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Evidence against Lancelot and Guinevere in Malory's *Morte Darthur*: Treason by Imagination

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Who, then, can live secure of himself or his own under . . . a law that offers assistance to anyone hostile to him?

Sir John Fortescue, *De laudibus legum Anglie*

One of the problems that continues to occupy Malory scholars is the difficulty of relating his *Morte Darthur* to the fifteenth century, a period of civil war. One way of realizing the historicity of Malory's text is to compare it to the French *Mort le roi Artu* (or *Mort Artu*, ca. 1225), the concluding section of the Prose *Lancelot*, Malory's most important source. Most comparisons of the two texts have concentrated on stylistic and philological matters and are important for understanding the *Morte Darthur*. These studies, however, tend to overlook or dismiss as unimportant a distinctive feature of Malory's text, that is, what Derek Brewer has called its *mixture of inconsistencies*.¹ This essay focuses on two important departures

¹ Derek Brewer, "The Presentation of the Character of Lancelot: Chrétien to Malory," in *Arthurian Literature*, ed. Richard Barber (Cambridge: Brewer, 1983), 51.

Malory makes from his French source—deviations which constitute internal contradictions in his text—to show the *Morte Darthur's* intersection with the legal and political dimensions of the crime of high treason in fifteenth-century England. The two departures are: Malory's ambiguous representation of Lancelot and Guinevere's treason, their adultery, when proof of the deed is being sought; and his creation of a law that sentences Guinevere to death.²

Unlike the French *Mort Artu*, which presents Lancelot and Guinevere's act of adultery in unequivocal terms, Malory tells his audience

whether they were abed or at other maner of disportis, me lyste
nat thereof make no mencion, for love that tyme was not as love
ys nowadayes.³ 1165

This peculiarity of the *Morte Darthur* has been explained in terms of a fifteenth-century morality that regarded chivalric romances as "guide[s] to conduct," so that condoning "adultery was no longer acceptable."⁴ By having the adultery of Lancelot and Guinevere take place offstage, Malory complies with this moral dimension of chivalric romance. Yet if Malory in this instance chooses to be ambiguous for the sake of a moral version of chivalry, then we must ask why he describes so explicitly in earlier sections of his text the adulterous relationships of Tristram and Isode, Tristram and the wife of Segwarydes, and Lancelot and Guinevere themselves (in the Knight of the Cart story). With such precedents as these, Malory's ambiguous treatment of adultery in this latter episode seems an oddity. Moreover, depictions of vices other than adultery are plentiful in this text. Indeed,

² III Edward 25, Stat. 5, c. 2, enacted in 1352, stipulated that adultery with the king's companion was an act of treason. This provision helps to explain Malory's consistent use of the term "treason" when referring to Guinevere and Lancelot's relationship rather than the feudal concept of disloyalty. *The Statutes of the Realm*, 11 vols. (London: Dawsons, 1963), 1:319–20. This law undermines Ernest York's conclusion that in equating adultery with treason, Malory is "most probably reflecting French law prior to the twelfth century" ("Legal Punishment in Malory's *Morte Darthur*," *ELN* 11 [1973]: 15).

³ All citations are from *The Works of Sir Thomas Malory*, 2nd ed., ed. Eugene Vinaver, rev. P. J. C. Field (Oxford: Clarendon, 1990), by page number. Malory's ambiguity also deviates from his fourteenth-century English source, the Stanzaic *Morte Arthur* (ca. 1350). See *King Arthur's Death: The Middle English Stanzaic Morte Arthur and Alliterative Morte Arthur*, ed. Larry Benson (Exeter: Short Run Press Ltd., 1986), lines 1801–7.

⁴ Larry D. Benson, *Malory's Morte Darthur* (Cambridge: Harvard University Press, 1976), 159. See Brewer, "Presentation of the Character of Lancelot," 45.

they are so numerous that Caxton, in his preface to the *Morte Darthur*, warns readers to "doo after the good and leve the evyl" (cxlvi). We are left to wonder why, if this instance of adultery must be relegated to the wings for the sake of morality, earlier incidents of adultery and other forms of vice, such as murder, do not take place offstage as well.

Caxton's admonition to readers of the *Morte Darthur* "can only be explained," Elizabeth Kirk has observed, "on the assumption that Malory's text troubled Caxton in a way no comparable text had done."⁵ Even now, in the latter part of the twentieth century, the *Morte Darthur* still troubles us. In fact, a number of Malory's critics have echoed Caxton's exhortation, following their own advice by ignoring Malory's textual inconsistencies. The *Morte Darthur*, it is said, is not "an intellectual book: we are called upon to feel . . . not to analyse or reason." Nor should we be too curious about Lancelot and Guinevere's adultery, since Malory expects his readers to have a "cool attitude" towards physical love. Likewise, we are told that Malory is concerned with the "public recognition of one's action" not guilt or innocence, not "the inner life."⁶ One can get the sense, from these remarks, that to ask about Malory's inconsistent representations of adultery is bad manners or, worse, a violation of the text's privacy. Curiously enough, by instructing readers what to do and not to do with Malory's text, such comments as these enunciate their own form of chivalry. Rather like chivalric knights, readers are to protect the *Morte Darthur* from its inconsistencies by behaving or reading in a certain way. We are encouraged to adopt a respectable distance from the

⁵ Elizabeth Kirk, "'Clerkes, Poetes and Historiographers': The *Morte Darthur* and Caxton's 'Poetics' of Fiction," in *Studies in Malory*, ed. James W. Spisak (Kalamazoo: Medieval Institute Publications, 1985), 289.

⁶ I oversimplify by grouping these critics together. As a group, however, their work exemplifies a certain strain of criticism that avoids the textual problematics of the *Morte Darthur* by indirectly apologizing for them. Respectively, the quotations are from Terence McCarthy, *Reading the Morte Darthur* (Cambridge: Brewer, 1988), xiv; Brewer, *Malory: The Morte Darthur* (Evanston: Northwestern University Press, 1974), 18; and Mark Lambert, *Malory: Style and Vision in Le Morte Darthur* (New Haven: Yale University Press, 1975), 179. See also Felicity Riddy, *Sir Thomas Malory* (Leiden: E. J. Brill, 1987), 13, and Brewer, "Presentation of the Character of Lancelot," 26–52. Compare the attempts made by Malory's nineteenth-century editors to remedy what they perceived as the "moral defects of the book." See Marylyn Jackson Parins, "Malory's Expurgators," in *The Arthurian Tradition: Essays in Convergence*, ed. Mary Flowers Braswell and John Bugge (Tuscaloosa: University of Alabama Press, 1988), 144–63, esp. 148.

textual puzzles, what we could call the "inner life" or private spaces, of the *Morte Darthur*.

Yet the dissonance of the *Morte Darthur* signals a narrative complexity that challenges and enriches our interpretive efforts and provides a way for us to gain a fuller understanding of this Arthurian tale.⁷ Malory's perplexing, ambiguous treatment of adultery when Agravain attempts to gather proof of the deed is inconsistent not only with his earlier depictions of adultery, but it is also at odds with the law on treason he creates for the sentencing of Guinevere—a law that requires for its application physical proof of the act of treason. This particular inconsistency functions to pose a legal dilemma: a law which specifies the types of proof necessary to establish the guilt of an alleged traitor is applied despite the fact that no such proof has been obtained. With this problem of evidence and legal reprisal, we can place Malory's version of the "exotic never-never land of Arthurian Britain"⁸ in the chaos of the Wars of the Roses and more specifically in that era's discourse on treason.

One prominent feature of fifteenth-century legal discourse on high treason derives from a 1352 statute. In an effort to check the interpretive latitude of the Crown in the matter of high treason, Parliament sought to identify, in this law, the specific acts that constituted this crime.⁹ Within the statute's "definitive" list of treasonous acts, however, Parliament included the act of imagining the death of the king. Thus the prosecution of treason did not have to be based on an overt act, one that left traces of physical evidence.¹⁰ Through its provision

⁷ A useful collection that contains several essays which analyze the dissonance in Malory's text is *Studies in Malory*, ed. James W. Spisak.

⁸ A. C. Spearing, *Medieval to Renaissance in English Poetry* (Cambridge: Cambridge University Press, 1985), 40.

⁹ III Edward 25, Stat. 5, c. 2, cited above, n2. See John G. Bellamy, *The Law of Treason in the Later Middle Ages* (Cambridge: Cambridge University Press, 1970), 63.

¹⁰ *Ibid.*, 116–17. According to Bellamy, cases of treason by words occurred in the thirteenth century, but there were none during the fourteenth. Bracton discusses treason by imagination but also makes the point that persons accusing others of treason had to see and hear it with their own eyes and ears. See *Bracton De legibus et consuetudinibus Angliae*, ed. George E. Woodbine, 2 vols. (Cambridge: Harvard University Press, 1968), 2:366. French custom also required the same type of proof. See Phillipe de Beaumanoir, *Coutumes de Beauvaisis*, ed. A. Salmons, 3 vols. (1900; rpt. Paris: Éditions A. et J. Picard, 1970), 2:1234. All references are to this edition, by volume and entry number. During the reign of Richard II, laws were passed that made riot and rumor (5 Richard II, Stat. 1, c. 6) and compassing

for an imagined act of treason, the statute transgressed the very boundaries it had been designed to impose and posed problems regarding the type of evidence needed to establish this crime. Not until the accession of Henry IV were the potentialities of imagining the king's death fully explored: Henry and his jurists found that words spoken against the king established treason by imagination. Once its interpretive possibilities had been tapped, imagining the death of the king figured frequently in the prosecution of treason throughout the fifteenth century.¹¹

As can be expected, the comings and goings of various kings during the Wars of the Roses created an atmosphere in which accusations of treason flourished, and the 1352 law assisted in that efflorescence. By equating a putative act of imagination to a physical act of treason and requiring no physical evidence to establish this crime, the statute encouraged what amounts to the spontaneous generation of treason. Rather than injecting an element of stability into the chaos of civil war, the law contributed to it. During this period, Sir John Fortescue was arguing in *De laudibus legum Anglie* that English law had brought peace and prosperity to the realm.¹² This claim is contradicted not only by the civil war but by a vociferous strain of popular sentiment that regarded law as eminently susceptible to private ambition.¹³

the death of the king (21 Richard II, c. 3) acts of treason. These laws were repealed in 1399 by 1 Henry IV, c. 3 and c. 10; they indicate, however, that the interpretive pliability of the 1352 statute was not recognized during Richard's reign. See also I. D. Thornley, "Treason by Words in the Fifteenth Century," *EHR* 32 (1917): 556–61, and Samuel Rezneck, "Constructive Treason by Words in the Fifteenth Century," *AHR* 33 (1927–28): 544–52.

¹¹ See Bellamy, *Law of Treason*, 136–37.

¹² Sir John Fortescue, *De laudibus legum Anglie*, ed. and trans. S. B. Chrimes (Cambridge: Cambridge University Press, 1942), 41. Fortescue is speaking specifically of statutes. Compare John Alford's comments regarding the effect of statutory law on the gap between legal theory and practice in the later Middle Ages in "Literature and Law in Medieval England," *PMLA* 92 (1977), 948–49. Alford identifies "legal positivism" and "the birth of modern jurisprudence" with Thomas Hobbes's *Leviathan* (1651). For another point of view regarding the incipient forms of positivist law and modern jurisprudence in the fifteenth century, see Norman Doe, *Fundamental Authority in Late Medieval English Law* (Cambridge: Cambridge University Press, 1990).

¹³ See, for example, the *Paston Letters*, ed. James Gairdner (London: Archibald Constable and Co. Ltd., 1908), 1:58; *Three Fifteenth-Century Chronicles*, ed. James Gairdner, Camden Society, 3rd ser., 28 (1880), 96; *An English Chronicle*, ed. John S. Davies, Camden Society 64 (1856), 60; and *Rotuli Parliamentorum: ut et petitiones, et placita in parlamento*, ed. J. Strachey, et al., 6 vols. (London: 1767), 5:326 (where

Malory's representation of law and legal process in the matter of Lancelot and Guinevere's treason brings into play these discordant perceptions of law in the fifteenth century. The law on treason found in the *Morte Darthur* reads as an objective statement that is binding on everyone, "whatsomever they were, of what astate or degré," caught in the circumstances it sets forth (1174). But like the 1352 law on treason in some of its fifteenth-century uses, it is applied when no conclusive proof of an overt act of treason exists. We will see that in the absence of such proof, the *Morte Darthur* accentuates the constitutive role of interpretation in what appears to be a simple application of law to the facts of the case. My analysis focuses on three issues:

- (1) Malory's law on treason and the lack of evidence;
- (2) Imaginative treason and imaginative accusations: evidence of words and reports of ill-fame; and
- (3) Gawain's alternate interpretations of the "facts": Malory's challenge to legal process.

In its peculiar representation of legal process, Malory's *Morte Darthur*, I argue, interrogates and challenges judicial and legislative interpretive practices that transform a lack of evidence or questionable evidence into unequivocal proof of crime and criminal guilt.¹⁴

complaints are made against people who know enough about law to pose as lawyers and seek suits on a contingency basis). See also Alford, "Law and Literature," esp. 951 n34.

¹⁴ See Michel Foucault's "Nietzsche, Genealogy, History," in *Language, Counter-Memory, Practice: Selected Essays and Interviews*, ed. Donald F. Bouchard (Ithaca: Cornell University Press, 1977), 139-64. Foucault's association of law and interpretation with acts of power has been extremely useful to me in my analysis of Malory's representation of law and legal process. Jacques Derrida, in his reading of Kafka's "Before the Law," speculates that law produces the subjects it represents and that literary texts make the law ("Before the Law," in *Acts of Literature*, ed. Derek Attridge [New York: Routledge, 1992]). For a discussion of the differences between objective and subjective interpretivist arguments in critical legal studies, see Robin West, "Adjudication Is Not Interpretation: Some Reservations about the Law-as-Literature Movement," *Tennessee Law Review* 54 (1987): 203-78. While West skillfully reviews both subjectivist and objectivist positions, her attempt to distinguish between acts of power and acts of interpretation is less convincing, as is her distinction between literary and legal texts: "The legal text is a command; the literary text is a work of art. This difference implies others. Legal criticism—criticism of law—is criticism of acts of power; literary criticism—criticism of literature—is the criticism of acts of expression" (277). It is hard, if not impossible, to imagine a law or a critique of law that is not itself an act of expression. Moreover, while literary texts are not backed up by the force of the state as laws are, it

When Guinevere is brought to trial for her adultery with Lancelot in the *Mort Artu*, Arthur asks his barons what must be done with her according to "droit jugement." In turn, the barons seek the advice of Agravain and his brothers who submit that

"par droit qu'ele en devoit morir a honte, car trop avoit fet grant desloiauté, quant ele en leu del roi qui tant estoit preudom avoit lessié gesir un autre chevalier."¹⁵

"according to justice the Queen should die a shameful death since she acted with such great disloyalty when she allowed another knight to sleep with her in the place of such a worthy man as the king."

Arthur's wanting to know what justice would be in this case and the barons' consulting others on the matter suggest that in the world of the *Mort Artu* there is no particular law to be followed. Arthur has told his barons that the Queen will suffer death no matter what they say and this confirms the absence of any justice beyond the king's word.¹⁶

Rather than having to figure out what should be done in Guinevere's case, Arthur in the *Morte Darthur* consults the appropriate law:

And the law was such in thos dayes that whatsomever they were, of what astate or degré, if they were founded gylty of treson there shuld be none other remedy but deth, and othir the menour other the takynge wyth the dede shulde be causer of their hasty jougement. 1174

Of course, by "hasty jougement" Malory could simply mean a prompt trial. But the types of proof Malory cites indicate a particular type of promptness. Both capture in the act and *mainour* were associated with

does not follow that literary texts and literary criticism exist outside power and its forms. West herself cannot maintain this distinction: she interprets two literary texts to highlight what she perceives as the "irresponsibility" of both subjective and objective interpretivist views of adjudication. For a favorable opinion on the law and literature movement, see Brook Thomas, "Reflections on the Law and Literature Revival," *Critical Inquiry* 71 (1991): 510-39.

¹⁵ *La mort de roi Artu*, ed. Jean Frappier (Geneva: Droz, 1954), 121. Translations of this text are mine. In the Stanzaic *Morte Arthur*, Arthur and his knights take "their counsel. . . . What best do with the queen" and then sentence her to death (*King Arthur's Death*, lines 1920-25).

¹⁶ *Ibid.*, 120-21.

an abridgement of judicial process known as summary judgment or summary justice. This association, along with the Crown's endeavors in the fifteenth century to bypass jury indictment and jury trial as a means to increase the likelihood of conviction, suggests that Malory's "hasty jougement" signals summary judgment.¹⁷ Guinevere is not tried by a jury nor given an opportunity to defend herself; rather the law is simply stated, the evidence cited for the crime of treason, and sentence pronounced—judicial process in this case takes the form of summary or "hasty jougement."

As to the types of proof, "taken with the dede" is readily understood: a person was captured in the act of crime, and, as the phrase implies, the deed was witnessed. Under such circumstances, a criminal deed was established; no other proof was necessary. The criminal captured in the act could be subjected to an abbreviated form of legal process and "summarily dispatched."¹⁸ To ensure conviction, the thing for an accuser to establish, then, was that capture in the act of crime had occurred. But there was more than one way to accomplish this. Through various types of capture, an accuser could establish that an equivalent of capture in the act had occurred. In fact, as we will see, capture in the act could be constructed even though the act of crime had not been witnessed.

Both Malory's *Morte Darthur* and the French *Mort Artu* recognize the force which establishing Lancelot's treason by the method of capture in the act would have. Having heard Agravain's and Mordred's accusation against Lancelot, Arthur in the *Mort Artu* orders them to

"fetes tant que vous les preigniez prouvez . . . mes fetes ce que ge vos di, qu'il soient pris ensemble . . . or m'enseingniez comment

¹⁷ Since Malory refers to himself as a prisoner, we can hypothesize that he had first-hand knowledge of fifteenth-century legal process. Quite apart from this, however, the attention law claimed in the fifteenth-century England exemplifies the familiar acquaintance of the non-professional with law and legal process. See the sources cited in note 13 above. For the use of the Court of Chivalry and the Court of the High Lord Steward to effect a summary form of judgment in treason cases, see Maurice Keen, "Treason Trials under the Law of Arms," *TRHS*, 5th ser., 12 (1962): 85-104; L. W. Vernon Harcourt, *His Grace the Steward and Trial of Peers* (New York: Longmans, Green, and Co., 1907), 362-470; and Bellamy, *Law of Treason*, 143-63.

¹⁸ T. F. T. Plucknett, *A Concise History of the Common Law*, 5th ed. (London: Butterworth, 1956), 430.

on le porra seurprendre en ceste afere que vos m'avez desc ouvert."¹⁹

"Make it so that you take them in the act. . . . But do this as I tell you, they are to be taken together. . . . Now explain to me how, without fail, he (Lancelot) will be taken in this deed that you have made known to me."

Likewise, Malory's Arthur wants the proof of capture in the act, telling Agravain that if

"hit be sothe as ye say, I wolde that he were takyn with the dede." 1163

Since the deed must be witnessed, Agravain in both works takes with him to the Queen's chamber a company of knights who will be able to say that they have witnessed the deed. But, in each version, because of the noise the knights make, Lancelot and Guinevere are alerted to their danger, and none of the would-be capturers witnesses the deed.²⁰

Malory's text takes this problem of evidence a step further by withholding even from the reader any proof of Lancelot and Guinevere's guilt or innocence:

For, as the Freynshhe booke seyth, the quene and sir Launcelot were togydirs. And whether they were abed other at other maner of disportis, me lyst nat thereof make no mencion, for love that tyme was nat as love ys nowadayes. 1165

Although Malory pretends that such ambiguity exists in the "Freynshhe book," it does not. The *Morte Artu* tells us that Lancelot "se deschauça et despoilla et se coucha avec la reine,"²¹ ("took off his shoes, undressed, and went to bed with the Queen").

Malory's strategy of ambiguity, coupled with Agravain's failure to take the lovers in the deed, contrasts strikingly with his rendering of an earlier, successful capture in the act, the capture of Tristram by Isode's cousin Andret (430-32). In fact, the attempt to capture Lancelot in the act is a point-by-point inversion of the Tristram episode.

¹⁹ *Mort le roi Artu*, 110-11.

²⁰ Arthur in the Stanzaic *Morte Arthur* also wants Lancelot to be taken in the deed, and, as in the other two works, the plan fails (*King Arthur's Death*, lines 1746-77 and 1832-63).

²¹ *Mort le roi Artu*, 115.

Where Malory makes the adultery of Tristram and Isode explicit both to the capturers and the reader, he withholds such evidence from Agravain, his companions, and the reader in the latter attempt. Tristram is taken naked in the Queen's bed, while there is not even a hint that Lancelot takes his clothes off in Guinevere's chamber, a detail explicit in the *Mort Artu*. And where the capture of Tristram proceeds cautiously and quietly, a fanfare of noise accompanies the attempt to take Lancelot in the deed, enhancing Lancelot's opportunity to escape. The contrast between these two scenes underscores an absence of evidence in Guinevere and Lancelot's case—in Malory, the episode is never more than a case of suspected wrongdoing. Neither Agravain nor the reader succeed in legal “takyng in the dede.”

Although the attempt to capture in the act fails in the case of Lancelot and Guinevere, Malory's law provides for one other form of proof which could also sanction summary judgment: the mainour. The OED²² speculates that mainour, in its original sense, probably meant “the act or fact of (a crime)” and defines “with (later in) the mainour” as “in the act of doing something unlawful; ‘in flagrante delicto’”—for example, as Andret takes the naked Tristram in bed with Isode. However, this definition is the second entry under mainour. The first entry defines mainour as

[t]he stolen thing which is found in a thief's possession when he is arrested: chiefly in the phrase taken, found with the mainour.

In English law, this definition seems to be earlier than that given in the OED's second entry. Capture with the mainour, a translation of the French *capta cum manuopera*, derives from an Old English concept, *æt hæbbendre handa gefangen*, the hand-having thief who is caught with the stolen goods in his possession. By extension, mainour applied to other forms of circumstantial evidence, for example, a person's holding a bloody knife.²³

²² OED 2nd ed., *sub voce* “mainour.”

²³ See Britton, ed. and trans. Francis Morgan Nichols, 2 vols. (Holmes Beach, FL: Wm. W. Gaunt, 1983), 1:36–37, and Julius Goebel, Jr., *Felony and Misdemeanor: A Study in the History of Criminal Law* (1937; reprint, Philadelphia: University of Pennsylvania Press, 1976), 75. For a recent discussion of the association of circumstantial evidence with narrativity, see Alexander Welsh, *Strong Representations: Narrative and Circumstantial Evidence in England* (Baltimore: Johns Hopkins University Press, 1992).

Mainour, then, means two things: the physical evidence of crime and the act of crime itself. Capture with mainour could in fact function as a construction of capture in the act; as such, mainour could have the probative weight of capture in the deed, that is, it could warrant summary judicial process and execution. The fact that witnessing the physical evidence of crime was as incriminating as witnessing the crime in process seems to have originated in the difficulty of catching people in acts of wrongdoing, since most malefactors would take precautions to ensure against such an event. The consequent interpretive supplement of mainour extended the event of capture in the act beyond the actual occurrence of the crime. Of course, although capture with the mainour is thus equated with capture in the act,²⁴ conflated into a single event, they represent two distinct acts which can only occur at separate moments in time. Capture in the deed requires that the act itself be witnessed—be seen and heard; while this does require the witness's interpretation, capture with the mainour is more clearly an interpretive act, requiring that objects be read as or be substituted for an act of crime.²⁵

In the context of Malory's “either . . . or” construction—“othir the menour other the takynge wyth the dede shulde be causer of . . . hasty jougement”—mainour is not precisely the same thing as capture in the act. Still, the two terms are synonymous in the sense that either one could justify summary judgment.²⁶ Malory's having mainour precede

²⁴ C. L. Von Bar, *History of Continental Criminal Law* (Boston: Little, Brown & Co., 1916), 14 n15, and Frederick Pollack and William Maitland, *The History of English Law before the Time of Edward I*, 2nd ed., 2 vols. (1898; reprint, Cambridge: Cambridge University Press, 1968), 2:497.

²⁵ As Bracton remarked, “Qui suum secum portat iudicium,” quoted in T. F. T. Plucknett, “The Origin of Impeachment,” *TRHS*, 4th ser., 24 (1942), 60. See also Pollack and Maitland, *History* 2:580; *Statutes of the Realm*, 1:81; and Britton, 1:56–57.

²⁶ For opinions on Malory's use of *mainour*, see Vinaver, *Works of Sir Thomas Malory*, 2nd ed. (Oxford: Clarendon Press, 1967), cix and 1633, and his *Malory, Works*, 2nd ed. (Oxford: Oxford University Press, 1976), 775; John W. Walsh, “Malory's Arthur and the Plot of Agravain,” *TSLI* 23 (1981): 533–34 n18; and J. A. W. Bennett, *RES* 25 (1949):, at 166. The concept of mainour was not obsolete in the fifteenth century, as Walsh surmises. In *De laudibus legum Anglie*, Fortescue explains that whether or not a thief is taken in the act, the penalty is death (111–13). See also H. T. Riley, ed. *Memorials of London and London Life in the XIIIth, XIVth, and XVth Centuries, A. D. 1276–1410* (London: Longmans, Green & Co., 1868), 195 n6 and 562. Lancelot's presence in Guinevere's room could be seen as mainour, but, as we shall see, his being there can be interpreted in a number of different ways. For adultery as trespass in English law, see Thomas A.

capture in the act in his statement of law perhaps suggests a paramount role for it in establishing a criminal deed. Instances of such a substitution of mainour for "takyn wyth the dede" can be found in the *Morte Darthur* long before Malory offers his statement of law. I will consider two examples.

Tristram, wounded in battle, is not deterred from entering the bed of Sir Segwarydes's wife:

So they souped lyghtly and wente to bedde with grete joy and pleasunce. And so in hys ragynge he toke no kepe of his greve wounde . . . and Sir Trystrames bledde bothe overshete and the nyther-sheete, and the pylowes and the hede-shete. 394

Warned of the husband's approach, Tristram escapes. But Segwarydes sees the bloodstained sheets, the signs of adultery, and threatens to kill his wife unless she gives him the name of her lover. She complies, and Segwarydes pursues Tristram and attempts to kill him.

Malory's "Knight of the Cart" presents a very similar situation. While Guinevere is at Melegaunt's castle, Lancelot climbs into her chamber through a window and in doing so injures his hand. Then Lancelot

went to bedde with the quene and toke no force of hys hurte honde, but toke hys pleasunce. . . . And whan he saw hys tyme that he myght tary no lenger, he toke hys leve. . . .

And therewithall [Melegaunt] opened the curtail for to beholde her. And than was he ware where she lay, and all the hede-sheete, pylow, and overshyte was all bebled of the blood of sir Launcelot and of his hurt honde. 1131-32

Like Segwarydes, Melegaunt takes the bloodstained sheets as the sign of adultery and accuses Guinevere of treason. In these two accounts, Malory devises scenes in which the crime of adultery is established by the signs of crime, by mainour, rather than by capture in the act.

If we place these two passages alongside Andret's capture of Tristram in bed with Isode and Agravain's attempt to capture Lancelot and Guinevere in the deed, we see Malory manipulating the relation between a deed and its signs. He supplies both direct and indirect evidence of adultery in the cases that precede Agravain's scheme. But in

Green, *Verdict According to Conscience: Perspectives on the Criminal Trial Jury, 1200-1800* (Chicago: Chicago University Press, 1985), 41.

the representation of the trap to take the Queen and Lancelot together, Malory produces no tell-tale signs—no naked lovers, no blood-stained sheets—to establish their treason. Yet Guinevere is sentenced to die by a law that calls for the proof of either capture in the act or mainour.

In light of the difficulties of actually taking someone in the act of crime, mainour offered an important means to construct capture in the act and thus to establish a crime; but, with its dependence on interpretation, the form of mainour was susceptible to change, depending on the circumstances of a case. In fifteenth-century cases of treason, the concept of mainour can be seen at times to take on the pliable form of words spoken against the king. This transformation helps us to understand Malory's peculiar representation of a legal process which is carried out despite a lack of proof that an act of treason has taken place.

As mentioned earlier, the 1352 statute on treason stipulated that it was treason

quant home fait compasser ou ymager le mort nostre Seigneur le Roi.

when one compasses or imagines the death of our lord the King.

Imagining the death of the king, of course, could not be established by capture in the deed: a thought of treason could not be seen or heard nor did it leave a trail of evidence as long as it remained in the imagination. In 1441, Sir Richard Neuton, C. J. C. P., was asked if a man could be put to death for a thing which he had never done, and he replied,

Ouy, que on sera mort, trait et pend[u] et disclos pur chos qu'il ne jamais, en fait, ny consentat ny aidat. Come si on ou sa femme imagine le mort le Roy et ne ad fait plus, pur ce imaginacion il sera mort come devant.²⁷

Yes, because a person will die, be drawn and hanged and known for a thing which he never in fact agreed to or aided in. This is

²⁷ Year Books, 19 Henry VI Mich. pl. 103, quoted in Bellamy, *Law of Treason*, 123n2. The translation is mine.

the same as when a man or his wife imagine the death of the King and do nothing more; by this act of imagination he will die as already said.

Proving an act of imaginative treason was problematic to say the least, but earlier in the century Henry IV and his jurists discovered one way to establish this type of treason: words spoken against the king were construed as evidence of the thought of treason. Thus words came to function as mainour, as a sign of treason.

Although Henry IV was the first to deploy the 1352 statute in this way, subsequent fifteenth-century monarchs followed suit, as Neuton's opinion indicates. Additionally, chronicles of the period record this type of construction. *The Brut or The Chronicles of England* reports that in 1444 a woman accosted the king after Eleanor Cobham, Duchess of Gloucester, had been convicted of treason. Speaking on behalf of the Duchess:

the woman . . . spake to hym [the king] boldly, and reviled hym ungoodly and unwisely for Dame Alianore Cobham. . . . And with these wordes the Kyng wexe wroth, and toke it to hert; and she was arested and brought into prison by the lawe, and so brought . . . afore the Justices of the Kynges Benche. And there she was reprevd for hir ungoodly langage, and folehardynesse to speake so to hir liege lorde, the Kyng.

For her words, the justices ruled that she be placed in a cart and paraded through London "with a paupire about hir hede of hir proude and lewed langage," and, according to the chronicler, she subsequently was pressed to death: "Thus she ended in this world, for hir proude langage to hir Kyng and souverayn lord."²⁸ In a similar case of the same year, Thomas Kerver, a gentleman of Reading,

untruely and ungoodly, and ayenst feith and lawe, depraued the Kyng; wherefore he was take and brought before the Kynges Consayle [which] Jughed hym to deth as a traytour.²⁹

²⁸ *The Brut or the Chronicles of England*, ed. Friedrich W. D. Brie, EETS, OS, vol. 136 (1908), 483-84.

²⁹ *Ibid.*, 485. The chronicler identifies this person as a John Kerver, but *CPR* 1441-46 names a Thomas Kerver. He was later pardoned since he had committed the offence in "ignorance of the peril" (295). See Bellamy, *Law of Treason*, 118-19.

In general, the deposition of a king generated the most conducive environment for treason by word. Anyone who said anything favorable about the deposed king flirted with treason. In fact, this type of remark sparked the first use, under the 1352 statute, of words to establish the act of imagining the king's death.³⁰

Malory's Guinevere and Lancelot do not in fact utter hostile words against King Arthur; they have left no such track of mainour to indict themselves. What indicts them is something more subtle: the fact of being accused. Judgment rests neither on a proven, witnessed deed of treason, nor on words proceeding "ex suo proprio capite" (from his/her own head),³¹ as in the fifteenth-century cases of treason by word. The mainour of this imaginative form of treason is the accusation itself—words proceeding from the accuser's head, filled with thoughts of treason, treason committed by the accused.³² By choosing not to follow his sources and render in explicit terms Guinevere and Lancelot's treason, Malory creates the conditions for an imagined act of treason which, in this case, takes the form of Agravaing's accusation against Lancelot, an accusation that relies on words, specifically the noise of ill-fame, rather than on physical evidence.

In the *Morte Darthur*, as soon as Lancelot and the Queen are together

there cam sir Aggravayne and sir Mordred wyth twelve knyghtes . . . and they seyde with grete cryng and scaryng voyce,

"Thou traytoure, sir Launcelot, now ar thou takyn!"

And thus they cryed with a lowde voyce, that all the courte myght here it. . . . But ever sir Aggravayne and sir Mordred cryed.

"Traytour knyght! Come forth oute of the quenys chamber!"

1165-67

³⁰ Compare *Henry IV* Part One 5.2.12-13: Worcester worries that looks will be interpreted as treason: "Look how we can, or sad or merrily, / Interpretation will misquote our looks." See also *Richard II* 4.1.8-83, where accusations of treason by words abound. References are to *The Complete Works of Shakespeare*, 3rd. ed., ed. David Bevington (Glenview: Scott, Foresman and Company, 1980).

³¹ A phrase that appears in a case of treason by words during the reign of Henry IV. P. R.O., K. B. 27/564 Rex m. 12, printed in Bellamy, *Law of Treason*, 117 n1.

³² A petition made in 1442 to the king on behalf of Richard Wogan, a clerk, suggests this type of imaginative accusation. Since Wogan had "executed certain commands of the king concerning the earl of Ormond, lieutenant of Ireland, the earl *imagined* (my emphasis) him guilty of treason whereof he was indicted in a place in Ireland where none of the king's lieges dare acquit him for fear of the earl" (*CPR* 1441-46, 91).

The redundant "cryng" of Agravain and his companions underscores and punctuates a fundamental element in Malory's rendition of the attempted capture: the noise that, almost by itself alone, constitutes his representation of the attempt to take Lancelot in the deed. It is this noise of accusation that alerts Lancelot and Guinevere to their danger: "'Alas!' seyde quene Gwenyver, 'now are we myscheved bothe!'" (1165). The corresponding passage in the French *Mort Artu* renders a different sort of fracas. The noise, heard by Lancelot and Guinevere, is that of the knights who try to break down the locked door and who, in fact, never address Lancelot at all.³³

Malory's representation, in contrast with the *Mort Artu*, ascribes to Agravain and company an intent to publicize both the crime of treason and the name of the traitor. To create such a scene, Malory turns away from his literary sources to draw upon and integrate into his text a particular custom for apprehending malefactors: raising the hue and cry, a custom common to both England and France and one that could also set in motion summary justice. To be raised when a person came upon a scene of crime, the hue and cry or clamor brought others to witness either the deed itself or its signs. If the perpetrators were not captured in the act, they were pursued by hue and cry, and if caught they were liable to summary justice.³⁴ The hue and cry served to bridge the temporal difference between capture in the act and mainour by making present, for a specified time, the criminal act beyond its actual occurrence.³⁵ Thus pursuit by hue and cry provid-

³³ *Mort le roi Artu*, 115-16. Agravain's accusations are, however, found in the Stanzaic *Morte Arthur*. Though Lancelot is called a traitor in this source, the poem does not evoke a noise that could be heard by all the court, as is the case in the *Morte Darthur*, nor does Lancelot take part in the shouting as he does in Malory's text. For an analysis that compares Malory's representation of noise and the destruction of the Round Table to the dissolution of language and faith depicted in the story of the Tower of Babel, see John F. Plummer, "'Tunc se Coeperunt non Intelligere': The Image of Language in Malory's Last Books," in *Studies in Malory*, 153-72. For a reading that relates Malory's noise to chivalric honor, see Ann Dobyns, "'Shamefull noyse': Lancelot and the Language of Deceit," *Style* 24 (1990): 89-102.

³⁴ Plucknett, *Concise History*, 430. In cases of murder, prosecution by hue and cry was validated by reference to scripture, namely, the story of Cain and Abel. God tells Cain that "the voice of Abel thy brother's blood, whom thou has killed, crieth unto me from the ground." See *Compilatio de Usibus Andegaviae*, § 7, quoted in A. Esmein, *A History of Continental Criminal Procedure with Special Reference to France*, trans. John Simpson (Boston: Little, Brown & Co., 1913), 63.

³⁵ Esmein, *ibid.*, 61.

ed a way to equate capture in the mainour with capture in the act—the signs of crime were no longer signs but the event of crime itself.

Even though the hue and cry represents an old custom in French as well as English law, it is not raised by Agravain and his fellow knights in the *Mort Artu*. One explanation for this absence is the fact that no scene of crime is witnessed.³⁶ The French text tells us that when the knights find the door to the Queen's chamber locked,

si n'i ot celui qui n'en fust touz esbahiz; lors sorent il bien qu'il avoient failli a ce qu'il vouloient fere.³⁷

they were confused because of this and they knew well that they had failed to do what they wished to do.

This depiction adheres to custom: that hue and cry be raised after evidence of wrongdoing has been seen. The only evidence against Guinevere and Lancelot is his presence in her chamber, as is the case in the *Morte Darthur*. But Agravain and his fellow knights in Malory's text do not admit defeat when faced with a locked door.

Although Malory's Agravain claims to Arthur that he and others know of Lancelot's treason, he mitigates his assertion by conceding that proof is yet to be obtained. But in seeking that proof, these knights, rather than sneaking noiselessly down a hallway, approach the chamber with "grete and scaryng voyce," a circumstance that does not favor capture in the deed. By having the men raise the noise before the crime is detected, Malory complicates his application of hue and cry, and such a strategy, I propose, derives from the overlap of hue and cry with concepts such as notoriety and infamy.³⁸

Raising a hue and cry or clamor at the scene of crime and sustaining it during pursuit of a suspect publicized the crime. As an object of hue and cry, a suspect, caught with the signs of crime in his possession, was regarded as a common or notorious malefactor and subject to summary judgment. The noise or clamor of ill-fame could also be regarded as evidence of wrongdoing and a means to abridge judicial process. In 1341, for example, a commission of inquiry reported that

³⁶ See Beaumanoir, *Coutumes*, 1:934 and 2:1637. See also R. Howard Bloch, *Medieval French Literature and Law* (Berkeley: University of California Press, 1977), 55-59.

³⁷ *Mort le roi Artu*, 115.

³⁸ Mainour was also associated with notoriety. See Plucknett, "Impeachment," 60. For examples of hue and cry as slander, see Riley, *Memorials*, 576 and 592.

the king had learned of the misconduct of Chief Justice Willoughby "by the common fame and clamour of our people." At the opening of his trial, Willoughby complained that the king had not been informed either "by indictment, or by the suit of a party." He was told that the king was "informed by the clamour of the people."³⁹ Thus we can see the interrelation of a number of different strategies which were devised to remedy injuries in a speedy manner: capture in the act, mainour, hue and cry, and notoriety offered proof that a crime had been committed and could instigate a summary judicial process. Agravain's hue and cry against Lancelot both operates as a clamor and reports Lancelot's common fame as a traitor.

Since Malory claims not to know whether Lancelot and Guinevere are in bed or at "othir maner of disportis" and the door to the Queen's chamber is locked, Agravain's raising a hue and cry against Lancelot's name does not proceed from an overt act of treason nor from any physical evidence beyond Lancelot's presence in the Queen's room. Malory reinforces this inversion of hue and cry, raising the clamor without a corresponding scene of crime, by having Arthur presuppose that noise is a first step in the attempt to catch Lancelot in the act:

"but if he be takyn with the dede he woll fyght with hym that
bryngith up the noyse." 1163

It seems to be taken for granted, then, that the clamor of ill-repute will precede the anticipated event of capture in the act.

In fact, Agravain has already tentatively taken such a step even before he outlines his scheme to take Lancelot in the deed. Speaking to all his brothers, Agravain

seyde thus opynly and nat in no counceyle, that manye knyghtis
myght here: "I mervale that we all be nat ashamed bothe to se
and to know how sir Launcelot lyeth dayly and nyghtly by the
quene. And all we know well that hit ys so." 1161

Thus even at this early stage, Agravain integrates common knowledge or common report into his accusation. In fact, common knowledge or report is the basis of his charge. Agravain stirs up so much contention between himself and those who will not speak ill of Lancelot that

³⁹ Plucknett, "Impeachment," 61-2. Reputation figured significantly in the findings of medieval juries. See Green, *Verdict*, 8, 16-17, 20, and 26.

Arthur, coming into the room, "asked them what noyse they made" (1163). And it is at this point that Agravain tells Arthur that Lancelot is a traitor.

Throughout the *Morte Darthur*, Malory's use of the term "noyse" is slippery to say the least. It can be used for various purposes, such as to spread news or a rumor, to make a complaint or accusation, or to serve as proof of wrongdoing. Early in the text, for example, when Lancelot refuses the advances of a woman, she tells him that "hit is noysed that [he] love[s] quene Gwenyvere." Lancelot replies that he cannot stop people from speaking of him however "hit pleasyth them" (270). Rumor or noise can also be turned to personal advantage and enters into Andret's scheme to get Tristram's lands. Although Tristram is alive, Andret "made a lady that was hys paramour to sey and to noyse hit" that she was with Tristram when he died and "buried hym by a well." Tristram's last wish, she claims, was that his lands be given to Andret (499). In another context, when Tristram rides into Joyous Garde, he hears "in that towne grete noyse and cry" over the death of a knight who, the people report, was wrongfully slain (690). Tristram, not having witnessed the deed, nevertheless takes up the people's cause and engages the alleged offender in battle.

Malory also uses "noyse" as a term for fame or reputation. At one point he tells us that, after Tristram had won many battles,

all the noyse and brewte fell to sir Trystram, and the name ceased
of sir Launcelot. And therefore sir Launcelottis bretherne and hys
knyysmen wolde have slayne sir Trystram bycause of hys fame.

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Fame or reputation, what is reported about a person, also enters into legal judgments. To settle a land dispute between two brothers, Arthur takes into consideration their reputations. Because one is "called an orgulus knyght and full of vylony" and the other is "named a good knyght and full of prouesse," Arthur awards the land to the "good knyght" (147). The use of noise or fame as a form of legal evidence appears with more frequency after Agravain has raised a hue and cry of ill-fame against Lancelot; Malory keeps the accusation of treason alive, after Agravain's death, by having others proclaim the charge again and again. At Joyous Garde, for example, after Lancelot has rescued the Queen, Arthur is the first to call Lancelot a traitor; then Gawain

made many men to blow uppon sir Launcelot, and so all at onys
they called hym "false recrayed knyght." 1190

Begun by Agravain, the noise of ill-fame continues to plague Lancelot, forcing him into a defensive position throughout the rest of the book.⁴⁰

Thus noise in Malory's text comes to stand for common knowledge, rumor, complaint, fame, or a form of legal evidence. These shifting aspects parallel a legal definition of rumor and noise given by Chief Justice John Fortescue during the impeachment proceedings against the Duke of Suffolk in 1450. When the Commons asked the King's Bench for guidance on the matter of noise and infamy, Fortescue

declared for all his Felawes and seid that in these generall termes, Rumoir, and noyse of sclaudre and Infamie may many thinges be understand; that is to for to sey, mesprisions or trespasses . . . or elles Felonie or Tresons.⁴¹

The point to note here is that the veracity of rumor and noise of ill-fame is not touched upon. What matters is that the noise exists and exists as a form of evidence for various acts of wrongdoing. Agravain has made sure that the noise against Lancelot's name exists and that it signifies treason.

Although begun by Agravain, noise emerges in Malory's text as a thing in itself, detached from any specific, identifiable voice, and capable of reproducing itself, like the personified "tydyng" Chaucer describes in the *House of Fame*:

Thus north and south
Wente every tydyng fro mouth to mouth,
And that encresing ever moo,
As fyr ys wont to quyke and goo
From a sparke spronge amys,
Til al a citee brent up ys.⁴²

Chaucer's "tydyng," the report, grows ever greater until it finds a

⁴⁰ I argue elsewhere that the noise sustained against Lancelot is one of the ways Malory's text erodes Lancelot's good fame to the point that he can no longer function as a knight of the realm. In a sense the text attains Lancelot. See "Lancelot's Vocation: Traitor Saint," in *The Lancelot-Grail: Text, Image, and Transformations*, ed. William Kibler (Austin: University of Texas Press, forthcoming).

⁴¹ *Rot. Parl.*, 5:176.

⁴² Geoffrey Chaucer, the *House of Fame*, 2075-80, in *The Riverside Chaucer*, 3rd. ed., gen. ed. Larry Benson (Boston: Houghton Mifflin, 1987). Compare Lydate's *Fall of Princes*, ed. Henry Bergen, EETS, e.s. 121 (1924), 2:1226-32.

point of exit from the house of fame and flies forth for the occasion. Malory renders a similar scene through Agravain's hue and cry against Lancelot. With "grete and scaryng voyce," Agravain and his cohorts shout that Lancelot is a "traytoure" so that "all the courte myght hyre hit" (1165). Their strategy provokes Lancelot himself to contribute to the general noise, until the search for evidence evolves into a cacophonous shouting match between Lancelot and the knights on the other side of the door:

"Traytour knyght, com oute of the quenys chambir . . . thou shalt nat ascape."

"A, Jesu mercy!" seyde sir Launcelot, "thys shamefull cry and noyse I may nat suffir. . . Now, fayre lordys . . . leve youre noyse and youre russhynge. . ."

"Traytour knyght! Come forthe oute of the the quenys chambir!"
1166-67

Malory's representation of the noise of ill-repute and Fortescue's opinion on slander assign a prominent role to reputation in fifteenth-century legal process. Fortescue's opinion was given during the impeachment proceedings against Suffolk, a favorite of Henry VI, and the transformation that noise undergoes in his case is well worth noting. In 1450, Suffolk addressed Parliament in an effort to clear his name from the "rumour and noyse of sclaudre and Infamie" and to learn who his accusers were so that he could answer them directly. In addition, Suffolk sought permission to petition the king on his own behalf. The Rolls of Parliament record that he

besought the Kynges Highness . . . to admitte to his supplication and desire, that he myght be atte his declaration of the grete infamie and defamacion that is seid uppon hym, by many of the people of this land, that he shuld be other than a true man to the King and his Reaume; if any man wold sey hit in generall or in speciall, howe, wherof and wherin, that he myght make his answer, in declaryng of hym self as he is

Granted his petition, the Duke wrote to the King:

I suppose welle that it comen to youre eeres, to my grete hevyness and sorowe, God knoweth, the odious and horrible language that renneth through your lande, almost in every Commons mouth, sowning to my highest charge and moost hevyst disclaundre . . . which noise and language is to me the heaviest

charge and birthen, that I coude in any wise receyve or bere.⁴³

The Duke of Suffolk identifies the noise of slander as an unbearable offense, as does Lancelot in his exchange with Agravaing:

"A, Jesu mercy!" seyde sir Launcelot, "thys shamefull cry and noyse I may nat suffir, for better were death at onys than thus to endure thys payne." 1166

After Fortescue had given his opinion on noise, the King's Bench advised the Commons that since "there was no speciall mater of sclaundre and Infamie putte upon hym," Suffolk should not be imprisoned. Within a very short time, however, the general noise against Suffolk modulated to particularity:

from every partie of Englonde there is come among hem [the Commons] a greate rumour and fame, howe that this Roialme of Eng-land be sold to the Kynges Adversarie of Fraunce.⁴⁴

Like Chaucer's tiding, the noise against Suffolk is shaped for the occasion. This specific charge or rumor is accompanied by many other detailed allegations. Supple enough to undergo the transformation from general to specific, "rumour and fame" in both forms originated in a general clamor disassociated from any one identifiable voice, and in this instance, the noise of ill-fame led to Suffolk's exile.

While the example of Suffolk serves to illustrate what could be done to a favorite of the king who had incurred the wrath of the Commons and certain magnates (most notably the Yorkists), the Crown had its own particular method of aligning notoriety and ill-fame with treason: attainting traitors by act of Parliament.⁴⁵ Attainder had long been a punishment for treason, but the procedure had tended to be an informal one. The proscription of the Yorkists in 1459, however, generated a standard for future acts. Enacted by Parliament, but under the close supervision of the king, attainder in the latter half of the fifteenth century was not the consequence of a trial in which an accused had been found guilty of treason. In point of fact, fifteenth-century

⁴³ *Rot. Parl.* 5:176.

⁴⁴ *Ibid.*, 5:177. For Suffolk's judgment, see 5:183.

⁴⁵ My discussion of attainder relies primarily on Bellamy, *Law of Treason*, 177-205. See also Michael A. Hicks, "Attainder, Resumption, and Coercion, 1461-1529," *Parliamentary History* 3 (1984): 15-31, and J. R. Lander, "Attainder and Forfeiture, 1453 to 1509," *The Historical Journal* 4 (1961): 119-51.

attainder operated only in the absence of judicial process⁴⁶ and can be seen as a legislative form of summary judgment, synthesizing accusation, conviction, and punishment into one parliamentary act.

Used primarily to legalize the forfeiture of a traitor's land to the king, attainders secured such a penalty by reputed or advertising the guilt of people who had not had the opportunity to speak in their own defense. By including a provision that declared the blood of traitors to be corrupt, attainder built upon and expanded the notion of infamy. By corruption of blood, the heirs of a traitor were also attainted and dishonored and consequently were unable to inherit their patrimonial legacy.⁴⁷ Thus a person's dishonor could extend well into the future, beyond his lifetime. In effect, the traitor's memory was damned, unless the Crown saw fit to reverse the attainder.

To take a powerful example, the Duke of York was not present at the Parliament that declared that

his fals and traiterous ymaginations [and] conspiracies [were] openly knowen to the [King's] liege people⁴⁸

—a declaration that made the treason and its perpetrator a matter of notoriety and common report. The attainder also stipulated that York forfeit his lands, that his heirs be disinherited, and that he

be reputed, taken, declared, adjudged, demed and atteynted of high Treson.⁴⁹

Such stipulations disclose the synthesis of accusation, conviction, and punishment that attainder achieved. The attainder of York and his supporters was then publicized:

by the kynges commissione in euery cyte, burghe, and toune [they were] cryed opynly and proclamed as for rebelles and tray-toures.⁵⁰

⁴⁶ Bellamy, *Law of Treason*, 169-70. He notes one instance in which attainder was part of an actual trial in Parliament (176).

⁴⁷ See *Rot. Parl.*, 5:389, for Henry Percy's attempt to restore the reputation of his father, the Earl of Northumberland, whose heirs were "unable to clayme or have by the same late Erle, any such name, estate or preeminance. . . ." Compare *Henry VI Part One* 2.4.90-94, where Somerset challenges Richard Plantagenet by referring to the attainder of Richard's father.

⁴⁸ *Rot. Parl.*, 5:346.

⁴⁹ *Ibid.*, 5:349.

⁵⁰ *English Chronicle*, 83.

Akin to hue and cry, the publication of attainder, however, was not issued as a way to apprehend suspects so that judicial process, summary or not, could begin. This form of clamor bypassed judicial process altogether by simply declaring the treason of those named. The Yorkists, for their part, blamed their estrangement from the king on the noise that they claimed was stirred up against them by their enemies at court. In a letter to the king, they decry the way they have been "proclaimed and defamed in . . . name unrythefully, unlawfully."⁵¹

In light of the supple, legal force of noise, rumor, and slander in the fifteenth century, exemplified by the attainder of York and the impeachment of Suffolk, Lancelot's intense desire to quell the noise Agravain makes against his name is understandable. At one point during his exchange with the knights, Lancelot attempts to silence them by proposing a bargain:

"Sires, leve youre noyse. . . . And therefore, and ye do be my counceyle, go ye all from thys chambir dore and make you no suche cryng and such maner of sclaudir as ye do. For I promyse you be my knyghthode, and ye woll departe and make no more noyse, I shall as to-morne appyere afore you all and before the kyng, and than lat hit be sene whych of you all, other ellis ye all, that woll depreve me of treson." 1168

Unfortunately for Lancelot, his accusers are not to be deterred. They continue in the same vein:

"Fye uppon the, traytour," seyde sir Aggravayne and sir Mordred, "for we woll have the magré thyne hede and sle the, and we lystel!" 1168

Fearless facing any physical battle, Lancelot does show an anxiety over this type of publicity. He is quite willing to hazard physical violence rather than endure a verbal assault on his reputation. Allowed to continue, the noise of slander can become an invisible and invincible accuser who cannot be faced on a battlefield or in a court of law.⁵²

⁵¹ *Ibid.*, 82.

⁵² Ernest York has observed that Lancelot's being called a traitor does not make him one ("Legal Punishment," 16). Fifteenth-century interpretations of imagining the king's death, which relied on words as evidence, and the role of ill-fame in prosecuting traitors challenge York's assertion. For the contagion-like quality of treason in Malory's text, see Deborah S. Ellis, "Balin, Mordred and Malory's Idea of Treachery," *English Studies: A Journal of English Language and Lit-*

As Guinevere succinctly states, "the lesse noyse the more ys my worshyp" (1128). Likewise, given the ramifications of an act of attainder which could dishonor one's reputation for generations to come, Lancelot's concern over the consequences of being banished for treason makes sense:

for ever I feare aftir my dayes that men shall croncyle uppon me
that I was fleamed oute of thys londe. 1202-3

The image of a clamoring Agravain and his fellow knights armed to the teeth, ready either to arrest Lancelot or kill him, suitably illustrates the actual act of violence the text assigns them: raising the hue and cry of ill-fame against Lancelot. He is not taken in the deed, and other than his presence in the Queen's chamber no sign of an actual deed is seen by his would-be capturers. But against the hue and cry, the noise of slander, Lancelot is rendered uncharacteristically vulnerable. Without offering evidence that would prove either the innocence or guilt of Lancelot, Malory consigns Agravain's accusation, the clamor of ill-fame, to the imaginative realm. Even so, that accusation which produces and publishes Lancelot's treason brings about his banishment.

In his representation of Lancelot and Guinevere's treason, Malory places before us the evidence of noise, the truth or falsity of which cannot be determined. And Guinevere is sentenced to death. But Malory does not allow such a judgment to go unchallenged. As Fortescue's statement on slander allows that rumor and noise can mean many things, Gawain's speech to Arthur on behalf of Guinevere argues that the evidence against the Queen can mean many things. One may take Lancelot's presence in Guinevere's chamber as mainour, as evidence of treason, but, as Gawain points out to Arthur, such proof is less than conclusive:

"My lorde Arthure, I wolde counceyle you nat to be over hasty, but that ye wolde put hit in respite, thys jougement of my lady the quene, for many causis. One ys thys, thoughe hyt were so that

erature 68 (1987): 66-74, and Stephen Knight, "The Social Functions of Middle English Romance," in *Medieval Literature: Criticism, Ideology, and History*, ed. David Aers (New York: St. Martin's, 1986), 136.

sir Launcelot were founde in the quenys chambir, yet hit myght be so that he cam thydir for none evyll. For ye know, my lorde . . . that my lady the quene hath oftyntymes ben gretely beholdyn unto sir Launcelot, more than to ony othir knyght; for oftyntymes he hath saved her lyff. . . . And peradventure she sente for hym for goodnes and for none evyll, to rewarde hym for his good dedys. . . . And peradventure my lady the quene sente for hym to that entent, that sir Launcelot sholde a com prevaly to her, wenyng that hyt had be beste in eschewyng and dredyng of slaundir; for oftyntymys we do many thynges that we wene for the beste be, and yet peradventure hit turnyth to the warste."

1174-75

From this passage we can see that Malory through Gawain offers alternate interpretations of Lancelot's presence in the Queen's chamber. Punctuated by the word *peradventure*, Gawain's speech announces its speculative, interpretive basis of the "many causis" it cites. Thus in Gawain's counsel to Arthur, Malory challenges what appears to be an impartial application of law in the Queen's case by foregrounding the very thing that the applied law of treason obscures or denies: the possibility of alternate readings, alternate interpretations of the evidence.

Moreover, Gawain's "many causis" are incorporated into a narrative that argues for a certain point of view. Arthur is cautioned "nat to be over hasty," not to ignore either Lancelot's honorable deeds or human experience, the unforeseen, untoward consequences that "oftyntymys" beset the best of intentions. The argumentative form of Gawain's speech accentuates the lack of argumentation in the application of law in the Queen's case. For rather than reasoning (as the *Mort Artu* does) that Guinevere is guilty because she has slept with someone other than her lord, the *Morte Darthur* suppresses altogether any connection between the Queen's judgment and the act of adultery: Malory's Queen is sentenced to die

bycause sir Mordred was ascaped sore wounded, and the dethe of thirtene knyghtes of the Rounde Table. 1174

Malory's application of law does not explain how Mordred's wounds or the dead knights signify treason by way of adultery. It offers no reasons, no "many causis," to construe this evidence in such a way. If Agravain's original charge of treason, adultery, is no longer in effect, what act of treason sends Guinevere to the stake?

It is not at all certain that Mordred's wounds and the death of Arthur's knights can in fact substantiate an act of treason, since at this point Malory turns away from legal terminology to offer a non-legal description of preceding events; for "wounds" and "death" do not denote crimes. Although legal language was certainly not standardized in the fifteenth century, we can distinguish between terms that construe the legal significance of events, those that do not, and those that are used in both legal and common parlance.⁵³ For example, Malory through Agravain and Arthur does not hesitate to transform the non-legal description of Lancelot's "ly[ing] daly and nyghtly by the quene" (1161), recasting it as legal fact: Lancelot is "traytoure to [the king's] person" (1163). With his facility for deploying legal terms, Malory could have easily represented Mordred's wounds and the deaths of Arthur's knights as signs of a criminal deed by inserting a phrase such as "by forecast of treson," or changing "dethe" to "murdir."⁵⁴ Had he done so, we could see some basis for construing the events as proof of treason. But "wounds" and "death" are not reinterpreted in legal terms.

In light of Malory's use of legal terminology and the questions he raises, through Gawain's commentary, about the facts of Lancelot and Guinevere's case, the switch from legal to non-legal discourse is an inconsistency but one that has important ramifications, complicating an apparently straightforward application of law. The facts of the case are represented as self-evident, as if no explanation, no interpretation, were needed. But this "just-the-facts" presentation obscures the interpretive activity that equates wounds and death with the Queen's adultery, even as the gap between treason and proof of the deed discloses the absence of sufficient evidence to establish the Queen's guilt. She may just as well have been accused and sentenced to death for imagining treason.

⁵³ For a discussion of lay and legal descriptions, see Kim Lane Scheppele, "Facing Facts in Legal Interpretation: Questions of Law and Questions of Fact," *Representations* 30 (1990): 54-59. The Old French *Mort Artu* circuitously equates adultery with treason by way of disloyalty. Even then, however, the act of treason is not an act against the king but against a "preudom" (121).

⁵⁴ For example, see the speech Lancelot makes to his knights after he has escaped from the Queen's chamber. Having willingly gone to Guinevere when she sends for him, Lancelot now, in this speech, imputes a treasonous motive to her summons (1171): "And thys nyght bycause my lady the quene sente for me to speke with her, I suppose hit was made by treson; howbehit I dare largely excuse her person."

The discrepancy between Malory's stated law and his representation of the facts of the Queen's case places the burden of interpretation on the King. It is he who equates the "previs" of Mordred's wounds and the death of thirteen knights with an act of adultery committed by the Queen. Although Arthur has instructed Agravaing to obtain the proof of treason by taking the two lovers in the deed, he now ignores that stipulation. The King's capacity to interpret inconclusive evidence as unequivocal proof of the Queen's guilt overrides any constraint the law places upon him—just as the 1352 statute's equation of imagining the king's death to an act of treason transgresses its restricted list of treasonous acts. Shown by Gawain that a presumption of the innocence of the Queen and Lancelot is as compelling as assuming their guilt, the King responds:

"I will nat that way worke . . . for she shall have the law. And if I may gete sir Launcelot, wyte you well he shall have as shamefull a dethe." 1175

Thus, with an absolute power like God's, Arthur as king commands the freedom and authority to alter the correspondence between law and the facts of a case or the correspondence between words and things: Mordred's wounds and the death of thirteen knights signify an act of adultery. At this point in Malory's text, the law is the King's creation.⁵⁵

The incongruity of Malory's deployment of legal and non-legal terminology in Guinevere's case also sheds light on some of the interpretive moves made by fifteenth-century justices in cases of imagining the king's death. Judgments that cite words as the signs of this type of treason also include projections of what could have happened as the result of such words. For example, in Thomas Kerver's case, the justices reasoned that his words could have incited rebellion and other crimes and could have led the king's people to withdraw their love from him.⁵⁶ Also, the justices sometimes added that by taking such unkind words to heart, the king could have become ill and died of grief.⁵⁷

⁵⁵ Lancelot, of course, has killed the knights and wounded Mordred. Thus in this application of law, Guinevere must be read as a sign for Lancelot. This circumstance along with her silence at the trial suggests that Guinevere is both an extension of male identity and an object of exchange between Lancelot and Arthur.

⁵⁶ Inciting the king's people to withdraw their love from him seems to have been a popular interpretation of treason by words. See Bellamy, *Law of Treason*, 118–19.

⁵⁷ As in the case of the Duchess of Gloucester, Roger Bolingbroke, and

The chronicler of *The Brut* may have been aware of this interpretation since he reports that "the king wexe wroth, and toke it to hert" when he heard the words of the Duchess of Gloucester's defender.⁵⁸

Although it was possible to convict a person for an imaginative act of treason on the basis of words, such interpretations offer an internal resistance to this line of reasoning. The case of the woman who spoke on behalf of the Duchess of Gloucester patently illustrates this resistance. Writing the woman's words on a piece of paper and hanging them on her transforms them into a visible, tangible object: words become physical evidence. Similarly, projecting rebellion or the king's sickness and death as a possible effect of words spoken against the king once again brings in, through the back door, overt acts and physical evidence. Such a compensatory strategy highlights the insufficiency of existing evidence, that is, words, by disclosing a need for corroborating physical evidence which an overt physical act of treason would have rendered. Thus at some level the jurists' interpretations of imagining the king's death register the inadequacy of words alone to serve as manifest evidence. Moreover, such decisions acknowledge the interpretive acrobatics required to establish an act of imaginary treason. A remark made by Roger Bolingbroke, who was sentenced to die for predicting the death of Henry VI, succinctly captures the problem of evidence in such cases of treason. A practitioner of magic, Bolingbroke

confessid that he was nevir gilty of eny treson ayens the kyngis persone; but he presumed to fer in his konnyng.⁵⁹

Likewise, the gap between legal and non-legal discourse in Malory's application of law exposes and challenges the implicit contradictions in judgments that convicted people for imagining the death of the king.

Perhaps it is worth saying, here, that I do not see in Malory's text a recommendation for doing away with law and legal process. What his text ponders is the obfuscation of the constitutive role of interpretive activity not only in statements of law, such as his own, but also in

Thomas Southwell. See P. R. O., K. B. 9/72/14, printed in Bellamy, *Law of Treason*, Appendix III, 237.

⁵⁸ *Brut*, 483.

⁵⁹ *English Chronicle*, 60.

the application of law to the facts of a case. Since the law holds such power over human beings, the *Morte Darthur* shows a need for legal process to acknowledge the multiple interpretations that evidence or the facts of a case generate and to acknowledge as well the reasons for choosing one interpretation over another. In Gawain's words to Arthur, Malory advises a king or judge "nat to be over hasty" in transforming ambiguous evidence or even a lack of evidence into unequivocal proof of guilt that, in turn, sanctions judgments of imprisonment, banishment, or death. Malory, in effect, calls into question the basis of interpretive activity, and thus challenges those of us who take up the *Morte Darthur* "nat to be over hasty" in deciding not only about the innocence or guilt of Lancelot and Guinevere but also about what really matters in this Arthurian romance and what can be dismissed as insignificant inconsistencies.

Malory's textual discontinuities in fact contest a legal practice that convicted and punished persons on the basis of questionable evidence. By resorting to ambiguity, by claiming not to know what the "Freyshhe booke" means when it says the "quene and sir Launcelot were togydirs," Malory creates a voice for himself that is neutral and objective, a voice that matches or mimics the neutrality and objectivity of his statement of law; he reports only the facts given in his French source. But he misrepresents those facts, and, from another angle, his very refusal to say what the "Freyshhe booke" means highlights the necessity and possibilities of interpretation. Malory devises two alternate and conflicting opinions regarding the guilt of Lancelot and Guinevere: that of Agravain and Arthur and that of Gawain. We do not know which is true. We have to say, as Arthur does when he tells Gawain of Gareth's death, that we "wote nat how hit was . . . but as hit ys sayde . . ." (1185). By refusing to supply the reader with direct or indirect evidence, Malory postpones judgment of guilt or innocence. Such a tactic stands in direct opposition to the rush to judgment carried out by the legal process he creates in his text and to the historical practice of summary or hasty judgment instigated and sanctioned not on the basis of physical evidence but on the evidence of words or reports of common fame. These inconsistencies highlight the *Morte Darthur's* own interpretive activity as it refashions Arthurian legend. The case of Lancelot and Guinevere in Malory both actualizes and challenges the role of evidence and interpretation in establishing acts of treason and proving criminal guilt in the fifteenth century.

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"She Learns As . . ." Work and the Exemplar English Early Modern

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The impulse toward social engineering has been a persistent aspect of human history. During the sixteenth century, when we consider, Roger Ascham in *The Schoolmaster* or the *Elementarie* (1582), worked out of an organization from the shifting ground of social and literary canons. They were among many others in a social revolution in which "the technical service had altered. The demand for military and the demand for intellectual and oratory had increased."² Despite their apparent differences,

¹ A shorter version of this essay was first presented at the Renaissance Circle during the 1990 annual meeting of the Renaissance Society of America and the Renaissance Society of the United States. I am grateful for the comments and the detailed suggestions of my two anonymous reviewers.

² Lawrence Stone, *The Crisis of the Aristocracy, 1558-1641* (1965), 673. According to Roger Lockyer (*Tudor England*, ed., [New York: St. Martin's, 1985], 131),

the most striking educational advance took place during the reign of Elizabeth and by the 1590's the great majority of the population was literate, as were some 60 percent of yeomen and gentry involved in commerce. . . . [G]enerally speaking, the educational process mirrored the hierarchical structure of English society.