Felony, Fact-Finding, and Medieval Due Process

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From early in its history, English common law understood process as integral to the validity and predictability of its justice system. With origins in the Latin *processus,* signaling a procession or course, the concept measured out both the anticipated tempo of a lawsuit—its beginning, middle, and end—and the formal steps that ensured all parties had access to the requisite information. By the early fourteenth century, rolls and Year Books regularly referred to actions taken by "process of law" (*procés de ley*)or "without just process" (*sanz droit procés*), with the phrase *due processe* appearing in parliamentary rolls by 1315.[1] Despite the ubiquity and centrality of procedural concerns to the late medieval landscape, the concept has received surprisingly little attention from scholars working in the field of law and literature. Our focus has tended to follow the "shinier objects" of medieval English law, from revolt to heresy to treason. Elise Wang's *The Making of Felony Procedure in Medieval English Literature* corrects this imbalance, showing procedure to be more than the "colorless" administrative factotum to law-making, "formulaic, terse, and partial" (4).[2] For Wang, *procés* serves rather as a vital creative engine of law and a necessary check on those same creative impulses, subjecting the particularity of individual cases to a generalized set of expectations. Over the first century of the common law, the assumption that legal practices followed a regular course would come to underpin the legitimacy of the system itself, ensuring law stood apart of the will of individual actors.

Wang finds in the creation of "felony procedure" a rich point of intersection between law and literature. Felony allegations in English law, she argues, tested England's nascent procedural system in a variety of ways, even as they also emerged from it. In her description, medieval felony constituted not simply an act but a quality of malefaction: it encompassed crimes so severe that they could only be "punishable by loss of life and property" (10). Legal treatises, in other words, did not classify crimes as "felonies"; rather they stipulated felony punishment for crimes that violated the king's peace and the public trust to a sufficient degree. This subtle but consequential distinction captures the major argument and intervention of

Wang's book. Felony, she suggests, follows from the process that determines it, while process, in turn, proves its worth and validity in the successful management of felony allegations. In her words, "[I]n order to treat [felony] as a felony, the law must pretend that it recognizes its object" (2).

Wang's book serves as a study in how law and literature create and recognize their objects—that is, how they amass the circumstantial details that constitute the groundwork of evidence, in a legal context, and verisimilitude, in a literary one. As Wang notes, the language of the early common law abounds in terms that recognized law as a form of storytelling and storytelling as potentially legally probative. The Anglo-French verb *conter*, for example, meant both to "recount" a narrative and to enter a plea in a legal case.[3] Both storytelling and pleading thus share a common root in the Latin verb *computare*—to reckon, account for, tabulate, or compute. With its attention to the details of inquest, testimony, jury composition, and judgment, felony procedure lies at the heart of law's accounting, its capacities to determine fact, measure harm, and apply remedy. A rhetorically "copious" legal category, it requires a large tally of wrongdoing, corroborated by a high degree of credible evidence, to come into effect. As Wang shows across her chapters, felony procedure thus serves as a useful lens for analyzing techniques of literary accounting, too, as the same details that serve to corroborate a crime also build narrative richness and realism. These entanglements of fact and argument, evidence and persuasion, have bound law and literature together since the classical era, but find new purchase in Wang's treatment of procedure as a shared archive for both.

To that end, each chapter of the book trains the reader's attention on a different genre of medieval literary storytelling and, with it, a different set of evidential, procedural questions. One of the more challenging texts in this regard is the *Placita Corone*, or "Pleas of the Crown," the focus of Chapter 2. Written in French in the second half of the thirteenth century and updated frequently thereafter, the *Placita Corone* provides rare, if complicated, insight into criminal pleading procedures in medieval courts.[4] Neither a legal *summa* nor a didactic treatise, the *Placita Corone* functions more as a loose compendium of mock trial transcripts: scenarios that approximate actual legal cases while being unusual enough to solidify key principles of pleading. Take, for instance, the "woman's appeal for the killing of her husband in her arms." In this case, we are first presented with the voice of the appellant's attorney, who sets out the terms of her complaint (known as her "appeal" in medieval law):

> Agnes de N, who is here, appeals Robert de C, who is there, that whereas John, her husband, and herself were in the peace of God and in the peace of our lord the king on such a day, at such an hour, in such a year in such a township, namely in the

> middle of the township in a certain place called N, lying towards the east, there came this same Robert, who is there, feloniously as a felon and in premeditated attack and called them vile names, inasmuch as he called them thieves and faithless ones, and then he drew a newly sharpened Cologne sword and ran towards John, her husband, feloniously as a felon and intending to kill him; and whereas she held John, her husband, in her arms to shield him from the felony Robert came, feloniously as a felon, and wounded him with the point of this same Cologne sword, which was so sharp that it inflicted a wound in the middle of the top of his head, causing his blood to be shed, and shed his brains so that he died soon afterwards in her arms; and when Robert realized that he had committed this felony he at once ran away (4–5).

Agnes, her pleader assures the audience, followed procedure to the letter. After her husband expired in her arms, she "immediately raised hue and cry upon him [Robert] as a felon and made suit to four neighboring townships; and then made suit to the bailiff of the district, from the bailiff to the coroner, from the coroner to the next county court, and then from one county court to another until he was attached at her suit" (5).

The details of this recounting seem artificial to modern readers. But each serves the purpose of corroborating Agnes's appeal on procedural grounds. According to the thirteenth-century legal *summa* known as *Bracton*, a woman could only bring an appeal of murder if the victim was her husband and he had died *inter bracchia sua*, in her arms.[5] It would likewise be important for the pleader to establish the precise time and location of the incident, the number and identities of the assailants, the premeditated nature of the attack (indicated by the verbal insults), the nature the weapon, and the precise wound inflicted by the weapon (middle of the top of the head, with blood and brains in abundance). Indeed, the *Placita Corone* produces in all the relevant details the sample plea provided in *Bracton* to cover the same circumstances: "The appeal for the death of [a woman's] husband."[6]

In her book, Wang argues that a primary purpose of *Placita Corone* cases such as this one was to supply what she calls "narrative satisfaction" for judge, jury, and audience, including readers and users of the manual. "Satisfaction" is an apt choice of word, as it signals formal completion in a literary sense (making a "good end"), while also serving in medieval texts as a synonym for compensatory or corrective justice. By teaching readers how to marshal the necessary details of a criminal plea, Wang argues, the *Placita Corone* also taught them how to "satisfy" the demands of the judge and jury (51). In the case of *Agnes v. Robert,* the Cologne sword, for example, might serve to validate the wife's testimony precisely on account of its idiosyncrasy and specificity. So, too, the tragic scene in which she

cradles her husband's dying body guarantees that she is more than an eyewitness; in experiencing his death tangibly, she gains the right to appeal it. Wang notes that "narrative satisfaction" represents a powerful and troubling point of intersection between law and literature, as it holds potential to pull pleaders, witnesses, juries, and judges towards the more persuasive *conte* rather than the truer one.

This tension within the rhetorical project of persuasion—how to regulate its relationship to truth—predates medieval common law by many centuries, of course. In fact, we see in the *Placita Corone* and its source text, *Bracton*, rough but deliberate outline answers to the questions that were known in classical and medieval rhetoric as the "circumstances"—those queries of who, what, when, where, why, and how that served as the foundation, in Cicero and his commentators, of effective forensic rhetoric. In *De inventione*, Cicero calls these details the "attributes" of person, place, time, action, and the like. By artfully arranging them, the rhetor moves the audience to the *confirmatio*, or "proof," of an argument, the part of a speech that "lends credit, authority, and support to your case."[7] The example case from the *Placita Corone* shows the pleader giving concerted attention to the "who" (Agnes, Robert, and John), the "when" (such-and-such hour and year), the where (N precise location in the middle of N township), and the "what" and "how" (slew, feloniously as a felon, with a Cologne sword). We also see what Ciceronian rhetoric called the "consequence" (*consecutio*): death, in the arms of the woman whose physical proximity to the crime serves as the final physical proof of the act.

In conventional histories of English law, such Ciceronian touches would have little place in the common law courts. Roman rhetoric belonged to Roman law, canon law, and inquisitorial and ecclesiastical procedure, where the questions of "who, what, when, and where" helped judges and confessors elicit the truth from guilty subjects. By contrast, the English jury system, the story goes, did not rely on proof but rather consensus to come to its verdict—the implication being that medieval English law cared less about "truth" in a veridical sense. But in an important set of recent articles, Elizabeth Papp Kamali has pushed back against this standard narrative, arguing that the rhetorical circumstances did in fact shape an important, quickly developing aspect of the common law—namely, pre-trial felony procedure, beginning with coroners' and sheriffs' inquests.[8] As Wang discusses in her first chapters, coroners were the first "fact-gatherers" in any death and hence the first shapers of the narrative that surrounded that death. They were tasked with collecting and recording precisely the information we see compressed into our sample appeal, beginning with the "who" and proceeding carefully through the questions of when, where, how, with what means, and with what consequences.

Wang arrives in this way at a similar conclusion as Kamali does. They suggest that we have failed to see medieval procedure, and felony

procedure in particular, as a form of argument, balanced precariously between the rhetorical and logical senses of that term *argumentum*. A rhetorical argument plays on our desire for narrative satisfaction; a logical argument holds us to the conclusions our evidence presents. In the example of Agnes, Robert, and John, the evidence presented relies on the power of vivid detail—a rhetorical move—to help these details then become "facts," and thus available to logical reasoning. What defense could Robert offer to all this procedural correctness? The *Placita Corone* offers a script for the accused as well. Tellingly, though, it consists not of an alternative narrative so much as a point-by-point refutation of all the "facts" Agnes presented in her original appeal. Agnes never had a husband named John, the defense argues, because at the time they were not married. Nor could Robert have killed said John with the point of his newly sharpened Cologne sword because he had on him that day no weapon whatsoever. For that matter, he couldn't have killed John in Agnes's arms because on that same day and time, she was in a completely different county than she attests. And, finally, given that no murder of no husband with no Cologne sword occurred in the stipulated time and place, no hue and cry was raised either. Any of these refutations, if corroborated, would deliver a serious blow to Agnes's case; taken together, they become an exercise in nonsensical negation.

This exercise and others in the *Placita Corone* highlight what I take to be the vital core of Wang's thesis: that law lives not just in its theories but more powerfully in its procedures and processes, in the habits of speech, reasoning, evidence-gathering, and judgment that assure legal actors of the law's consistency and futurity. It is no accident, therefore, that the term *procés* enters both English and French during the period covered by Wang's book, carrying the sense that it still holds today. It is in the myriad rituals of inquest, fact-gathering, dispute, and decision that law holds itself to account. That we today still argue for our rights to due process underscores the importance of understanding how an expectation for reliable legal procedure came into being.

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[1] Examples may be found across late thirteenth- and early-fourteenth-century parliamentary rolls, with the earliest attested use of "due process" appearing in a petition heard at the parliament of January 1315, in the exceedingly troubled reign of Edward II. See C. Given-Wilson, P. Brand, A. Curry, R. E. Horrox. G. Martin, W. M. Ormrod, and J. R. S. Phillips, eds. and trans., *The Parliament Rolls of Medieval England, 1275–1504* (Scholarly Digital Editions, 2005).

[2] Elise Wang, *The Making of Felony Procedure in Middle English Literature* (Oxford, 2024).

[3] *Anglo-Norman Dictionary*, s.v. *conter*. See also Wang, *Making of Felony Procedure*, 51.

[4] *Placita Corone, or La Corone Pledee devant Justices*, ed. and trans. J. M. Kaye (London, 1966). Translations of the French throughout are Kaye's.

[5] *Bracton on the Laws and Customs of England*, G. E. Woodbine, ed. and trans., 2 vols. (Cambridge, 1968), II.419–20. For the limitations governing women's right to bring appeals in the thirteenth century, see Kaye's introduction, xxviii–xxix.

[6] *Bracton*, II.419.

[7] Cicero, *De inventione*, E. M. Hubbell, trans. Loeb Classical Library (London, 1949), I.XXIV.

[8] See Elizabeth Papp Kamali, "Finding Facts in Medieval English Law," *Journal of Legal Analysis* 15 (2023): 158–82, and *ibid*., "The Audacity of Judging Mind in Medieval England," *Journal of Medieval and Early Modern Studies* 53 (2023): 493–518.

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