in canon law was the moral condition of the accuser taken into account; the separate adulteries of husband and wife cancelled each other out.⁶ It is this

6. Brundage 513. C.f. the Prose Lancelot, where Arthur, as well as Lancelot and Guenièvre commits adultery. See Lancelot do Lac: The Non-Cyclic Old French Prose Romance, ed. Elspeth Kennedy, vol. 1 (Oxford: Clarendon Press, 1980) 545-47.

kind of principle that Malory has in mind when he blackens the character of Mark.

The majority of so-called treasons against Mark are self-invalidating; 'no-one is obliged to obey another person if it means disobeying God.'⁷ Sadok cannot really be said to be guilty of treason against Mark by disobeying his orders to kill an innocent child; Mark's intentions are such that ethically at least Sadok is not obliged to obey them. And whatever the law might have thought about this, Malory writes in such a way that the reader makes an ethical, not a legal judgment; this is a romance not a lawbook. Tristram's treason however is a different matter, because adultery is necessarily immoral: but Malory's ethics, as I will discuss later, are not necessarily in accordance with the morals of Catholic Christianity.

8:3 Treason against King Arthur

Pochoda has rightly observed that Arthur, who typifies good kingship according to fifteenth-century thought, stands in direct contrast to King Mark, who suggests Fortescue's unacceptable dominium regale.⁸ Malory's designation of Mark as a traitor is a reaction against regal rule: the king is, in Malory's book, below the law to the extent that the law has jurisdiction over him. English law, of course, did not allow the possibility that a king could be a traitor: but Malory thinks otherwise (or at least presents events which might lead the reader to believe that, in fictitious history at least, he thinks otherwise).

7. Christine de Pisan, The Treasure of the City of Ladies 115.

8. Pochoda 51.

Arthur, however, is in many ways an exemplary monarch. He is not, in contrast to Mark, a traitor: hearing that his realm has been invaded, he observes it would be a great shame to him if he did not rescue them. He is below the law: if occasionally he acts as an autonomous judge, his judgment is usually allowed to pass without comment, or--as with Guenever's summary burning--partially justified by Malory, or is obviously right--as with Awnowre who is witnessed in the perpetration of her treason. On the occasions when Arthur is proven wrong, as with his exiling of Uwayne, it is noticeable that Arthur merely considers him 'suspecte' (158.12) rather than guilty. And though banishment is implied to be a penalty for proven treason in the Pentecost Oath, there is a difference between the kinds of paranoiac aggression of Mark, who considers all who are 'suspecte' of treason traitors and worthy of death, and Arthur's infliction of a non-capital and reversible penalty. In any case, in real-life, summary exile--as opposed to summary execution--was occasionally practised by kings, apparently within their legal rights: Henry VI exiled the Duke of Suffolk, even though on Henry's own admission Suffolk has committed no crime.⁹

And Arthur, inevitably, graciously acknowledges when he has participated in a wrong judgment. He apologises to Balin for wrongfully imprisoning him, even though in this case the imprisonment was not strictly Arthur's fault: and Uwayne is recalled to court by

a messyngere that com from kyng Arthurs courte that had soughte them well-nyghe a twelve-monethe thorowoute all Inglonde, Walis, and Scotlonde, and chargyd yf ever he myghte fynde sir Gawayne and sir Uwayne to haste hem unto the courte agayne. And than were they all glad (179.9-14).

And the king too, is glad: presumably, in the offstage world of

9. Storey 44.

pseudo-history, something proves to Arthur that Uwayne is innocent.

Now, if Arthur's judgments are sometimes wrong, for the most part of the book he is portrayed as a king who, according to Bracton's definition of justice, is just: 'Justice is the constant and unfailing will to give each his due.'¹⁰ Arthur intends to reward the good, and reprimand the not-so-good and punish the downright bad, and his motives, unlike Mark's, would generally appear to be the desire to do justice rather than the working out of personal grudges and fears. Arthur is imperfect: he commits adultery and, his only real atrocity, attempts to remove the threat of Mordred by ordering the death of the children born in May. Generally, however, he is a good king.

This is reflected in the way he views treason and traitors. Treason against Arthur is usually defined in similar terms as the treasons of English law. When Arthur, himself or by delegation, is called upon to judge a crime of treason dissimilar to the English, as in the case of murder, or when he utilises a non-English procedure like summary execution based on circumstantial evidence, Malory attempts to justify Arthur's actions by pointing out that the crimes and procedures of Arthurian England are not those of contemporary England. Arthur, by the standards of his own time, is acts in accordance with the law. If there is injustice, it is largely as a result of the injustice of the law itself and rarely through Arthur's maladministration.

Treason against Arthur is a relatively simple matter, consisting of occasional traitorous wars against him, one usurpation, adultery with Guenever and in various forms, attempts on his life. Malory has much in common with other romanciers, who portray high treason almost

10. Bracton 23: 'Est autem iustitia constans et perpetua voluntas ius suum cuique tribuens.'

exclusively as adultery with the queen and as attempts to kill the king or queen.

The word 'treason' nowadays has become practically synonymous with regicide, to the extent that translators replace the 'traïson' of a French book, if the treason in question is evidently not one of attempted regicide, with 'treachery;' and one Malory critic has defined treason as 'an attack on the king's natural body which cannot damage his immortal body politic.'¹¹ This is nonsense; it would mean, for example, that killing a justice in the execution of his office was regarded as a treasonous attack on the king's personal body, which evidently is not the case. Still, Malory, like most romanciers, is not concerned with indirect treasons such as these; only Gamelyn, a romance set in the curiously unromantic world of the English yeoman, includes such a prosaic treason.¹²

Crimes against the monarch, such as causing his exile with treachery, or regicide, murder and attempted murder of heirs to the throne, however receive great emphasis in both romance and history. These appear, for example, in Octavian, Havelok, and Emaré; Wulfstan speaks of high treason as exiling the king; Robert Goodgrome, attempting to exculpate himself of a charge of felony, accused his friends of intending to poison the king; one poet, taken by the attempted regicide by witchcraft of Eleanor Duchess of Gloucester, wrote a verse

11. See for example Cable's translation of the Mort Artu's 'il est plus vilz et honis qui ne se deffent, quant il est de traïson apelez, que d'autre chuse' (161.13-14) as 'a man is more debased by an accusation of treachery than by any other thing' in The Death of King Arthur (Harmondsworth: Penguin, 1971) 170. The traïson is Lancelot's killing of Gaheriet which is arguably a crime of treason according to French customary law. See also Pochoda 38.

12. Gamelyn 879-880, in Sands 180.

confession on her behalf; and the chronicles contain often quite detailed accounts of traitors' deaths.¹³

8:4 Regicide and Attempts on the Life of the King

Mordred is Malory's supreme traitor to Arthur, and probably the most famous Arthurian traitor of all; Dante, in fact, alludes to his death: 'non quelli a cui fu rotto il petto e l'ombra / conesso un colpo per la man d'Artu' 'him whose breast and shadow Arthur's hand / at one blow dissevered.'¹⁴ This echoes Mordred's death in the Mort Artu: Arthur impales Mordred on his spear, and 'l'estoire dit que après l'estordre del glaive passa par mi la plaies uns rais de soleil si apertement que Girflet le vit.'¹⁵ Dante presumes that his readership is aware of the incident; he does not mention Mordred's name.

In early versions of the story there is some doubt as to whether Arthur dies; Mordred's treason is therefore not that of regicide.¹⁶ In Malory's book, Arthur does die, and probably as a result of the chilling of the head-wound that Mordred gives him. Mordred is therefore a regicide. If Malory does not call Mordred a traitor for killing the king, it is probably because the crime is obviously treason. The

13. Octavian 114-216 in McSparran 63-4; Havelok 527-35 in Sands 72; Emaré 193-805 in Mills 68; Sermo Lupi 48; Aston 90; 'The Lament for the Duchess of Gloucester, 1441' in Rosset Hope Robbins, Historical Poems of the XIVth and XVth Centuries (New York: Columbia UP, 1959) 176-180; Hall's Chronicle 61; Fabyan 627; Chronicle of London 212-13.

14. Canto 32 ll.62-3 in Gilbert 272-3. 'Not him whose breast and shadow Arthur's hand / at one blow dissevered.' Trans. Henry Francis Cary, in The Vision: or Hell, Purgatory and Paradise of Dante Alighieri (London: Peacock, Mansfield and Britton, 1844) 149. Cary notes Dante's allusion to the Mort Artu (149 n.2).

15. Mort Artu 220.2-3: 'the story says that after the wrenching out of the lance, a ray of sunlight passed through the wound so clearly that Girflet saw it' (my translation).

16. See for example Lagamon, Brut, 2 vols. ed. G.L. Brook and R.F. Leslie, Early English Text Society (London: Oxford UP, 1978) 2: 751 ll.14277-98.

terrifying culmination of Mordred's treasonous intentions could not be anything else: it is perhaps the supreme image of treason in the whole book.

Yet, ultimately, it is also irrelevant; Mordred is a traitor as much for his malicious intentions and deeds as for his fulfilment of them. His malicious intent has been manifested in his proclamation of Arthur's death and his waging war against the king; the whole point of fighting Arthur's army was to kill him and retain the English throne. In accordance with law, which allowed unfulfilled attempts on the king's life to be treason, Malory emphasises intent, and the way that intent is manifested in concrete acts against the king. And Mordred has his traitor's execution, in a knightly manner, on the battlefield; Arthur attacks him, with a lance, crying 'traytoure, now ys thy dethe-day com!' (1237.11). He is guilty and worthy of death even though he has not yet killed Arthur. It is ironic that it is during the course of enforcing the punishment of a traitor that Arthur should himself receive a mortal wound; as Mordred's intent to kill the king is punished, he succeeds in bringing that intent to its fruition.

The killing of King Harmaunce is an unjustifiable regicide, because Harmaunce, like Arthur, is an exemplar of good kingship. He is a noble and generous knight, who loves errant knights of Arthur's court and knightly pursuits such as hunting and hawking. As usual, Malory's idea of kingship is simplistic and moral rather than political, but one has to take his word as to the king's goodness.

What happens is this: King Harmaunce brought up, from children, two men of low birth, made them knights and gave them lands. He trusted them to the exclusion of his family, and they in turn would not suffer any of the king's blood to influence the king: as a result the

lords all depart to their own lands. The two traitors then have the 'rule' of the king, who, being a generous and noble man, does not suspect they are manipulating him; ultimately, the two men are not satisfied with their lot:

'but ever thought to have more. And as ever hit is an olde sawe, "Gyeff a chorle rule and therby he woll nat be suffy-sed", for whatsomever he be that is rewled by a vylayne borne, and the lorde of the soyle be a jantylman born, that same vylayne shall destroy all the jeauntylmen aboute hym.' (712.23-7).

Consequently, they lure Harmaunce out into the forest and stab him with a spear as he drinks at a well. Harmaunce dictates a letter to the knight who finds him dying, asking that a knight should avenge his death in return for the lands and rents Harmaunce held during his lifetime.

Those who kill Harmaunce do so not out of a justifiable desire to punish a bad king, but out of ambition and greed. The killing of one's king is in itself a treason by the standards of fifteenth-century law and Malory's contemporary readership, perhaps even more than a modern readership which conceives treason almost exclusively as regicide, would have automatically regarded it as such. But this is reinforced by Ebell's depiction of Helyas and Helake's special relationships with the king. The high treason of killing the king is seen in the context of other legal and moral treasons which emphasises the villainy of the traitors.

Firstly, there is the marginal treason of usurping the king's authority, which in England was never a treason by itself, but which, as in this episode, could accompany other treason charges. Helyas and Helake take upon themselves the governance and rule of the king. While it was an acceptable notion in the fifteenth century that a king should be counselled by good men, Helyas and Helake's 'rewle' goes beyond

influence and advice and suggests lèse-majesté, a real denigration of the king's rightful powers and status, obviously, in this case, to the vast advantage of the perpetrators. In Malory, this usurpation of authority is seen to be a part of Mordred's treason, manifested in his usurpation of the throne and in his attempt to marry Guenever: according to Morgan le Fay, Aggravain and Mordred, usurpation is part of Lancelot's treason too. One version of the Prose Lancelot, after Guenièvre and Lancelot have committed adultery for the first time, goes even further by laconically observing that all Lancelot now lacks is a crown.¹⁷

In the Harmaunce episode, the idea of usurpation is emphasised by the humble status of the two traitors. By birth they are nothing. Elsewhere Malory specifically notes that those who Arthur has brought up from nothing and enriched soon forget his generosity and betray him in favour of Mordred. And so it is with Helyas and Helake; their very class origin endows them with the envy, ambition, and greed which underlies their treason. In this Malory was very much in accord with those rebels--themselves, for the most part, of humble origins--who objected to the men in Henry VI's Council; it was said that he should instead surround himself with the noble blood of the House of York, presumably because the less noble were greedy and manipulated the king's justice to profit from forfeitures.¹⁸ Malory's Harmaunce episode allows a similar sort of political moralising on the attributes of different classes. Sir Ebell admonishes all kings and other estates to learn from the fate of Harmaunce: the moral is that 'all the astatys and lordys, of what

17. Prose Lancelot 547.14-15: 'Sire chevaliers, or n'i faut que la corone que vos ne soiez rois.'

18. Three English Chronicles 94-7.

astate ye be, loke ye beware whom ye take aboute you' (712.27-9).

Yet, at the same time, neither Malory nor other writers see greed and envy as exclusively lower class attributes; they are common to all traitors, however noble in status, although in the case of Helyas and Helake class failings are employed to explain treason, how anyone in their right minds could kill such a virtuous king. One need not be poor to be a traitor: Mordred is regent of England, the king's illegitimate son, a member of the most powerful family in the British Isles. But he is still a traitor.

Mordred's killing of Arthur, however, is a treason insofar as his victim is the king, and to some extent, his father. Nothing in the fight itself is treacherous: Mordred does not murder Arthur. Harmaunce, however, is killed en traïson: were the king an ordinary knight, the unfair and premeditated manner of his death, regardless of his relationship with his men, would qualify the killing as a treason. This is hinted at in Harmaunce's deathbed observation that 'there was never knyght nother lorde falselyar nothir traytourlyar slayne than I am' (713.31-2). The objective treason of killing the king is reinforced by the circumstances of the killing, the treachery of it: the brothers are ungrateful; they kill the man who knighted them, which is a violation of a special kind of loyalty and gratitude; and Harmaunce, since he has brought up the brothers from children, has had something of a paternal role and the idea of familial treason (as with Mordred) reinforces their other treasons. And, in addition to all of this, Helyas and Helake are portrayed as unrepentant, malicious, and uncourteous; they, unlike Lancelot and even Tristram, lack the qualities of moral decency and fundamental goodwill through which even a traitor, to Malory at least, can be forgiven.

Killing a king, of course, is not always treason. Malory independently reports the death of King Mark, killed by his great-nephew in vengeance for the deaths of Bodwyne and Alexander. But Bellyngere is Arthur's knight, not Mark's, and if he does not owe Mark allegiance he cannot be guilty of high treason towards him. Whilst a knight can commit treason against any other person, in Malory's book, by acts of treachery in violation of general bon foi, treason against the king would appear to predicate allegiance of one kind or another. Pellinore, though he is in Arthur's kingdom, may not owe his allegiance to Arthur: it is perhaps because of this--and because Pellinore is a good man and knight who, as Merlion knows will serve Arthur well in the future--that Pellinore is not called a traitor nor treated as one. The revenge Pellinore fears Arthur will inflict upon him might be reprisals fitting to an enemy, rather than to a traitor.

A rather more enigmatic plot, hardly more than an unfinished incident, is the plot to poison Arthur which Pellinore overhears. One who has presumably been spying at Camelot heads North to report to the 'chieftains'--presumably the 'kynges of the Northe'(130.22-3). He meets en route a knight who says he carries a poison with which 'a frend ryght nyghe the kyng, well cheryshed' will poison Arthur (118.22-3): the man has received, in return for his promise to do so, great gifts from the chieftains. While Malory does not treat the five kings as traitors, the man in Arthur's court whom they bribe is evidently guilty of conspiring to kill the king and, for that matter, consorting with the king's enemies; having been cherished in Arthur's court the traitor has an especial obligation of gratitude and fidelity towards Arthur quite apart from the allegiance a subject, or at least a denizen, owes to his king, and he is therefore guilty of treason. But this plot

vanishes; Arthur is not killed, the plot is not revealed, no accusations are made. Yet the spy from Camelot himself, observing that Merlion knows all things by the devil's craft--ironic coming from a traitor--gives a plausible hint as to how, off-stage, the plot might be thwarted. Narrative history, in this case at least, suggests resolutions to threads it does not follow.

Now, Awnowre, Accolon, and Morgan are all ostensibly the King's subjects, and they all involve themselves in attempts on his life. Awnowre, like many of the traitorous women in the Morte, is a seductress; she comes to Cardiff, and by 'fayre promyses and fayre behestis' (490.8-9) lures Arthur into the forest to seduce him; when her sorcery fails, because Arthur remembers his fidelity to Guenever, Awnowre determines to kill him. She sets two knights onto him and is prepared to cut off his head herself; Tristram, however, arrives at the instigation of the Lady of the Lake, kills the knights, and Arthur, on the Lady's orders, beheads Awnowre. Awnowre's treason is a matter of false-seeming, of attempted murder through ordering an unfair fight, all worsened perhaps by the fact that her victim is the king; but she would be a traitoress for the same deeds even if Arthur were not a king, as Tristram implies when he orders her 'Traytours! Leve that knyght anone!' (491.23).

Accolon's treason, however, is one of consenting to the king's death; there is no feeling that Accolon could have committed treason against Arthur were the king merely another knight. The story is a complex one, involving a whole range of representative treasons from the knightly treason of Damas to the strictly legal, such as Accolon's.

Accolon initially appears to be on good terms with both Uriens and Arthur. He fears for their safety when it becomes apparent that the barge upon which they all spent the night was an enchantment:

"Jesu, save my lorde kynge Arthure and kynge Uryence, for thes damysels in this shippe hath betrayed us. They were fendis and no women. And if I may ascape this mysadventure I shall distroye them, all that I may fynde of thes false damysels that faryth thus with their inchauntementes" (140.15-20).

This appears to be sincere; it is not done for public effect. Accolon shows a genuine hatred of sorcery and a love for the lord by who he is 'withholden.' However, only a few lines later Accolon accepts that Morgan is responsible for the enchantment, and that she has made it to enable Accolon to take a battle with a king, as he secretly promised her.

Malory seems anxious to establish that Accolon is not aware that he is to fight Arthur. The king is not identified, and kings are common enough in Arthurian England. Accolon, therefore, need not know that the man he should fight at Prime is Arthur. Thus, when he offers to take Outlake's battle, it is because Morgan 'had sente hym Excalibur and the shethe for to fyghte with the knyght on the morne. This was the cause sir Accalon toke the batayle uppon hym' (141.25-7).

However, when Accolon, defeated, confesses to the incognito knight who has defeated him, he says that Morgan sent him Excalibur

"yestirday by a dwarfe to the entente to sle kynge Arthure, hir brothir; for ye shall undirstonde that kynge Arthur ys the man in the worlde that she hatyth moste, because he is moste of worship and of prouesse of ony of hir bloode. Also she lovith me oute of mesure as paramour, and I hir agayne. And if she myghte brynge hit aboute to sle Arthure by hir crauftis, she wolde sle hir husbonde kynge Uryence lyghtly. And than had she devysed to have me kynge in this londe and so to reigne, and she to be my quene" (145.32-146.3).

Thus Accolon seems to be aware that the knight he was intended to fight should be Arthur himself. Arthur observes that it would have been shameful for Accolon to have killed his lord; Accolon says this is true. Arthur then reveals who he is, and in total contradiction to everything he has just said, Accolon cries 'Fayre swete lorde, have

mercy on me, for I knewe you nat' (146.13-4). Arthur accepts this, saying

"mercy thou shalt have because I fele be thy wordis at this tyme thou knewyst me nat, but I fele by thy wordis that thou haste agreed to the deth of my persone, and therefore thou art a traytoure; but I wyte the the lesse for my sistir Morgan le Fay by hir fals crauftis made the to agré to hir fals lustes" (146.15-20).

That Accolon does not recognise his opponent as the king suggests that Arthur is correct: he has been bewitched.

Witchcraft was never a treason in England, except when--as in this case--it was used in order to destroy the king. In the fifteenth century, in fact, there was a case of it, concerning the Duchess of Gloucester, who was said to be overly ambitious like Lucifer and to plot by witchcraft the death of the king with two clerks; if the king died, she was likely to come to the throne since her husband was Henry's heir apparent. Her treason, however, was detected and she was imprisoned for life.¹⁹

Accolon's treason has similar elements; the attempt at usurpation, the existence of a conspiracy to which he consents, and indeed his betrayal of his lord. But Arthur spares him, because though he has committed an objective treason in fighting the king, he was apparently prevented from realising what he was doing; this of course contradicts English law, which did not allow innocent intent or accident--and as far as I am aware, the idea of bewitchment--as a mitigating circumstance. It seems plausible, in fact, that were this a real-life case Accolon might be considered to be guilty of a kind of negligence which would exaggerate his guilt; just as a drunken man, because he had become drunk through his own fault, could not plead that

19. Storey 47 and 226.

he was not responsible for his actions if he killed a man whilst drunk,²⁰ Accolon, by consorting with Morgan, who he knows to be a witch, might be considered to be ultimately guilty for his own bewitchment. Yet in other respects Malory follows the law. To consent to a conspiracy against the king's life was a treason, because speech was an overt act.²¹

There is also an inconclusive parallel with the procedure of the Duel of Chivalry, where opponents were required to swear that they would not bear any magical talisman on their persons.²² Accolon, of course, does: he has Arthur's scabbard, which prevents blood loss, and his sword, which cuts steel. But Arthur, in intending to carry the weapons into battle, is guilty of the same violation of correct form: either Malory is applying double standards, or the use of advantages which are rightfully one's own is not forbidden in Arthurian law. The latter seems more likely, particularly since no-one ever swears to battle without magical aid. Magic is a part of the Arthurian world, and the employment of it, even in battle, is not said to be treasonable in itself. In the Arthur-Accolon conflict, it is rather Morgan's treachery in substituting Excalibur and the scabbard for 'counterfete and brutyll and false' copies (142.13) which is treason:

Whan Arthure behelde the grounde so sore bebledde he was dismayde. And than he demed treson, that his swerde was chonged, for his swerde bote nat steele as hit was wonte to do (142.30-33).

The treachery may be in itself be synonymous with treason: but that it

20. Baker 427; Bellamy Law of Treason 26-7.

21. For a discussion on this matter see Isobel Thornley, 'Treason by Words in the Fifteenth Century,' English Historical Review 32 (1917): 556-561.

22. Gloucester's letter to Richard II in Dillon 64.

involves counterfeiting objects that belong to the king with the purpose of destroying him echoes English law. Morgan's treason is thus substantiated by reference to reality.

Morgan herself is portrayed as a plotter of some subtlety. She contrives that Accolon should fight in an ethically right quarrel for the deserving Outlake, while Arthur fights for the evil Damas. Accolon is therefore more likely to win, especially since he is given the advantage of Arthur's magical weapons. Accolon is however prevented from recognising Arthur, lest he 'fle treson' and reveal the plot. Both Arthur and Accolon are sworn to fight to the uttermost. If Accolon wins, Arthur will be dead: in the unlikely event that Arthur should win, Accolon will not be in a position to reveal either the plot or Morgan's part in it. And because the whole conspiracy is concealed within a judicial duel the death of either party, but especially Arthur, can only be interpreted as a righteous killing of a knight who fought in the wrong, a 'soddeyn adventure. . . [which] befallys ouftyn of arraunte knyghtes' (147.7-8).

Due to the intervention of the Damsel of the Lake, Arthur wins the duel. It is to his credit that he publicly treats his fight with Accolon as a mistake that would not have happened if each had known the other's identity; as Accolon loyally stresses Arthur's lordship over himself and all present, Arthur diverts attention away from Accolon's treason by drawing attention to the fact that he has fought with his own knight to their mutual disadvantage. Arthur thus reestablishes fellowship, rather than emphasising a crime against hierarchy. It is only to Outlake that Arthur admits the existence of the plot, and then he emphasises substitution of the swords and the enchantment which brought it about, thus blaming Morgan. Outlake observes that it 'is grete

pit  that ever so noble a man as ye ar of your dedis and prouesse, that ony man or woman myght fynde in their hertis to worche ony treason ayenst you' (148.11-4). This treason is not a result of righteous rebellion, as Malory interpret Dynas' war; it is a result of evil in the one who betrays. Morgan, as instigator of the plot, bears the most blame.

The Accolon incident is the first in which Morgan openly declares her opposition to Arthur. Her treason is later consolidated by her sending to Arthur a peace offering of a rich mantle; the Damsel of the Lake warns Arthur not to wear it, so he puts it on the messenger who is as a result burned to a cinder. It is another attempted regicide, this time based in pure hatred without the motive of wishing to be queen. She, likewise, commits other acts against Arthur, such as stealing his scabbard and opposing his knights. Later, her hatred is transferred from Arthur to Guenever and Lancelot, and she attempts to cause trouble by revealing their treason to Arthur through an iconographic shield.

The root of unjustifiable treason such as Morgan's is a hatred of goodness. This takes different forms and hides in different motivations. King Mark's horror of good knights and powerful men is a result of his own bad knighthood and fear of losing his own power to one more fitting to rule: it is a mixture of envy and paranoiac fear. Morgan, and Mordred who she prefigures, however, apart from a desire for power, have no ostensible motivation for their hatred of goodness nor for their treason. They are destructive and vindictive forces. Morgan herself, like Mordred, flees no treason which enables her to express her hatred; she betrays her brother's trust, attempt his death despite both the family relationship and his sovereignty; she is prepared to commit treason against her husband by murdering him, piously

insisting she was tempted by the devil when she is caught red-handed. Only her son's respect for family ties saves her life; yet she has shamelessly exploited those ties. Her hatred of Arthur is sufficient for her to risk her life to steal his sword; she knows he will kill her if he wakes, so she steals his scabbard. When it seems he will recover it, she throws it into the lake, an eerie foreshadowing of the return of Excalibur to the waters at the end of the book. Like Mordred, impaling himself on his father's spear in order to deal Arthur his death blow, Morgan's hatred demands that she destroy even when such an act will bring her no advantage.

The complex of relationships in the Accolon-Morgan-Uryence triangle are the second prefiguration of the Arthur-Lancelot-Guenever triangle, with vastly important differences. There is no reason to suppose that Morgan's love for Accolon is insincere; she genuinely mourns. Perhaps part of the reason that both Malory and Arthur readily forgive Accolon is because his allegiance is torn in two directions; while allegiance to both Arthur and Morgan need not cause strife, it is Morgan who pursues that strife by obliging Accolon--possibly by enchantment--to place his allegiance to her above that to Arthur. Both Morgan's love and her grief are means to destruction by her own consent; both Tristram and Lancelot later on, though they commit treason by adultery, do not do so with the intent to usurp or destroy those kings whom they betray, which is a crucial difference. The destructive forces which arise from their adulterous loves are beyond their control: Morgan however contrives destruction. She attempts the murder of her husband and her brother, who is not directly involved in the triangle; when her plot fails, she takes advantage of her grief to spite Arthur further, rescuing one of his knights for love of Accolon

and thereby informing her brother that she is alive and well. He, to his credit, has vowed to destroy her yet believing she has suffered God's vengeance in being turned into a stone, has compassion on her fate: but he also acknowledges her as a traitoress, attempting to regain possession of the lands he has given her, which she has forfeited by her treason. This, however, is given little emphasis: when Arthur's knights capture the castle, they do so to fordo evil customs, not to repossess the lands for Arthur.

8:5 Disobedience to the King

The idea of knight-service, in Malory, includes the notion that the knight shall be under his lord's 'commandment'; he is sworn, effectively, to obedience as well as loyalty. This is a somewhat different idea to the fealty given to the feudal lord, which included loyalty but not necessarily obedience. And this difference is important, because obedience to a sovereign suggests that the inferior must act according to the moral judgment of his king; fealty suggests that the inferior may employ his own moral values to determine whether his lord's command is one he should carry out. Generally, especially with King Mark, inferiors make their own moral judgments and obey and disobey accordingly. Only tyrants, in Malory's book, think that this denial of the supremacy of their will is treason; Mark is an especial example, but Mordred, as king, also appears to think his will is law.

The Archbishop of Canterbury threatens Mordred with excommunication for his depredations, to which Mordred threatens him, if he should anger him further, with execution; 'I shall make stryke of thy hede!' (1228.15) Now, threatening the king with excommunication or giving him unpalatable advice was not treason in English law, and Arthur does not inflict penalties upon Rochester for bearing the Pope's threat of excommunication, nor upon Gawain or Lancelot for telling him

things he does not want to hear. Mordred can therefore be seen to break the law.

Yet in one respect Mordred conforms to legal practice. In the stanzaic Morte, Mordred similarly threatens his Archbishop with death. It is, however, a classic traitors' death: 'With wilde hors thou shalt be drayne, / and hangyd hye upon an hylle.'²³ Malory still makes it clear that Mordred considers the Archbishop guilty of treason: he, having excommunicated Mordred, flees, 'and tooke parte of hys good wyth hym' (1228.19-20). There was no benefit of clergy for treason, and a bishop was as likely to forfeit his goods for his treason, if he were attainted of it in his absence, as any layman.²⁴ Presumably Malory changed the form of execution as it is presented in his source because he was aware that noblemen were usually beheaded for treason, and as an Archbishop was unlikely to be by birth anything less than a nobleman.²⁵ Mordred, therefore, whilst breaking the law, inflicts the usual penalties demanded by law: he masks private illegality with the correct public legal customs. He is therefore less barbaric than the Mordred of the stanzaic Morte, but more dangerous, because his public façade is less open to criticism: in Malory's book the whole episode is a subtle intimation that Mordred, under the surface, is not the righteous figure that the English believe him to be (1228-9).

23. Stanzaic Morte 3014-15.

24. Baker 423.

25. Medieval people seem to have been sensitive to the distinction between a nobleman's and a commoner's punishment. In the Second Shepherd's Pageant, Mak, who has consistently pretended to be higher in status than he actually is, vows to the shepherds that he will allow them to cut off his head if they catch him stealing again. It is a sign of Mak's continuing pretentiousness. See Everyman and Medieval Miracle Plays, rev. ed. by A.C. Cawley (1956; London and Melbourne: Dent, 1977) 88 ll.201-15 and 104 ll.621-2.

There is only one incident which, on a first reading, appears to suggest that Arthur equates disobedience with treason. Arthur charges Bedivere to throw Excalibur into the waters and to report back; Bedivere, standing by the water, thinks that to throw the 'ryche swerde' away will lead to no 'good, but harme and losse' (1239.8-9): and secondly, it will be 'synne and shame' (1239.20), and therefore on neither occasion does he carry out Arthur's command and throw away the sword. Bedivere makes a moral judgment which overrides Arthur's command.

Arthur's response to Bedivere's first disobedience is fairly restrained: 'as thou art to me lyff and dere, spare nat, but throw hit in' (1239.17-8); it is both a reminder of past favour which Bedivere is rewarding ill, and a threat that if he does not obey, he will no longer possess Arthur's favour. After the second betrayal Arthur's reprimand is more severe:

'A, traytour unto me and untrew,' seyde kynge Arthure, 'now hast thou betrayed me twyse! Who wolde wene that thou that hast bene to me so leve and dere, and also named so noble a knyght, that thou wolde betray me for the ryches of thys swerde? But now go agayn lyghtly; for thy longe tarynge puttith me in grete jouperté of my lyff, for I have takyn colde. And but if thou do now as I bydde the, if ever I may se the, I shall sle the myne owne hondis, for thou woldist for my ryche swerde se me dede' (1239.27-35).

'Betrayal' carries both its modern sense of infidelity and the old sense of 'undone;' Arthur's comment is a recrimination, certainly, but it is also a justification of his own command. Perhaps, given the circumstances--it is wartime and the king's soldiers were especially bound to obey him--one can justify the equation of treason and disobedience.²⁶

26. See the Black Book of the Admiralty 459 s.1: 'alle maner of men of what soever nacion, estate, or condicion soever he be, be obeissaunt to our soverayn lorde the Kyng . . . uppon peyn of asmoche as he may forfeite in body & in goodes.'

But there is a further treason, derived from English common law. Arthur says that Bedivere must obey him, because by failing to do so he is causing a delay which is making it more likely that the king will die. Bedivere's treason is a primarily a matter of endangering the king's life, a kind of consent to regicide. Secondly, of course, there are the elements of ingratitude, unknighthliness, and greed: Arthur implies that Bedivere has put a desire for wealth before his allegiance to the king and the ethical obligations of knighthood.

Ultimately, however, Arthur is exaggerating, deriving from the facts the crudest, most vulgar, and most shocking assumptions--that Bedivere, like Judas, is betraying his lord for riches--in order to coerce, through shame, Bedivere's compliance.

Bedivere's own motives for disobeying Arthur are obscure. They do not seem to be materialistic; there is certainly no feeling that Bedivere knows that his delay and disobedience might kill the king, nor that he consciously consents to the king's death. His actions are objectively traitorous, but since Malory consistently evaluates moral guilt of treason according to whether the perpetrator acts in malice, the reader assumes that Bedivere is innocent of treason as Arthur presents it. And Bedivere, perhaps out of desire to establish his moral innocence and atone for his objective guilt, finally returns the sword to the water. Arthur then forgives him, saying that he himself has delayed too long; Bedivere's part in the tarrying is forgotten, and effectively Bedivere, though his treason may have contributed to Arthur's death, is excused of any desire to cause it.

8:6 Concealment of Treason

To conceal a treason, in the fifteenth century, was

treasonable:²⁷ Malory, however, does not appear to know, or certainly is not interested in, this aspect of treason in law. Pellinore, as far as the reader is aware, never tells Arthur that there is a plot to kill him, and nothing is made of it by Malory: by and large, it is the revelation of treasons to the king which are seen to be treacherous and sometimes said to be traitorous. Andred is called a traitor to Tristram for causing his exile through the revelation of the lovers' adultery to King Mark: Bors considers the plot to entrap Lancelot and Guenever a treason. Both entrapments are treason because they equate with unfair and underhand conflict.

In the Mort Artu, concealment equates with treason: Aggravain and Mordret reveal the adultery of Lancelot and Guenièvre to Arthur, and admit to being 'parjure et desloial' for their previous silence on the matter.²⁸ In Malory Aggravayne and Mordred merely say they, as Arthur's kin, cannot live any longer with the shame that has been inflicted on Arthur. Both sets of characters pretend virtue of various kinds, but concealment in Malory is bereft of any traitorous implications. Now, it is possible that Malory did not know that concealment of treason was treason, or perhaps he took the traitorous concealment for granted as a treason and imagined, if he thought about it at all, that his readers would do the same. Or, more likely, he ignores the issue altogether.

Aggravayne, to Malory, is dangerous, because he is indiscreet; 'he was evir opynne-mowthed' (1045.21). Mordred and Aggravayne, in revealing the adultery, are the instigators of disaster: according to Malory, it is because of Aggravayne and Mordred's revelation of the

27. Bellamy, Law of Treason 220-22.

28. Mort Artu 87.16: 'foresworn and disloyal' (my translation).

adultery that there befalls the 'grete angur and unhappe that stynted nat tulle the floure of chyvalry of alle the worlde was destroyed and slayne' (1161.7-8) Thus, though it might be, in law, a treason to conceal treason, in the context of the book, the legally righteous revelation of it has the consequences attributed to treason: it destroys the king and the realm. Concealment of Lancelot's adultery would, in the circumstances, have been in everybody's best interests; those who, virtuously--and it is seen to be virtuous--turn a blind eye to Lancelot's conduct, because he is a good man and they are grateful to him for his good deeds, should not be tarred with treason for their concealment--as those in the Mort Artu are--particularly since those who finally reveal it do so under a mere pretence of goodness; at heart they are motivated by the motivation of all traitors, 'prevy hate' (1161.12).

There is another treason besides concealment which is ignored by Malory even though it is both an English treason and mentioned in his source: Mordred's counterfeiting the king's seal on the letters announcing King Arthur's death to England.²⁹ Perhaps if--as is probable--Malory knew of the treason of counterfeiting, he would have thought that Mordred as regent would have had free use of the appropriate seals anyway.³⁰ Perhaps, however, a fifteenth-century audience, at least if treason was on their minds, would have taken it for granted that Mordred may be guilty of counterfeiting, just as they may have supposed that the false letters contained a form of treason by alluding

29. Mort Artu 148.9-12.

30. Malory associates counterfeiting with treason when Mark counterfeits letters from the Pope, and when Morgan counterfeits Arthur's sword.

to the king's death. In this latter case, however, there is less legal evidence to suppose that the letters in themselves are treasonable: speaking of the king's death could be construed--very indirectly--as an attack on his life and therefore a treason, but there are few cases of treasonable writings before the time of the Tudors.³¹ But ultimately, the possible treasons by counterfeiting and by writing of the king's death are not particularly important in themselves; what the letters announcing Arthur's death signify is Mordred's intent to usurp the throne, just as the later war against Arthur automatically implies an intent to kill the king to maintain that throne; the separate treasons are significant when they are seen as continuous manifestations of a desire to destroy the king.

8:7 Deposition

Arthur is never formally deposed by the English, or at least, Malory never says that he is, and neither is any king in Malory's book. The closest effective equivalent is the national transfer of allegiance from Arthur to Mordred: even when Mordred's spurious claim to the throne is invalidated by the news that Arthur is still alive, 'the moste party of all Inglonde hylde with sir Mordred, for the people were so new-fangill' (1229.21-3) the people are willing to support Mordred in his war against Arthur:

for than was the comyn voyce amonge them that with kynge Arthur was never othir lyff but warre and stryff, and with sir Mordrede was grete joy and blysse. Thus was kynge Arthur depraved, and evyll seyde off; and many there were that kynge Arthur had brought up of nought, and gyffyn them londis, that myght nat than say hym a good worde (1228.35-1229.5).

The legal status of deposition was always a shadowy one in the Middle Ages: on one hand there was the train of thought represented by Ælfric

31. Bellamy Law of Treason 120 and Tudor Law of Treason 27.

and Richard II, who did not believe that a consecrated king could be unmade: on the other, there was the idea that deposition, even tyrannicide, were permissible if the king had failed to satisfactorily fulfil his monarchical role. As far as these Englishmen are concerned, Arthur is an unsatisfactory king: Mordred represents a better alternative. It is impossible to glean from this what Malory thought of the validity of deposition in general: the English justification for the effective 'deposition' of Arthur is simply what people could and did say in such circumstances.

Malory, however, does not seem to approve of Arthur's particular 'deposition' nor, it appears, that of Henry VI. Malory is rarely condemnatory; while this makes his book considerably more appealing than those who have condemned it, it also makes it considerably more difficult to interpret; it is relatively easy to say what Malory approves of, rather more awkward to determine the extent to which he disapproves of things. But he does go as far as saying that the Arthurian English are ungrateful and forgetful of the generosity Arthur has shown towards them: and this failure to respond to 'good lordship' has been previously seen as an element in the treasons of Lancelot and Harmaunce's murderers.

The Arthurian English therefore have traits in common with traitors, but Malory portrays them as making an error of judgment in their assumptions about Arthur as a result of their ingratitude. It has been suggested earlier that a bad king deserves death:

'Save my lyff,' seyde kynge Marke, 'and I woll make amendys. And concider that I am a kynge anynted.'

'Hit were the more shame,' seyde sir Gaherys, 'to save thy lyff! For thou arte a kynge anynted with creme, and therefore thou sholdist holde with all men of worship. And therefore thou arte worthy to dye' (549.13-18).

If Mark deserves death, however--and Malory seems to think he does--Arthur does not deserve deposition:

Lo ye all Englysshmen, se ye nat what a myschyff here was?
For he that was the moste kyng and nobelyst knyght of the
worlde, and moste loved the felyshyp of noble knyghtes, and
by hym they all were upholdyn, and yet myghte nat thes
Englyshemen holde them contente wyth hym (1229.6-10).

The people's reasons for deserting Arthur, though in principle fair according to one mode of thought, are not seen to be founded in fact. The English have forgotten that life under Arthur was not only a matter of war and strife; he has advanced men, maintained knights, and himself been a kingly king and exemplary knight. This is certainly true to the limited picture of Arthur which the reader receives. He of course is never seen in the midst of commonplace administration: he is never said to impose outrageous taxes to finance his wars and maintain his knights, which might have provided the people of England with some justification for supporting Mordred. But since such abuses--if realistically likely--are not mentioned, one cannot assume that they have any bearing on the Arthurian people's reaction to their king. The reader has to take Malory's word, his perhaps naive ideas of what constitutes a good king, and what is seen of Arthur's virtue in the narrow social world of the gentry and nobility, and accept on that basis Malory's assertion that Arthur is not the cause of his subjects' defection.³²

The Arthurian civil war provides Malory with a final opportunity of juxtaposing his own and Arthur's time. Malory sees in the parallel between the contemporary and the historical civil wars evidence that the English as a race are perfidious:

32. C.f. Pochoda 91: 'As Malory sees it, rebellion is a direct outgrowth of the king's governmental disability.'

Lo thus was the olde custom and usayges of thys londe, and men say that we of thys londe have nat yet loste that custom. Alas! Thys ys a grete defaughte of us Englysshemen, for there may no thynge us please no terme (1229.11-14).

If there is a solution to the English national failing, Malory does not offer it.

He does, however, reveal his own political leanings. Mordred, the usurper, draws his forces from areas which were predominantly Yorkist: Edward IV was on the throne as Malory finished his book, and presumably the English king with whom the perfidious English could not hold themselves content was Henry VI, then in exile in France. This is not the only time Malory has created 'coincidences' in English and Arthurian history,³³ but on this occasion his observing an unmistakable similarity--whatever political purpose he intended it to serve--between historical and contemporary treason forcefully lessens the distance between romance and reality.

8:8 Trial and Punishment of High Treason

High treason by anything other than adultery is occasionally subjected to legal process and punishment, as with the death of the Earl de la Planche in a trial by combat, and the condemnation to death of Melyodas' queen for the attempted murder of the heir to the throne, Tristram. Several times, however, Arthur is seen to impose, on his own authority, penalties on those he knows, or suspects, have betrayed him: he beheads Awnowre and banishes Uwayne for suspected complicity in Morgan's plot against him. Arthur intends to inflict on Morgan vengeance of such a nature 'that all Crystendom shall speke of hit,' because 'God knowyth I have honoured hir and worshipped hir more than all my kyn, and more have I trusted hir than my wyff and all my kyn aftir' (146.21-

33. Riddy 5, Field's commentary to ll. 1640-2 and 1807 in his Seventh and Eighth Tales 275-6.

4). It is not clear what vengeance he is intending to take, and whether it will follow legal or informal procedures. Many of the knights of the Round Table, however, 'wysshed [Morgan] brente' (157.6), in accordance with legal custom. And much later on, Malory observes that Morgan is still in possession of a castle which Arthur gave her,

'whyche he hath repented hym sythyn a thousand tymes, for sytthen kyng Arthure and she hath bene at debate and stryff; but thys castell coude he never gete nor wyne of hir by no maner of engyne' (597.13-16)

This is one of the few references to forfeiture for treason, though the following story, inconsistently enough, sees Palomides and Dynadan merely fordoing the evil customs of the castle rather than claiming it as Arthur's rightful escheat (600.5-12).

Punishment of traitors, in the world of the book, is much less thorough than in real life. Finding Morgan and her retainers transformed into statues, Arthur supposes that 'here may ye see the vengeance of God!' supporting the notion that God abhors traitors and will Himself impose an appropriate retribution upon them. But Arthur is fundamentally merciful: he regrets Morgan's supposed transformation into stone ('now am I sory this mysadventure ys befalle' 151.24-5), and more often than not he ignores or pardons traitorous offences against him. Accolon, a confessed traitor, is informally pardoned by Arthur: Mellyagaunce is spared the posthumous penalties usually inflicted on defeated appellants in trial by combat. A formal death penalty is rarely threatened, and never successfully imposed, on a man for high treason consisting of a crime other than adultery. Perhaps the most frequent form of punishment, in fact, is death in battle, which is inflicted upon all of the kings (who are, of course, questionably traitors) in the early books, and finally upon Mordred in the last tale. Malory, unlike the author

of Havelok and the chroniclers, has no love for tales of executions whether the victims are traitors or not.

8:9 Summary

High treason, in Malory's book, is one of the least consistent forms of treason he portrays, at least in the sense that he does not always indicate to the reader whether those who commit English crimes of treason in his work are to be considered guilty. The treason of warring on the king is the foremost example: while, in the last tale, Mordred is undoubtedly a traitor for his war against Arthur, the wars of the kings in the early part of the book have a dubious status. There is no clear set of allegiances which allow us to determine with certainty whether the kings, in the early part of the book, are rebels or enemies. And while Lot at least is furnished with some justification for warring on Arthur, one cannot avoid the conclusion that, in the first tale at least, Malory is not interested in treason at all.

In general, however, the definition of treason against the king in Malory's book corresponds to, and is validated by, that of English law: the reader is obliged to judge the justice of some of Mark's accusations of treason by those standards. Though Mark's accusations of treason in substance sometimes coincide with the definitions of crimes in English, and once, military, law, the basis of treason as Mark conceives it is potential or actual opposition or non-subjection to his personal will. Mark's idea of treason is both a means of suggesting, and a reflection of, his belief in his own regality, his desire to be above the dictates of law and communal decision, and his personal paranoia.

Mark acts illegally, both as a king and a knight, and is a traitor in his own right: this, in part, is why treason against him is

considered to be morally, if not legally, justifiable. This reflects the fifteenth-century extra-legal idea that the immorality of the victim justifies the perpetrator's treason.

Arthur, like Harmaunce, is however naively represented as a generally good and just king, who, if he has failings, nevertheless approximates to the ideal of kingship of the fifteenth century. Because of this, treasons against Arthur, such as adultery with the queen, regicide, attempted regicide, and levying war, closely correspond to the acceptable English definition. When Arthur, himself or by delegation, is called upon to judge a case of non-English treason, or to follow a non-English procedure, Malory makes it clear that both definition and procedure are legally valid in the historical culture of Arthurian England.

Because Arthur, unlike Mark, is a good king, treason against him is not generally justifiable by his personal immorality or abuse of office. Lot's resistance may be justified on these grounds, and the English people may be accorded tolerance on Malory's part because they desert Arthur in the misguided belief, born of ingratitude and forgetfulness, that Arthur is an unsatisfactory king. However, Malory does not habitually condemn any but the most immoral and unpleasant of people, whether they are traitors or not, and the English, though they are foolish, are never presented as an evil race.

Generally speaking, the difference between one who commits treason and one who is reputed a traitor for doing so depends on three factors: the goodness of the victim; the intentions, circumstances, and moral and knightly qualities of the perpetrator; and whether Malory has treason on his mind--whether, in fact, the plot demands treason or not. In the Arthur's early wars with the lesser kings, the latter factor bears the most force. However, whilst the badness of the victim can

justify treason, and his goodness render it the more heinous, the moral qualities and circumstances surrounding the perpetrator him or herself tend to be the things which determine whether his or her treason should be excused, ignored, or condemned. Thus Malory has Arthur forgive Accolon his treason since he is a man of excellent knightly qualities and has been bewitched. In contrast, King Mark, who has good legal and even moral grounds for attempting to punish Tristram, is reviled, not least because he is a weak and envious knight, forever treacherous, morally undeserving and personally lawless.

Conclusion:

Infidelity, Sin and Tragedy

9:1 Law and the Arthurian World

Sometimes Malory's law is sufficiently similar to contemporary English law for an audience to judge Malory's world by their own standards: at other times, Malory predicates 'historical' law, by which the audience is obliged to acknowledge essential differences between Arthurian and fifteenth-century society. Either way, the law itself is a means through which characters are depicted, praised and criticised: Lancelot's offer of a sizable income to Elayne conditional on her marriage (1089.30-33) is in accordance with canon law's demand that a man who had seduced a virgin should either marry her or provide her with a compensatory dowry. Lancelot of course has not seduced Elayne--he makes this very clear to her father (1091.5-8)--but his attempt to provide for her in the only way he can shows both his virtue and generosity.¹ Mark's breaking of both Arthurian and contemporary laws reveals his lawless character. Ultimately the law, in Malory's book, gives an impression of the Arthurian world's physical and historical actuality: the characters exist in, react to, and are to some extent determined by, an objective material world. And that ostensibly objective world is vital to the effect of Malory's story: perhaps vital to the Arthurian story itself. For all Tennyson's flashes of melodramatic brilliance, his Arthurian world is determined by moral idealism and deviation alone

1. Brundage 461.

and is lightweight compared to Malory's.²

Malory's book, however, if it is in part about the breaking of laws, is not about the making of them: the law, in Arthurian England, is made on occasion by the king through his ordinances, but primarily it is seen to exist as a necessary condition of the world Malory depicts. The laws of high treason, treason as murder and its automatic referral to the judicium dei, and summary execution for capture in the menour are amongst those formal laws and customs which Malory as narrator explains, but most 'customs' are revealed through repeated character actions and comment. Arthurian legal custom, to Malory, is only partly based in the institutional authority of the king: primarily it is inherent in the individual knight errant whose part it is to fight and defeat wrong. In fact Malory's law, in stressing individual rather than corporate obligation, is archaic in the extreme: indictment, for example, does not exist even for felony.³ The infliction of punishment on the perpetrator is the responsibility of the injured party's family or friends either through vendetta or by appeal to a court.

9:2 Aesthetics, Reaction and Law

Institutional law such as formal execution or the process by which Guenever is finally judged to death is not in Malory's book a satisfactory process. Executions never take place 'on-stage': a knight, or a party of knights, inevitably intervene regardless of the guilt of the

2. See for example 'Guinevere' in The Poems of Tennyson, ed. Christopher Ricks (London and Harlow: Longman, 1969) 1727-8, 11.67-136. The Queen is discovered taking her leave of Lancelot by Mordred. There is no plausible circumstantial evidence for the lovers' adultery, no trial conducted under real or fictitious law, and therefore no feeling that the Arthurian background itself determines the characters' development: idealistic moral guilt alone propels Lancelot and Guinevere on their separate courses to France and Almesbury.

3. C.f. Leges 86-7, c.5 s. 7a. The author argues that nothing can be done in the absence of an accuser.

victim. The situation in which knight confronts knight to reveal one or the other's misdeed is to Malory the only truly satisfactory way of resolving legal disputes, not because it is a completely accurate determination of culpability--sometimes it is not--but because it implies that the participants are courageous fighters and pursue good knighthood. Combat is fitting, or kynde, to knights, whilst administering execution through the process of formal law is not. And, indeed, formal execution or summary judgment such as Guenever's has similarities with treason. It is killing in cold blood in which the victim has no chance to fight back, and in which the appellant or accuser does not willingly wager his own life to prove his right. It is difficult to avoid the feeling that Malory's judicial battles, in fact, are intended less as determinants of guilt or innocence than as showcases for the bravery and integrity of the parties involved. A good fighter, like Accolon, can redeem himself through prowess, even if he is guilty of the worst of crimes.

Malory's interest in single combat, personal justice and customary punishment meted out by his good knights is perhaps a reaction against the indeterminable and long, frequently corrupt and generally unsatisfactory legal milieu of his day. Fifteenth-century law was bureaucratic and tedious in the extreme, and it was more often than not divorced from justice. Malory himself may have been a victim of manipulation of the legal process: his depiction of the ethical and effective failures of formal law may indicate a highly conventional dissatisfaction with the

law as it existed in his own time.⁴ The processes of fifteenth-century formal law may have been no more satisfactory than Malory's judicial battles, though for different reasons. And this distrust of formal process spills over into the Morte: Lancelot, if in an understandable cause, manipulates the formal processes of Arthurian law to save his queen's life by the use of equivocal oaths.

In the Morte Darthur, personal conflict between knights is a speculative alternative to formal and non-violent court process. Whether judicial combat as Malory portrays it would be a feasible or even presentably just system of law enforcement in real life is not the question. Malory is indulging, rather than recommending, because in the world of the book conflict in arms is pleasing enough to justify itself on aesthetic if not legal grounds. It is a remedy comfortably familiar to readers of chivalric romance: it is numinous, emotive, and at best a highly dramatic manner in which to resolve purely fictional disputes.

9:3 Vigilante Justice and Wish-fulfillment

It seems likely that Malory's informal judicial processes had particular significance to a society in which extra-legal, and indeed illegal, process was often the only way to obtaining satisfaction. Moreover, in the fifteenth century as now, individual human beings possessed the desire to inflict vengeance, in person and not through the sometimes feeble mediation of the state, on the perpetrators of certain sorts of crimes. Men desired to take the law into their own hands: sometimes they did so. The Duke of Suffolk, for example, was executed with due ceremony, not merely murdered, at the hands of a vigilante

4. Josephine Waters Bennett, 'The Mediaeval Loveday,' Speculum 33 (1958): 362, and Ian Rowney, 'Arbitration in Gentry Disputes in the Later Middle Ages,' History (1982-3): 367, Christine Carpenter, 'Sir Thomas Malory and Fifteenth-century Local Politics,' Bulletin of Historical Research (1980): 38.

force.⁵ Malory's book presents a world in which the knightly class at least--the gentry to which the book is in fact addressed--are allowed, obliged even, to enforce law and justice in person. Romance temporarily legitimises the real-life last-resort of self-help and the human desire for first-hand vengeance.

But Malory's romance does not conspicuously recommend that men take the law into their own hands. When Caxton advises readers to follow the good and leave the evil in Malory's book, he is not suggesting that one should act as jury, judge and executioner to the next widow-robbing neighbour one encounters, even though fair vigilante justice on such men is a 'good' in Malory's Arthurian world. The reader of romance has to distinguish wish-fulfillment, the free play of the amoral imagination, from those incidents and themes which have moral relevance to real life.

Wish-fulfillment, after all, does not always predicate moral, spiritual or legal goodness. That it is wish, rather than reality, usually predicates the exact opposite. Mordred manifests urges towards anarchy and greed and megalomania which most possess and with which they can appropriately empathise: but he is not good, and neither is the reader for being able to identify with him. And Lancelot, according to Christian estimation, is morally bad for his adulterous affair with the queen: yet the affair itself is touching, and the majority of readers, emotionally if not morally, tend to side with the lovers. The secular and sexual allegiances which make Malory's characters emotive and affective are ultimately in tension with what is right: and it is this I intend to examine in this concluding chapter.

5. Storey 44.

9:4 The Traitor as Sinner

All traitors in medieval literature, whether heroes or adversaries, are portrayed as sinners. Judas' covetousness of wealth is seen to be the reason for his betrayal of Christ. Athelston's Earl Wymond explains his treason to be a result of the King's favouring of a rival: 'He lovid him to mekil and me to lite; / Therefore envie I hadde.'⁶ Gawain in Gawain and the Green Knight blames himself for covetousness: and the poet who wrote a verse confession on behalf of the traitoress Eleanor, Duchess of Gloucester, observed her pride, greed and covetousness in the perspective of Lucifer's archetypal treason;

With welth, wele and worthinesse,
I was be-sett on euery side;
Of Glowcestre I was duchesse,
Of all men I was magnifyed.
As lucifer fell downe for pride,
So fell I from felicite.

.
In clothys of gold and garmentys gay,
Me thought there was no thyng to dere.
I purchast fast from yere to yere,
Of poore men I had no pite.⁷

In committing treson one violated one's allegiance to not only to one's king or countrymen, but to God. A fifteenth-century reworking of the Speculum Vitae, A Myrour to Lewde Men and Wymmen, classifies treason as a sin in deed and treachery as a sin of the heart. Treason implied also the sin of pride, the root of all sins and the fundamental 'vnfeithfulnes, pat is vnkyndnes to God and Man.'⁸ A man is considered proud if he 'forswerep him wityngly,' or if he acts in 'despite':

6. Athelston 799-800 in Sands 153.

7. 'The Lament for the Duchess of Gloucester (1441),' ll. 25-30, 35-8 in Robbins, Historical Poems 177.

8. Myrour 105 ll.19, 29-30, 32.

þo þat ne wole nought doo þe reuerence þat þei owe to doo to hem þat bep aboue hem. . . . Vnbuxumnesse comeþ of despite þat is a rote of pryde; for þo þat wil not doo to God þe worschip þat hem aughte doo ne to his halowes the reuerence þat he oughte to doo for Goddes sake, ne to his souerayne obedience or buxumnes þat he oughte to doo, he hap in hym þat rote of pryde þat is cleped despite.⁹

Rebellion is a sign of the third root of pride, 'overtrowynge,' or believing oneself to be worthier than one actually is. Particularly relevant to the usurper is the fourth root of pride, the 'desire of hye estate' insofar as one achieves one's desire by causing the downfall of a man in office by any 'fals manere' or treachery. The fifth root of pride is vainglory, the desire for earthly praise above all, because 'þis bynemþ God þat he aughte have' and is therefore a kind of lese-majesty against God.¹⁰ Aspects of pride can thus be seen in Malory's Accolon, Morgan, Mordred, all of the 'false' or intentionally erring knights, and even Lancelot himself, who is taken to task for vainglory in the Grail Quest, and who accuses himself of pride in his repentance over Arthur and Guenever's tomb.

Envy, however, is the primary sin of Malory's worst traitors. To judge as evil a man's good acts was envy in heart, as was being glad of another's misfortune, or lamenting his misfortune. Slander of and belittling of the good was envy in speech, but perhaps most relevant to treason in law is 'fordoyng' and 'dressynge of wiles:'

Fordoyng is whan a man þat is envious wip myght and power destroyþ a good man. Dressynge of wiles is when þe envious man wip all his myght afforceþ him to abate þe estate & good fame of gode men. . . . þe envious man sekep all þe sleigtes & wiles þat he can forto fordo here good fame & to purchase to hem angres and despites, for anoper mannes wel dede is as sorwe & woo to an envious man.¹¹

9. Myroure 105 11.35-42.

10. Myroure 106 11.2-42.

11. Myroure 111-3 for envy, esp. 112 11.1-4 and 11. 17-19.

Envious people, as the Myroure observes, 'synneb by malice, pat is contrarie to the goodnes of þe Holy Gost, wipoute whiche may be no sauacion.'¹² Malice, throughout Malory's book, has been the yardstick by which objectively traitorous deeds are deemed treason. Envy, being itself malicious, is closest to the nature of Malory's treasons and furthest from his ideal of human conduct, worship: envy, says Guenever, negates worship.

Mordred's killing of Arthur, like Morgan's disposal of Arthur's scabbard, is motivated solely by desire to hurt another person. Neither act is of any material benefit to the perpetrator. Morgan does not desire the scabbard for its useful power: she wishes to deny Arthur use of that power. Mordred does not hope to win back the throne, since he knows he has his death-wound: he wishes to deny Arthur possession of the throne. Mark too is motivated by envy: his desire to destroy Tristram, and his opposition to all good knights, is envious; he recognises their greatness, and failing to be great himself, wishes to destroy the mirror of his shame. His destruction of Bodwyne and his attempted destruction of Tristram, of course, has its political aspect: he is afraid that their popularity and worship will set him at naught. But that, in itself, is a form of envy: were he to indulge less in privy hatred and act, as Lancelot and even Dynadan act, with 'pitee . . . a vertu pat makeþ a man sory for opere menis harme or yuelfare and glad & ioyful for oper menis profite and welfare'¹³ he would not have earned himself the evil reputation for which he is constantly reviled and threatened, and which in turn causes him to with-

12. Myroure 112.25-7.

13. Myroure 114 l.43-115 l. 2.

draw further into envy and traitorous deeds. Mark, more than any of Malory's traitors, is enmeshed in sin.

Lancelot, of course, is not conspicuously envious, and neither is Tristram: but both are guilty of lechery because they are adulterers.¹⁴ Covetousness appears to be a motivation for Helyas and Helake, Perys, Morgan, Mordred, Accolon, Palomides, and perhaps even Lancelot and Tristram, in that they desire their kings' wives. Gawain, another of Malory's major characters and another traitor, is subject to anger, which 'stireþ a man aȝenst his neighebour,' by making him vengeful, prone to killing, and the causer of wars

of whiche comeþ moche sorwe and woo, nameliche whan it is bytwene two grete persones; for þen bep many men slayne, moche blode sched, townes brente, londes destroyed, many men agreued, some disherited, some bansched, some enprisoned, some raunsoned, and moche opre harm doo þat neuere may be amendid. How may þen a man amende þat is gilty of suche debate? & but he amende it how may he be saued?¹⁵

Gawayne's anger, in the last tale, has most of these effects: and it is noticeable that the first cause of the Arthurian civil war is Mordred and Aggravayne's 'prevy hatred' of Guenever and Lancelot, which the Myroure itself regards as an expression of the sin of anger.¹⁶

14. See the Myroure 165.18-39. Adultery is classified as the fifth degree of sexual sin out of fourteen possible variations, because it involves breach of faith between man and wife, and sacrilege for the breaking of the Church's sacrament. Tristram's crime is worse than Lancelot's, in that both he and Isode have spouses of their own: but there was much debate in the Middle Ages as to what constituted a valid marriage, and Tristram's failure to consummate his own marriage may be regarded as exculpating him of the guilt of 'double avoutrye' as well as of treason (Brundage 502). The Myroure also adds that adulterers suffer 'moches meschif of body in þis world as to pouerte, losse of som lyme, enprisonment & distresse of his body or sodeyn deth' which seems to refer less to possible legal penalties than the kind of bad luck Lancelot associates with love par amours in the third tale.

15. Myroure 116 11.20-26.

16. Myroure 116 11.18-19.

9:5 The Traitor and Unnatural Behaviour

Whatever the justifications, excuses, or authorial, reader, or character sympathy for the traitor, he or she is inevitably presented as one who, either as part of or peripheral to his or her crime of treason, indulges in unnatural relationships or practices. The medieval legend of Judas, for example, tells how he commits fratricide, parricide, incest and suicide. 'The logic behind this legend,' observes Archibald, 'seems to be that a man capable of betraying Christ has broken all of the taboos already.'¹⁷ But this is true of all traitors. Quendrith, in killing the young king, and later saint, Kenhelm, commits fratricide: Gamelyn is a fratricide; Godard an infanticide; the Emperor's mother in Octavian contrives to have two children executed and in one version commits suicide; Wymond in Athelston is considered morally responsible for the death of the unborn Crown Prince; Shakespeare's Macbeth commits infanticide; Lady Macbeth insists she is capable of infanticide, and though she shies from symbolic parricide, arguably commits suicide; and Claudius commits fratricide and incest.¹⁸

The personal unnaturalness of traitors was assumed in real-life too: the Peterborough Chronicle reports that during King Stephen's reign, the two bishops Roger of Salisbury and Alexander, the Bishop of Lincoln, along with the Chancellor Roger, captured 'carlmen 7 wimmen,

17. See Archibald, 'Arthur and Mordred' 6-7 for a discussion of the legend of Judas.

18. 'St. Kenhelm,' in the Early South English Legendary 355, Gamelyn 873-9 in Sands 180, Havelok 466-73 in Sands 70, Octavian 113-248 in McSparran 63-5 or 1777-9 in Mills 124, Athelston 282-96 in Sands 139, Macbeth, ed. Kenneth Muir, The Arden Shakespeare (London: Methuen & Co., 1962) Act III sc.i ll.134-7, Act III sc.vii ll.54-9, Act II sc.ii ll.13, Act V sc.v ll.16. C.f. Macbeth's refusal to commit the traitor's conventional suicide: 'Why should I play the Roman fool, and die / On mine own sword?' Act V sc.viii ll.1-2, Hamlet, ed. Harold Jenkins, The Arden Shakespeare (London: Methuen & Co., 1982) Act I sc.v 1-2 etc.

7 didn't heom in prisun, 7 pined heom efter gold 7 sylver' and they did not spare 'nouthir circe ne cyrceiærd, oc namen al þe god þat þarinne was, and brenden sythen þe cyrce 7 al tegædere.' Tiptoft, Earl of Gloucester, executed for treason in 1470, is associated with infanticide in the course of his former work as 'Bowcher of Englonde,' or King's Executioner:

Thys man as above is said was ffamed Crwell and mercylees ffor so much as he put to deth ij sonys of therles of desmund whiche were soo tendyr of age, that oon of theym havynge a Byle or sore In his nekk said unto the excecucioner whan he shuld smyte off / his hede, Gentyll Godffaydr, beware of the sore In my nekk.

And one of the charges against Anne Boleyn involved incest.¹⁹

Now, in Malory's book Lancelot and Guenevere are adulterers: Tristram and Isode commit adultery and incest and both consider suicide (and Tristram is associated with matricide); Melyodas' queen is an infanticide; the Giant is a cannibal, a rapist, and an infanticide; Morgan Le Fay attempts fratricide and is promiscuous as well as an adulteress; Mark is a fratricide, and an attempted infanticide who finally succeeds in killing his nephew; Gaheris commits matricide; Mordred commits patricide, attempts incest and adultery and threatens a clergyman; even Balin, whose treasons are ill-defined, is a fratricide; and it is usual for all of Malory's knights to derive their good or bad moral status in part from the way in which they treat women.

19. Peterborough Chronicle 55 ll. 18-19 and 56 ll.47-8, Chronicle of London 213, Bellamy, Tudor Law of Treason 40. The fifteenth-century view of executioners was not in itself favourable in any case: the Myroure observes 'hangmen þat for hyre dop men to deth þat bep demed þerto, and fayne bep to doo þat office in hangynge or heed smytyng of for here huyre. . . . þis office is foule and li[k]ly to be of grete perile & synne, for hit may nought wel be doo but wipoute pitee, and þat is grevous, so þat a man were better to lyue in as moche meschief as he myght wip þe lyf þan vse this office' (141.7-12).

9:6 Unkyndenes and Treason

The literary traitor, depicted in this way, becomes a symbolic and affective representation of the nature of treason. The traitor is seen to act unkyndely, or unnaturally, both in his political and his domestic relations: he or she is partly or conclusively incapable of fulfilling the roles of nurture, protection, or subservience appropriate to his or her sex or status. It was kynde, for example, for each limb in one's body to fulfil its natural function:

eueriche putte him forth in helpe of other, as if þat oon foot slyt, þat oper foot stont and kepip vp; if men smyte to þe heed þe honde puttip him kyndeliche aȝen þe strook in sauacioun of þe heed. And so by þe kyndeliche wirchinge of þe lymes men may unvnderstonde parfyte loue, whiche may beste be proued at nede.²⁰

Treason is by contrast unkynde: in committing treason the perpetrator becomes the hand rising to destroy the head or the vital organs of the body politic, to the disease or the destruction of the whole. In committing treason, one rejected God's providence and refused to express one's angelic nature through service and perfect love for one's fellows. One instead aligned oneself with fallen, and less than human, bestial nature: Dunbar observes that the traitor is 'evir odious as ane owle, / the falt sa filthy is and fowle; / horrible to natour / is ane tratour, / as feind in fratour / undir a cowle,' and he concludes that it is to the 'the fals fox dissimulator' that 'kynd hes every theiff and tra-tour.'²¹

9:7 Unkyndenes in Le Morte Darthur

The notion of unkyndenes is fundamental to Malory's presentation of treason. Kyndenes, in Malory's book, is to be ruled 'manly' or

20. Myroure 115 11.19-23.

21. 'Epitaph on Donald Owre' 11.7-12 and 33-4 in MacQueen 106-7.

'womanly', with loyalty and generosity of heart according to the obligations appropriate to one's position: to be, in effect, a person who fulfills one's natural obligations. One can be a kynde lord, lover, daughter or wife: knights especially are obliged not only to conduct themselves as is fitting to men but as is fitting to knights.

Treason, in some of its forms, includes ingratitude or cruelty, which is unkyndenes approaching the modern sense of the word. But primarily it is a deviation from one's appropriate natural and social role or place. Morgan is, says Arthur ironically, 'a kynde sistir;' she fails to behave in accordance with familial and political obligations. There is a discrepancy between what nature and 'reson' intended her to be--subject and sister--and what her own moral deviation makes her. Perys is by status a knight: but he refuses to behave as one should. Mark, a king, does the same, and is identified, like Dunbar's Donald Owre, as kin to the fox: neither act in accordance with what they are supposed to be. Even treason by murder is unkynde, because it is not 'manly,' or appropriate to men of arms. The ideal knight, relation, lord or wife is the 'natural' state for a human being: to deviate from that is, if common, nevertheless unnatural.

9:8 The Idea of Secular Sin

To designate or present the traitor as a sinner, however, sounds more condemnatory than it actually is. Early in Malory's book one is presented with the idea that traitors are displeasing to God and can be penalised: Ulphuns accuses Igrayne of treason against God, the king and the state; Arthur believes--albeit mistakenly--that Morgan has been turned into a statue in retribution for her treason. But the sins and unnaturalnesses of the traitors in the early part of the book are fuel for their condemnation only insofar as those traitors--like Morgan or the Giant--are awarded scant sympathy anyway. The unkyndenes of Tris-

tram to Mark is implicit: Tristram's incest is mentioned only once, and then obliquely in context of a denial. Lancelot's adultery is unkynde to Arthur: and Guenever's supposition that it could be penalised with death reminds the reader of its status in law. But offsetting this is Malory's evident sympathy with his sinful characters. He is taken by their situation, both as great knights and true lovers: Tristram and Lancelot, regardless of their immorality, are emotive, numinous figures. So Malory suspends his judgments, and if he does not conceal the sin and crime, he does not emphasise it either.

Others have been less tolerant. Malory has been criticised for not making clear his moral objections to his sinful heroes. Ascham's denunciations were extreme, and were reiterated by Strachey, who if he could defend the Morte against open manslaughter had to concede to its bold bawdry: 'the morality of "Morte Darthur" is low in one essential thing, and this alike in what it says and what it omits.' This refers, of course, to Malory's depiction of adultery. While, according to Strachey, Tennyson reveals how the moral tone of the Arthurian story should be raised: 'The ideal of marriage, in its relation and its contrast with all other forms of love and chastity, is brought out in every form, rising at last to tragic grandeur, in the Idylls of the King,' all Le Morte Darthur offers as an indication of good and evil love is the

silent yet implied judgment which is passed upon lawless love by its tragic end, [and] the ideal presented in the lives of the maiden knights, Sir Galahad and Sir Percival. . . . [Malory] does for the most part endeavour, though often in but an imperfect and confused manner, to distinguish between vice and virtue, and honestly to reprobate the former.²²

22. Le Morte Darthur: Sir Thomas Malory's Book of King Arthur and of His Noble Knights of the Round Table, ed. Sir Edward Strachey (London and New York; Macmillan and Co., 1891) xxi-xxiii.

But this is missing the point. The audience of the Morte, if not experts in theology, lived in a theocentric culture which imparted to them a knowledge of Christian ethics. The sinfulness of adultery was a matter of fact, not a matter of opinion, and Malory's audience, as Caxton implies, were quite capable of distinguishing between vice and virtue in literature from the presentation of the deed alone.²³

But to acknowledge sin, either as author or reader, is not necessarily to acknowledge the complete metaphysical system of which it is a part. The sins of and in treason do not condemn Tristram or Lancelot because the moral emphasis of the early parts of the book--the 'Tristrams' in particular--is secular not religious. In the Arthurian world before the Grail Quest, adultery affects a man's worship and thence his standing only insofar as it becomes public and is subjected to reproof and shameful penalties. The ethics by which Malory evaluates a traitor's conduct are Christian, but they are a socialised kind of Christianity which to some extent has divested itself of God and eternity. This allows Malory to evaluate his characters' conduct according to relative, rather than absolute, values. Treasons of malice, greed or aversion imply a morally corrupt or evil person--such as Mark--whereas treasons deriving from love, which is a good in itself, are committed by those who on the whole are morally adequate men and knights, like Accolon, Lancelot, Tristram, or Palomides. And Malory emphasises and responds to the good in his characters above the bad: Lancelot may be an adulterer, but he has sufficient moral and human integrity to forgive Palomides his offences and allow him to take the honour at the tournament at Lonsep. The sin of adultery, being private, undetected,

23. Caxton's Preface in Vinaver cxlv.30-cxlv.8.

non-malicious, and disruptive only by accident, is wrong only insofar as it is a spiritual crime against God: and it is therefore external to the value-system which Malory primarily employs, and which the reader consciously or unconsciously assimilates in the act of reading.

9:9 The Return to Spiritual Values

Like Guy of Warwick, however, Le Morte Darthur is ultimately a penitential romance.²⁴ Secular values and evaluations give way to spiritual. The middle to late portion of the 'Tristrams' has a violent tenor: squabbles and killings take place with alarming frequency for little or nothing; vengeance, rivalry and anger, for all the touches of jantyness and courtesy, dominate the whole. Treason is only part of the language of violence: legitimate conflict itself has become indiscriminate.²⁵ The Round Table, instituted to be an example of virtue to all nations, becomes instead an example of spiritual corruption, because its members, though the flower of chivalry, represent earthly rather than heavenly knighthood. It is to remedy this that God directly intervenes in Arthurian affairs through the Grail Quest, and it is preparation for the Grail Quest that Malory begins to emphasise the spiritual aspect of sin.

The last 'chapters' of Malory's 'Tristrams' point to spiritual, rather than secular, values. In the 'Conclusion,' Tristram and Palomides fight their long-delayed single combat. Tristram wishes to punish Palomides: but he also, perhaps sarcastically, wishes to enable Palomides to fight a last battle for God in order to accept baptism. Tristram is a secular knight, and like so many others in this movement

24. See Guy's realignment from earthly to heavenly chivalry in The Romance of Guy of Warwick, ed. Julius Zupita, Early English Text Society (London, 1883) 298-91. C.f. Lewis 43.

25. Riddy 84.

of the whole book, loses sight of the end of battle--fair justice--in favour of the battle itself and the motive of vengeance which inspires it. He desires ultimately to kill Palomides, a punishment in excess of the gravity of the offence. Palomides, in apologising and refusing to fight to the death, defuses Tristram's rage: they are reconciled, and Palomides pledges his allegiance to God through baptism. Tristram becomes his godfather, and their long antagonism, which the secular relationship of lord and man could not contain, is ended with their reconciliation in a new spiritual relationship.

In 'Lancelot and Elayne' Malory confronts Lancelot's sin of adultery in spiritual, rather than secular, terms: the adventure of the Grail, the quest for God Himself, would have been most fitting for Lancelot

'of all earthely knyghtes, but synne ys so foule in hym that he may nat encheve none suche holy dedys; for had nat bene hys synne, he had paste all the knyghtes that ever were in hys dayes. And telle thou sir Launcelot, of all worldly adventures he passyth in manhode and proues all othir, but in spyrytuall maters he shal have many his bettyrs' (801.27-33).

Sin is placed in its metaphysical context. Lancelot's sin alienates him from God as well as man: 'he was overtakyn with synne, that he had no power to ryse agayne the holy vessell. Wherefore aftir that many men seyde hym shame, but he toke repentaunce aftir that' (894.35-895.2).

It is in Lancelot that the conflict of secular and spiritual values is presented most fully. In both Tristram's and Lancelot's stories, accusations of treason effect a separation of the lovers. The avoidance of sins of lechery, to the author of the Myroure, was best achieved by the avoidance of lechers and those situations in which the

sin could be committed.²⁶ Lancelot is given his chance to forgo Guenever's company: she banishes him in retribution for his all too secular treason of infidelity with Elayne. The result, of course, is Lancelot's madness, which, like Tristram's when he believes Isode has betrayed him, is a result of 'hartely sorrwe.' The separation of Isode and Tristram, according to the secular emphasis of their story, is lamentable. But while Tristram is discovered by Isode, precipitating a renewal of their relationship and Tristram's equally regrettable exile for treason, Lancelot is discovered by Elayne.

This is the first of his significant opportunities to repent. He is free of Guenever, in service with a king who gives him lands, and in company with a woman who loves him. He is free, physically at least, to follow a life of good service and 'vertuose' earthly love. But Lancelot is impenitent. He, religiously, looks towards Camelot each day and weeps: he enshrines Guenever on his shield. He calls himself, with supreme irony, 'La Shyvalere Ill Mafeete, that ys to say, "the knyght that hath trespassed"' (826.22-3). He has trespassed against God: but he has also trespassed against Guenever, and it is to this trespass he refers. And of course, Guenever exhibits an uncharacteristic forgiveness and seeks him out: his banishment is repealed, and for Arthur, Guenever, and his reputation he returns, as he always returns, to court. Lancelot still defines his allegiances and his betrayals in secular terms: but spiritual values cannot now be ignored.

9:10 The Grail and the Redefinition of Allegiances

Malory's Grail story redefines the proper object of the Arthurian

26. Myroure 172 ll.9-12. C.f Guenever's order, on behalf of God, that Lancelot should forgo her company.

knights' allegiances. In Malory's first five tales allegiance is primarily secular, being to knighthood, lady, lord, family or sovereign: even the bon foi one owes to one's fellow man is motivated by a desire for social conformity and chivalric honour rather than for the love of God. In Malory's 'Grail,' allegiance is primarily and absolutely owed to God. The knights' allegiance to secular ideals and persons is subsidiary to their allegiance to God and can be dispensed with if a conflict of allegiance occurs. Bors is forced to choose whether to rescue his brother Lionel or a virgin who is about to be raped by a near kinsman of hers. In accordance with his knightly obligation to protect women, he rescues the maiden: he saves her maidenhead, the soul of the man who intends to rape her, and the lives of two hundred others who will be brought into conflict if the rape takes place. Knightly deeds in heavenly works take precedence over familial loyalty, because knighthood is a spiritual vocation: the knight exists to be an instrument of the divine will, and as such must leave behind secular and personal ties.

But the knightly obligation to protect the weak is secondary, in this scale of values, to the preservation of one's soul: Bors is obliged to choose whether to rescue twelve women when that rescue necessitates him committing a sexual sin which will imperil his soul. He rightly chooses to save his soul. Allegiance to God is expressed first and foremost through 'clene lyvyng' or the avoidance of sin.

In this context any sin, or knightly deed done for worldly motivation or worldly gain, whether it is committed in a traitorous context or not, is a deed in the service of the devil rather than God. Percival meets two women, the younger of which demands his service for her lord, whom one later learns is Christ: the elder asks if Percival will do her homage, adding that he has in fact done so ever since his baptism and she understands him to be one of her own men. She is Lucifera,

the devil, and the deeds Percival has done in her service are his sins. Now, the idea of sin as breach of allegiance to God and traitorous adherence to the devil was remarked upon during the fifteenth century: in an image from military law, the mortal sinner was described as

a traytore to God, for þe castel þat God hap take him to kepe for his owne herborwe and restynge place, þat is his herte, he hap ³golde it & delyuered hit to Goddes moste enemy þe deuel of helle.²⁷

Specific accusations of treason to God however were rare in the Middle Ages, and Malory does not suggest that any of the knights who quest for the Grail, by breaking allegiance through committing sin, are guilty of treason against God: but they are unfaithful nonetheless.

The ideal heavenly knighthood, epitomised by Galahad, predicates allegiance to God above all other allegiances. Most of Arthur's knights are 'earthely,' being not only in the world but of it: whilst the secular values of the first five tales are reassessed in terms of spiritual values, the majority of Arthur's knights fail to realign their fidelities accordingly. Gawayne's fidelity is given to earthly knighthood: he seeks worldly adventures alone and refuses penance because the hard life of a knight errant is remission enough for one's sin.²⁸ He is also said, in his usual vengeful pursuit of any of Pellinore's affinity, to have murdered Lamorak's man Dynadan: allegiance to family overrides allegiance to God, which in the Grail is expressed through eschewing needless slaughter of men. Lionel, feeling himself to be traitorously abandoned by Bors in favour of a distressed virgin, says he will do to him as a knight should to a felon or a traitor: the value of service to

27. Myroure 124 ll.8-11. ←

28. C.f. Keen, Laws of War 123-5. [The image is inappropriate, in one way, because there were circumstances in which one could with impunity surrender the castle in one's charge.]

the higher Lord is obscured, for the majority of those who seek the Grail, by personal and secular allegiances.

Lancelot, of course, by committing adultery, has displaced fidelity from God to Guenever: but the new spiritual context reveals Lancelot's love for Guenever to be less virtuous than it appeared to be in the third tale, where it inspired great feats of arms and prevented him from succumbing to the seductions of Morgan le Fay:

'all my grete dedis of armys that I have done for the quenys sake, and for hir sake wolde I do batayle were hit ryght other wronge. And never dud I batayle all only for Goddis sake, but to wyne worship and to cause me the bettir to be beloved, and litill or nought I thanked never God of hit' (897.17-22)

The traitor exists as adversary whom the righteous must punish: but he cannot in a spiritual context exist as the justified hero, because spiritual values are absolute. Lancelot's allegiance to Arthur is not relevant in the Grail story, any more than Lancelot's allegiance to God was truly relevant in the 'Roman War:' it is the sins in treason, rather than of treason, which are in the 'Grail' given their full metaphysical significance as eternally punishable crimes against God.

Lancelot, of course, attempts to conform to the scale of allegiances prescribed in the Grail quest. He who has received great gifts ^{u.c.} from God has not in gratitude elected to serve Him; but in suffering retributive adversity, Lancelot repents his adultery with Guenever and his vainglory. He promises to forgo Guenever's company and pursue heavenly chivalry, or pure knighthood. But Lancelot, in the Grail Quest, is in an artificial world: God can take first place in his life because Guenever is absent. Lancelot's real testing begins when he returns, as he is always to return, to court and Guenever.

9:11 Tale Seven and the Conflict of Allegiances

Lancelot, on his return to court, betrays God for Guenever. The seventh tale charts his spiritual degeneration and his ascendancy in earthly knighthood which he has forgone in the Grail Quest. His battle for Guenever in the appeal laid by Mador is virtuous, in that Guenever is innocent of the crime put upon her: in this respect Lancelot is fighting for not only for Arthur and Guenever but for God, as he fought for God as the champion of other ladies on his return home from the Quest. But Lancelot, like an earthly knight, fights to be the better beloved of Guenever, and with the intention of shaming the other knights of the court: he admits also that he is willing to fight for Guenever in wrong as well as right--in, in effect, a worldly quarrel. He refuses the virtuous married love of Elayne of Ascolat for the Guenever who has again disowned him: Elayne's death is the questionably just price of Lancelot and Guenever's reconciliation. He fights, wearing Guenever's token, for her love in the tournament at Winchester: finally, he casually kills two men on his progress to Mellyagaunce's castle, goes to Guenever's bed, and is obliged to defend Guenever in the resulting treason trial by means of an equivocal oath, in the course of which he contrives the death of the appellant Mellyagaunce at Guenever's command. Lancelot observes the letter of his knightly oath, and his spiritual obligation, to fight only in righteous quarrels: his equivocations, like his previous fighting for women in right quarrels, are his concessions to right. But he has departed from the spirit of both oath and obligations.

Penitential romance, it has been observed, tends to place a high

premium on secular values even after penance:²⁹ and on the surface, the 'Lancelot and Guenivere' presents this return to secular values on Malory's as well as Lancelot's part. As Lancelot, with regards to Guenever at least, loses his hold on the spiritual values of the Quest, so Malory emphasises the traitorous aspect of his love for the Queen. Aggravayne and Mordred are spying: Lancelot and Guenever are obliged to act cautiously; Lancelot's voyage in the cart 'lyke as he were juged to the jubbet' (1154.5-6) is in Malory as in Chrétien an ironic emblem of his guilt of treason. But Malory, like Lancelot, only half-commits himself to secular values:

lyke as May monethe flowryth and floryshyth in every mannes gardyne, so in lyke wyse lat every man of worshyp florysh hys herte in thys worlde: firste unto God, and nexte unto the joye of them that he promysed hys feythe unto; for there was never worshypfull man nor worshypfull woman but they loved one bettir than another; and worshyp in armys may never be foyled. But first reserve the honoure to God, and secundely thy quarell muste com of thy lady. And such love I calle vertuose love (1119.22-30).

This acknowledges that Lancelot's 'holding' of another man's wife is contrary to God's law: that in fighting primarily for Guenever's love, Lancelot fails to reserve the honour unto God. Humility, in the Myroure, is opposed to pride: and honouring God is the first 'branch' of humility:

by praysinge & thankyng men may honoure God, as praysinge him & thankyng him of all þe gode þat he hap doo vs and doþ and of þat we hopeþ he schal doo vs, as a pouere man is fayn and þankeþ hen þat him good doþ.³⁰

It is not Malory's purpose, however, to render his lovers contemptible. Their adultery, and Lancelot's vainglory, are failures in fidelity to God: but the love which inspires both the adultery and the

29. Elizabeth Archibald, 'Moral Tales,' review in The Times Literary Supplement, Sept. 20 1991: 26.

30. Myroure 108 l.39-109 l.3.

vainglory is also expressed through fidelity and loyalty to each other. That Lancelot and Guenever are adulterers does not render all aspects of their love vicious: one evil does not, to Malory at least, eclipse all good. Malory, despite the Grail, still adheres to the notion of relative goodness. But his emphasis is much different. Whilst Tristram's sin and adultery was excused by Tristram's knightly goodness and Mark's immorality, Lancelot and Guenever's sin is not excused at all. One mortal sin alone is sufficient to condemn the soul of the unrepentant, despite an otherwise exemplary life: the relative goodness of Lancelot and Guenever is rather seen as a transition between human love and the love of God.

Ultimately Guenever's capacity for fidelity, as well as its intrinsic virtue, is the basis of her good end. The goodness of which she is capable enables her to respond to God's grace and repent her sins: her very worldliness prompts her to repent when she believes her own sin has destroyed the world she has valued.

Malory treats Lancelot too with sympathy. Lancelot is unfaithful to God and Arthur only when the allegiance he owes to them conflicts with that he has given to Guenever. In the last 'adventure' of the seventh tale, Lancelot, as the best knight of the world, is ordered by Arthur to attempt to heal Sir Urré. The entire court, in order of social precedence, has tried and failed. Lancelot's reply is worthy of the fourth knight of the Grail:

'My moste renowned lorde,' seyde sir Launcelot, 'I know well I dare nat, nor may nat, disobey you. But and I myght or durste, wyte you well I wolde nat take uppon me to towche that wounded knyghte in that entente that I shulde passe all othir knyghtes. Jesu deffende me frome that shame!' (1151.26-30).

Lancelot fears vainglory. He is however obedient to Arthur and 'serches' Urré from fellowship, rather than pride: and he privately prays:

'Fadir and Son and Holy Goste, I beseche The of Thy mercy that my symple worship and honesté be saved, and Thou Blyssed Trynyté, Thou mayste yeff me power to hele thys syke knyghte by the grete vertu and grace of The, but, Good Lorde, never of myselff' (1152.20-5).

His prayer is a kind of humility, and both this and his response to God's granting of his request echo the Myroure:

by deuoute prayer men may honoure God, as whan a man feleb himself vnwitty & naked & bare of all good and prayeb hertly & dredfully to God of his helpe; right as a childe pat hap agilt to his maister, or for he can nought his lesson, or for oper mysdede, and stondeþ naked tofore his maister whom he hap agilte and may not flee fro him, mekeliche knelip adoun weping, & wip grete sorwe cryeb mercy.³¹

Lancelot cries because he 'hap agilte:' he has betrayed God for Guenever, and God's kindness is the hardest reproof.

By compromising his soul and his knighthood for Guenever, as well as by his more virtuous fidelities in service, Lancelot is depicted as a true if not completely virtuous lover. And it is through Mellyagaunce, who commits a related form of sexual treason, that Lancelot is put into perspective. He is a sinner: but he is better than Mellyagaunce, because he is willing to risk his own life and soul for the love and safety of another. Mellyagaunce is prepared to have Guenever burned to hide his treason. Lancelot's comment that 'I fared never with no maner of treson,' in the wake of his adultery, sounds like hypocrisy: but what Lancelot means is that he, unlike Mellyagaunce, has never acted maliciously, treacherously or meanly. Lancelot commits one treason only, like Tristram, Gamelyn, or Gawain from Gawain and the Green Knight. And this is a treason with the best of possible motivations, love: Lancelot therefore has a great potential for goodness insofar as the expression and object of his love is not corrupt or misplaced. In

31. Myroure 109 11.4-10.

Guenever it is misplaced: but it is that love and fidelity towards Guenever which ultimately determines Lancelot's entrance into holy orders.

But fidelity to one object, in Malory's last two tales, predi- cates a failure in fidelity to others. Sometimes conflicting fidelities are a concealment, an excuse, for failures to be loyal. The entire court, in refusing to fight for Guenever in her appeal by Mador, appear to value their allegiance to knighthood above their allegiance to the queen. But that Guenever's guilt is circumstantial and all acknowl- edge this without further investigation (1050.25-7) suggests that the knights' motives are based less in righteousness than in deep resentment and envy. On other occasions the conflict of fidelity is resolved cor- rectly: Arthur is obliged to see justice done, and like any knight, to protect his wife. In the case of Guenever's two trials, his public obligation to justice rightly overrides his private personal allegiance. Gareth, to Arthur's distress but ultimately admiration, fights for his endangered lord Lancelot at Winchester even though this necessitates him u.c. fighting against his king. Sometimes the resolution of the conflict in fidelity is acceptable or justifiable or right: on other occasions, as with Lancelot's allegiance to Guenever above God, it is not. But Malo- ry's observation in the penultimate episode, that 'he that was cur- teyse, trew, and faythefull to his frynde was that tyme cherysshed'(1114.31-2) reinforces the notion that even misplac- ed fidelity, that which of itself is treason to another, is ethically admirable insofar as it is 'faythefull.'

9:12 The Role of Treason in the First Six Tales

Treason, in Malory's previous tales, has generally, though not exclusively, tended to conform to the predominant interest or emphasis of the tale in which it appears. The first two tales, which deal with

national and therefore king-centered history, correspondingly deal with resistance to the king. In the chivalric romances of Gareth, Lancelot, and Tristram, the emphasis is appropriately on treasons by and against knights. The 'Tristrams,' of course, presents a good proportion of high treason as well: Helyas and Helake and Awnowre commit treason against their kings, but in both cases the treason is presented in such a manner that the treachery or traïson is emphasised: both attacks would be treason even if their object was not a king. And Tristram's adultery with Isode, prefiguring and paralleling Lancelot's with Guenever, is high treason: but this is offset by Mark's own treason, which in accordance with the knightly emphasis of the tale is presented as a worse immorality. And in the 'Grail,' of course, where the emphasis is away from secular allegiance, there is scarcely any mention or depiction of treason at all.

The treasons of the last two tales encompass the entire scope of treason in Malory's book. There is both high and French treason: Mellygaunce's rape by abduction of Guenever; his treachery-treason against Lancelot; Bors' traitorous attack on Lancelot; Lancelot's adultery, supposed murder of Gareth, and recollection of Gawayne's actual murder of Lamerak; Mordred's treason by war; Bedivere's 'encompassing' Arthur's death; and the unidentified knight's breach of truce in the last battle. The kinds of treasons are comprehensive, because in the last two tales treason is subservient to the spiritual, rather than the specific secular, interest of the story. In Malory's last two tales infidelity to man is the means by which infidelity to God is revealed and punished: the consequences of treason are the instrument of the characters' repentance and amends to God for their infidelity.

9:13 The Causes of the Downfall of the Arthurian Kingdom

Treason and infidelity, in the last tale, are devices which direct the preconceived story: the downfall of Arthur has been prefigured since the first tale, and it had been a feature of Arthurian literature since the observation on Arthur and Medraut's mutual fall in the Annales Cambriae.³² One is given no idea whether Medraut and Arthur fall opposed or allied, or even if Medraut was a traitor. Much Welsh literature offers a favourable impression of Mordred's character: the earliest extant reference to Mordred's treason is in Geoffrey of Monmouth, and it was from Geoffrey that the account of Mordred's treason became a feature of later Arthurian stories.³³ But Arthur's death by treason is significant as well as traditional. Many of Geoffrey's major kings die by treachery or treason: it is an aesthetic decision, in Geoffrey as in later Arthurian literature.³⁴ Death in battle is not a fitting end for a king who has spent his entire reign victorious in external conflict, because it implies an anti-climactic and shameful military weakness in the monarch. Death by treason, however, is the result of moral corruption in one's betrayer. Even in Beowulf, the protagonist's downfall is framed as being a result not only of his aged fragility, but the treachery of his retainers: it is a deflection of blame, an apology for, and a proof of, mortality in the very great.³⁵

32. Nennius: British History and the Welsh Annals, ed. and trans. John Morris (London and Chichester: Phillimore, 1980) 45 and 85.

33. Yuri Fuwa Kuga, 'The French Treatment of Mordred,' unpub. essay, 1989: 1-2.

34. Geoffrey of Monmouth, The History of the Kings of Britain, trans. Lewis Thorpe (1966; Harmondsworth: Penguin Books, 1980). Aurelius, for example, is poisoned by a Saxon posing as a doctor (200). C.f. the death of Uther Pendragon (211).

35. Beowulf ll.2623-60 and ll.2846-91 in Wrenn 193-4 and 200-1.

But the downfall of the king from treason, in Geoffrey as well as in the later writers who adopted in whole or part his account, is more than a plot device to glorify the king. Treason was, throughout the Middle Ages, a major political issue: it was as conventional and as natural for medieval authors to mention treason as it is for modern fantasy writers, all living in the possibility of atomic destruction, to depict conflict between the status quo est and disruptive forces who wish to destroy the world. Both subjects have an interest and a numinosity beyond the immediate context in which they appear: and both are inherently moral.³⁶ The idea of the king's death by treason may have drawn emotional force through its parallel with the story of Christ and Judas: the pattern becomes further Christianized when Arthur's downfall by treason is rationalised as a retribution for a sin of incest in which Mordred was conceived.³⁷ The Arthurian downfall is no longer a simple tragedy of 'reversed fortunes' but an Aristotelian nemesis for the protagonists' hamartia.

In Geoffrey's version of the tragedy, of course, Guenivere commits adultery with Mordred. Her transfer of affections to Lancelot, ostensibly in Chrétien's Lancelot, appears to have answered the vogue for stories of adulterous courtly love: but it also provided another interesting and rather more immediate and emotive perspective on the theme of treason. The traitor becomes the hero, rather than the villain: one suspends condemnation, if not criticism. Some Arthurian

36. See for example David Eddings' The Ruby Knight (London: Grafton, 1990) where the Zemochs, under the sway of the demonic god Azash, are denizens of the east of Eosia: the Elenes, however, dwell in relative prosperity and freedom in the west. This obviously echoes the conventional contemporary east-west political divide, and needless to say, Eddings depicts the easterners as the aggressive and disruptive forces.

37. Archibald, 'Arthur and Mordred' 18.

romances, of course, were less tolerant: in Sir Launfal Guenever is a promiscuous adulteress who is eventually blinded for her crimes. Blinding seems to have been associated with treason and feudal felony: Quendrith is blinded for her treason against her brother, and so is Shakespeare's Gloucester, much later, for an infidelity of sorts.³⁸ But Lancelot and Guenivere, and their parallels, Tristan and Isolde, are treated with sympathy in most medieval renditions of their stories.

In the French tradition represented by the Mort Artu, the stanzaic Morte, and Malory, Lancelot and Guenever's treason to Arthur supplants that of Guenivere and Mordred and is integrated into the story of the king's death by treason. In the Mort Artu, and to some extent in Malory, author and reader sympathy lies with the lovers, which it certainly does not in Geoffrey, where both Guenivere and Mordred are condemned. And this sympathy for the lovers determines a depiction of Arthur, not as a blameless victim of treason, but as morally and sometimes legally corrupt in his dealings with the friend and wife who have betrayed him. His own injustice furthers his end, because the lovers themselves have become the dynamic of Arthurian romance: Arthur is to some extent peripheral, a device in their story, until he again takes up a central role in his ensuing battle with Mordred.

In Le Morte Darthur Malory, Arthur, Gawayne, Lancelot and Guenever all have specific ideas as to the cause of the human tragedy. Malory blames it on Mordred and Aggravayne: Arthur considers the 'debate' between him and Lancelot to be the prime cause; Gawayne blames Mordred's usurpation on himself, for alienating Lancelot; Guenever considers that her love for Lancelot has caused the destruction of the

38. Sir Launfal 1006-8 in Sands 231, 'Kenhelm' in Early South English Legendary 355 ll.348-9, King Lear Act 3 sc. 7 in G.K. Hunter, ed., New Penguin Shakespeare (Harmondsworth: Penguin Books, 1972) 134-6.

flower of chivalry; and Lancelot blames his own pride and unkyndenes, that is, his treason.

But these claims to blame are partial truths, expressions of feeling of guilt, aspects of repentance. All of the characters involved in the human and political tragedy contribute to it.³⁹ In Malory's book, the sequence of events which leads to the king's death on Salisbury Plain partly consists of, as Vinaver noted, conflicting loyalties: but it is also determined by coinciding disloyalties, some treasons, some falling short of treason. Mordred betrays Lancelot; Lancelot betrays Arthur; Arthur betrays the ideal of his kingship; Gawayne betrays his knighthood; Mordred takes advantage of Lancelot's alienation to usurp the throne; and so on, until Mordred lies dead at Salisbury and Arthur is mortally wounded with one man alone left to him.

9:14 Reactions to Crisis: Failures in Fidelity

All of the characters to some extent fail to live up to their professed or prescribed ideals of loyalty. The most forceful reaction to Lancelot and Guenever's adultery is that of Aggravayne and Mordred, who manipulate it as does Andred with Tristram, to fulfil their ireful 'prevy hatred' and envy of Lancelot and the queen. Initially this failure in knightly bon foi is disguised as secular and familial fidelity:

'we be youre syster sunnes, we may suffir hit no lenger.
And all we wote that ye shulde be above sir Launcelot, and
ye ar the kyng that made hym knyght' (1163.8-10).

Mordred's refusal to fulfil the knightly ideal of courage enables the plot to succeed: his cowardice facilitates his escape from Lancelot, and he therefore acts a witness to the lovers' capture 'with the menour.' It is Arthur's own familial loyalty combined with fear of

39. Field, Seventh and Eighth Tales 59.

betrayal which causes him to appoint Mordred as regent: Mordred, as Arthur's son, is by any decent moral standards the man least likely to usurp the throne and echo the crime of Lancelot to Guenever. But, as Malory has observed before,

ever a man of worshyp and of proues dredis but lytyll of perellis, for they wene that every man be as they bene. But ever he that faryth with treson puttyth oftyn a trew man in grete daungere (1143.28-31)

The traitor, who alienates himself from shared values, cannot be predicted by them: it is this which makes him so dangerous, and which leaves Arthur and Lancelot so vulnerable to treason.

The only antidote to treason, the only force which can successfully and consistently contain it, is the intervention of the supernatural through judicial combat or through the advice and action of a human being acting on the behalf of the supernatural: but in the last tale, the characters themselves fail to respond fully to such interventions. Arthur has commented 'there shall never harlot have happe, by the helpe of Oure Lorde, to kylle a crowned kynge that with creyme is anoynted' (227.21-3). The last tale is a working out of the effects of treason, not when that grace has failed, but when the recipients fail to take heed of it.

The failure to take counsel is one aspect of this failure to take note of God's providence. Gawayne ignores Lancelot's killings of Aggravayne, Lovell, Gyngalyn and Florens, because 'they ar the causars of their owne dethe; for oftyntymes I warned my brothir sir Aggravayne, and I tolde hym of the perellis the whiche ben now fallen' (1176.9-11). As their eldest kinsman, the dead had an obligation of obedience towards Gawayne: in refusing to obey his advice, they have alienated themselves from him and he has no duty of vengeance towards them: he has rather a duty of gratitude to Lancelot who has aided him in the past.

Failure to take counsel, however, is not a facet of the morally corrupt alone. Unlike Lancelot, Arthur fails to take good counsel. Gawayne's argument that Guenever may be innocent is a valid one which Arthur ignores: later, trapped by his familial and feudal loyalty to Gawayne, as well as the latter's threat of diffidatio should Arthur withdraw his patronage, Arthur pursues Lancelot against the will of his barons, his people, and the Pope himself. Finally he ignores the very sensible advice of Lucan, who tells him to leave Mordred:

'Sir, latte hym be,' seyde sir Lucan, 'for he ys unhappy. And yf ye passe thys unhappy daye ye shall be ryghte well revenged. And, good lorde, remembre ye of your nyghtes dreame and what they spyryte of sir Gawayne tolde you tonyght, and yet God of Hys grete goodnes hath preserved you hyddirto. And for Goddes sake, my lorde, leve of thys, for, blyssed be God, ye have wonne the fylde: for yet we ben here three on lyve, and with sir Mordred ys nat one on lyve. And therefore yf ye leve of now, thys wycked day of Desteny ys paste!' (1236.28-1237.4)

Arthur thereby finds his death.

Arthur wilfully isolates himself from good advice. He, like Mordred threatening the Archbishop of Canterbury, places his own judgment above that of his men and his God and thereby falls short of ideal kingship. Arthur's motivations as a judge are questionably just: his ordinance of war at Benwick favours Gawayne's magical increase in strength; his refusal of a judicium dei for Guenever shows him to value his own human and potentially fallible judgment above that of his advisers and God. He fails to be a judge who takes 'good avisement and counsaile'⁴⁰ before he judges, because he is pursuing the 'rightwis' letter of the law with mixed motives: he is upset at having to burn Guenever, whilst simultaneously bent on a purely personal revenge. And he is therefore guilty of 'cruelte' and 'foly:' his judgment lacks mercy

40. Myroure 154 l.34.

as well as pure justice:

Seynte Iohan Gristodom, þat is cleped Iohan wip þe gilden mouth, seith þat moche better & sikerer it is to ȝelde rekenynge & answer at þe day of dome of moche mercy þan of moche reddour of right wisnes.⁴¹

To be merciful, in Malory's book, is much preferable to a strict adherence to legal form: the crime of a knight does not represent the whole man, and one should respond to the whole man in making a secular judgment. This is the thinking behind Lancelot's reproof of Arthur for lordly unkyndenes, and Gawayne's refusal to participate in Mordred and Aggravayne's plot: in secular terms good acts outweigh bad ones.

If Arthur's response to Lancelot and Guenever is unfaithful to the spirit, if not the letter of the law, Arthur is nonetheless faithful to Gawayne. This fidelity is perhaps misplaced because it is disruptive, preventing Arthur from making peace with Lancelot: it takes Arthur from England, allows Mordred to usurp the throne, and ultimately contributes to Gawayne's own death. Arthur becomes a kinsman above a king. But Arthur's fidelity to his nephew has its reparative aspect: the ghost of Gawayne, in reward for the man's good acts and perhaps in reparation for his bad ones, warns Arthur of the outcome of the proposed battle with Mordred. Arthur, in the same spirit of fidelity to kin which he has shown throughout the tale, attempts to obey his nephew, arranging a month-long truce. It is the penultimate 'intervention' which promises a happy outcome if it is properly obeyed. But it is bought to nothing by the unthinking infidelities of an unknown knight and of Bedivere, and indeed by Arthur himself, who attacks the already defeated Mordred to inflict his due punishment upon him. These three disobediences are well-motivated: but they have consequences which cannot be contained by

41. Myroure 155 l.27-30.

the moral intentions of the perpetrator.

9:15 Divided Fidelities

The responses of Lancelot, Gareth, and Gawayne to the crises of the last tale are revelations of divided fidelities. Lancelot, as he says, is 'well-willing' towards Arthur, but he is also obliged as lover and knight to rescue Guenever from the fire to which their apparently adulterous liaison has condemned her. In this he chooses fidelity to Guenever and knighthood above Arthur, although he attempts to harmonise his fidelities by offering to prove Guenever's innocence by combat, which Arthur of course refuses. Underlying Lancelot's divided fidelities, however, is a failure in fidelity both to God and to Arthur: had he not committed adultery with Guenever, either in her chamber or in the past, which gives Arthur his suspicions of their guilt, his fidelities would not be split at all. Since the deed is done, however, Lancelot's fidelities are irreconcilable: in rescuing Guenever he opposes Arthur, but at least has a hope of contriving a reconciliation; if he failed to rescue her he would betray her to her death and his shame.⁴²

The deaths of Gareth and Gaheris, which precipitate the next stage of conflict, are in themselves a result of actions determined by divided loyalties. Gawayne diplomatically observes that his brothers will not wish to attend Guenever's execution because of the 'many adventures that ys lyke to falle' (1176.26-7), which refers to Lancelot's predictable rescue of the queen in arms. Gareth, as in the 'Great Tournament,' is torn between his rightful obedience to Arthur's command and his fidelity to Lancelot: he, in attending the queen's execution

42. C.f. Christine's observations in The Treasure of the City of Ladies 114.

unarmed, attempts to compromise between the demands of his two allegiances and thereby meets his death. This causes Gawayne's own change of fidelities: whilst early in the tale Gawayne had in gratitude, knightly bon foi and kyndenes placed his support for Lancelot above his fidelity to his family, with the death of Gareth and Gaheris Gawayne places a higher premium on familial vengeance. In consequence he approaches his king as a nephew, rather than a retainer. His is the cry of a man whose family has been taken from him, and who has nothing left to him:

'A, myne uncle kyng Arthur! My good brothir sir Gareth ys slayne, and so ys my brothir sir Gaheris, whych were two noble knyghtes' (1185.15-7)

Gawayne's insistence on Lancelot's treason to Gareth, on the face of it a plausible evaluation, is beneath the surface a means of justifying his own vengeance: it is less a desire to punish a traitor than a need to kill one who has deprived him of the kin he values above everything else, including his knighthood. Gawayne's belief in Lancelot's treason is an attempt to impose order on a world which has rapidly begun to resist such an ordering. If the world is just, a death of the good cannot happen by chance: there must therefore be a reason, and that reason must be the corrupt malice, the sin, of the perpetrator.⁴³ So Gawayne, like Tristram with Palomides, in deeming Lancelot a traitor also deems him to be corrupt in himself:

'I leve the well, false reocrayed knyght, for thou haste many longe dayes overlad me and us all, and destroyed many of oure good knyghtes' (1189.31-3).

There is a suppressed resentment, feared by Arthur in the tournament at Winchester, in these lines: it is the speech of a man who has lost

43. C.f. Nicholas Humphreys' interpretation of the trials of animals as a means to re-establishing world-order in his Foreword to Evans' Criminal Prosecution xxv-xxvi.

those through whom he has defined himself, and like Mark, has retreated into the paranoia consequent on threatening isolation. In Gawayne's case this expresses itself as a belief that Lancelot's every act is directed at him personally: Gawayne interprets Lancelot's treason by murder as the final expression of his oppression of the Orkney clan.

It is Gawayne's accusation of treason alone which draws Lancelot out of Benwick to fight: it is Lancelot's reminder of Gawayne's own treason which consolidates the conflict between them. But this also puts Gawayne's actions into perspective: he cannot and should not condemn a man for a crime which he himself has committed. It is the treason of his half-brother Mordred--Gawayne, in writing to Lancelot, stresses this familial tie--which forces the dying Gawayne to repent his intransigence towards Lancelot. In fighting Mordred's forces Gawayne's old wound is reopened: Gawayne takes this to be equivalent to death at Lancelot's hands and therefore implicitly asserts Lancelot's innocence of treason. Gawayne thereby resolves the conflict of knightly good faith and familial loyalty. He is morally acquitted, and dies in a state of grace: his letter to Lancelot, and his appearance in spirit to Arthur, are his attempts to repair the damage his excessive fidelity to family has caused.

9:16 Treason and Retribution for Sin

Malory's last tale is the most extreme, sustained medieval English depiction of the potential destructive power of treason and infidelity: but it is not a political object lesson so much as a depiction of retribution, through the consequences of infidelity to man, for infidelity to God.

There is no doubt that most of the treasons, misplaced fidelities and lesser infidelities of the last tale involve mortal sin. Gawayne

and Arthur are motivated by anger and lack of forgiveness: Lancelot, if he may not be guilty of adultery on this specific occasion, has been guilty of it in the past and the knowledge has lodged itself in Arthur's mind. Aggravayne and Mordred are guilty of the usual sins of traitors, pride, envy and hatred. Even Bedivere and the unknown knight, in disobeying their sovereign or the terms of the truce, are guilty of pride, because to be morally innocent of the malicious intentions with which Malory associates treason does not exculpate one of the sin implicit in one's objective deed.

Suffering and tribulation, in the Myroure, is seen to be a test of virtue or a retribution for sin.⁴⁴ It is as a result of the characters' misdeeds that the Arthurian nation is destroyed: it is tribulation and suffering on a grand scale. Admittedly Malory does not always make it very clear whether a reader should interpret tribulation as merely the chance happenings of an imperfect world, or as part of God's providence for humanity. Malory has a claim to the kind of realism Brecht claimed for Shakespeare:

he of course means something very different from naturalism. . . . 'He always shovels a lot of raw material on to the stage, unvarnished representations of what he has seen' This material is not tidied up or harmonised in accordance with a preconceived idea, and can therefore preserve some of the complexity, irregularity, and contradictory movement of history itself.'⁴⁵

Mordred's possible role as nemesis for Arthur's incest is just one case in point: he might destroy Arthur in fulfilment of Merlin's prophecy in the first tale, but the connection is made by the reader alone, much

44. Myroure 147-9.

45. Margot Heinneman, 'How Brecht Read Shakespeare,' Political Shakespeare: New Essays in Cultural Materialism, ed. Jonathan Dollimore and Alan Sinfield (Manchester UP, 1985) 206-7. The edition of the Messingkauf Dialogues to which Heinneman refers is that translated by John Willet (London: Methuen, 1977) pp. 27 and 63.

as one might interpret real events in terms of a theory of retribution. There is a fundamental uncertainty whether Mordred is nemesis or just coincidence: it is perhaps better to see his killing of Arthur as being done by adventure, a kind of significant chance which conceals more of the workings of the universe than ever it reveals.

A fifteenth-century reader, however, was better versed in a providential and theocentric world view, and may have interpreted the book accordingly. Caxton observes that the Morte is a book in which

noble men may se and lerne the noble actes of chyvalrye, the jentyll and vertuous dedes that somme knyghtes used in tho dayes, by whyche they came to honour, and how they that were vycious were punysshed and ofte put to shame and rebuke; humbly bysechyng al noble lordes and ladyes wyth al other estatys, of what estate or degree they been of, that shall see and rede in thys sayd book and werke, that they take the good and honeste actes in their remembraunce, and to folowe the same.⁴⁶

To follow the good, to Caxton, leads one to worldly and heavenly honour: but even he overtly admits that bad knights are not always shamed and rebuked. One knows from experience that the evil, in real life, often prosper: that there is no observable retribution imposed upon the very evil; and that the good often suffer.

And so it is in Malory's book: the guilty Mark kills the innocent and righteous Bersules and Amant; the innocent Elayne of Ascolat dies. But Caxton was not indulging in conventional pieties of the exclusion of the pattern of his material: elsewhere in the Morte there are hints that retribution follows sin--Bors considers that his attack on his lord Lancelot is retributive, and Gawayne in the Grail Quest--where such examples are prolific--kills his sworn brother. The knight who values too highly kin and killing, by poetic justice, kills his kinsman.

46. Caxton's Preface in Vinaver cxlv.31-cxlv.1.

There are few thunderbolts from heaven in the Morte: retribution for sin is depicted as a direct or indirect consequence of the sin itself, epitomised perhaps by Arthur's son Mordred, or Lancelot's son Galahad: if Arthur and Lancelot had not committed incest and adultery respectively, there would have existed no sons to kill or to supersede. Retribution, in Malory's book as in real-life, is disguised in the secular: but that need not make it any the less divine in origin.

And the last tale, more than any other, invites interpretation in terms of divine retribution and providence. Each of the sins and infidelities and treasons is freely committed by its perpetrator: each is offered a chance to turn from the course they have chosen, or to make amends. Each character fails to take counsel which is offered, or ignores the means by which grace is offered to them. Arthur ignores Gawayne, the Pope, Lucan: Mordred ignores his kindred and the Archbishop of Canterbury; Lancelot ignores Bors' admonition to refuse the queen's summons; Gawayne ignores Lancelot's amends. In Malory's book, the perpetrator of each sin, treason and infidelity is warned of or forbidden his action: the warning or the command is inevitably ignored. The situation offers a temptation to do wrong: it is the test of virtue in which each character, judged according to the absolute values of theology, fails. His treason or infidelity thereby becomes the means by which retribution is exacted through the destruction of himself or his peers.

The stinging of the unknown knight by the adder from the heath-bush is a symbol of the test in which each of Malory's characters has failed. The knight is bound to obey the terms of the truce: no sword shall be drawn. In choosing to kill the adder, he disobeys: and in disobeying he commits sin and enacts in miniature the failures in secular and divine loyalty of the whole court, and brings retribution down

upon them all. By human values the knight, like Lancelot, means no harm: like Arthur attempting to impose justice on the traitor Mordred, the knight's intention is good. But he, like his Arthurian peers, and like Eve responding to another serpent, is disobedient: and his action has consequences out of keeping with his intention but fitting to its objective nature as sin and treason. The last tale recalls the unhappynes of the Balin episodes in the first: whatever the characters do, regardless of why they do it, turns to ill. External consequences of one's deeds no longer accord with one's private intentions: the world is beyond the control of those in it.

This very lack of control over external circumstances echoes the Grail Quest, where external happenings influence characters much more than characters control external happenings: it is a world in which God is intervening. Arthur's knights and Arthur himself have all heedlessly chosen to act according to secular values and allegiances, or have completely failed to fulfil their secular and religious obligations in quest of material gain or satisfaction. And therein is the downfall of the characters: in trusting in the world and its values they are doomed. The world is, as Lancelot says, unstable and variable: it is not trustworthy. Even Arthur comes to believe in this: he rejects the idea of secular allegiance, saying 'in me ys no truste for to truste in' (1240.32). Bedivere withdraws from the 'varyaunte' world into holy orders, into 'truste' of God.

9:17 The Transfiguration of Fidelity

This rejection of the worldly in favour of spiritual values and goals is the purpose of the entire movement of the last tale: perhaps of the entire book. The whole reason for the destruction of the Arthurian world is to enable certain characters to repent and offer amends for

their misliving.⁴⁷ Even Morgan, who has represented evil and treachery throughout the entire book, appears in a benevolent guise, burying the brother to whom she has been opposed for so long.⁴⁸ One has no idea of the destination of Arthur's soul: only that, according to Malory, the king is dead. But Gawayne, Lancelot, his kinsmen, and Guenever repent and go to heaven: Lancelot's kinsmen end their lives on Crusade.

None of this would be possible without the destruction of the social world in which the characters live and the consequent transformation of their fidelities. Lancelot, throughout the book, has begun and ended his quests at court with Guenever: even after the Grail Quest, he returns to her. Their love affair cannot easily be ended, because it is a condition of the circumstances in which they are used to living: their partings, inevitably, have ended in reconciliations. So the court itself is taken from them as a consequence of their sin and the sins of their fellows, their concurrent failures in fidelity and excessive adherence to worldly fidelities. Once Arthur is dead and the Round Table destroyed, it is Guenever who first withdraws from what is left of the world she has valued but destroyed through that love. Her fidelity to Lancelot is displaced to its true object, God:

And yet I truste, thorow Goddis grace and thorow Hys Passion of Hys woundis wyde, that aftir my deth I may have a syght of the blyssed face of Cryste Jesu, and on Domesday to sytte on Hys ryght syde; for as synfull as ever I was, now ar seyntes in hevyn. . . . as well as I have loved the heretofore, myne harte woll nat serve now to se the; for thorow the and me ys the floure of kyngis and knyghtes destroyed (1252.11-25).

47. C.f. Evelyn Waugh's Brideshead Revisited (Harmondsworth: Penguin, 1962) where 'the fierce little human tragedy' (331) has a similar penitential purpose.

48. C.f. Myroure 156 11.1-2. The burial of the dead was the seventh of the Corporal Works of Mercy.

Lancelot, of course, does not break his pattern so easily: he ends his final earthly quest, as ever, with Guenever. It is his last test: and he of course fails it, wishing to take Guenever into France. But the pattern is broken: she is in a convent, not in court, and refuses him. Her banishment is this time made on behalf of God rather than herself, and it is not repealed.

Lancelot's fidelity to Guenever is, like Guenever's, therefore transfigured to spiritual purpose: he too vows to take orders in accordance with canon law.⁴⁹ And Lancelot's retainers, even Bors, the third Grail-knight, who have been faithful to their lord above all, even in 'synfull matters,' are themselves through that same loyalty encouraged to take upon themselves great penance: with his death, they enter a military order and die, for God's sake, on Crusade. Earthly allegiances to mankind and to knighthood at last come to uphold allegiance to God: celestial knighthood finally triumphs over the 'trechory, treason' and misplaced fidelities of earthly knighthood.

49. Brundage 375-6 and 389. See also pp.95-7 above.

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