# Felony and the Interdisciplinary Frounce

➡ read the rest of this Forum
➡ Supplementary Materials ("Felony")

**Elise Wang***

I want to begin by thanking Drs. Butler, Jahner, Ristroph, and Taylor for the time and attention they dedicated to my book *The Making of Felony Procedure in Medieval English Literature* and to the task of responding to it. I feel acutely the generosity of such gifts. Each response followed a different thread, and what they have woven shows the whole of the project in a way that is impossible to see from the inside, and I am truly grateful. Sara Butler's reflection on the importance of literary sources to historians is both gratifying and clear, and her warnings against anachronism are well-taken. I am indebted to Jamie Taylor for drawing out gender's role in the stories of this book, and in particular for her observations about Criseyde's silence, an analysis I hope to read more of. Jennifer Jahner and I are thinking along the same paths, and her response articulates the philosophical center of the stories in this book: In this period, process and accounting themselves are creation. I was also excited to read her thoughts on the *Placita Corone*, which is a source that I think literary scholars would find extremely generative if more knew about it. Finally, with gratifying attention to the book's relevance (or lack thereof) to our present moment, Alice Ristroph addresses my claims about felony's definition and about what its past might tell us about its present.

## Definition, Classification, and Social Meaning

The issue of definition—or rather, my claim that felony has lacked it—caused a stir in every paper, and I think it is a good place to start. In my introduction and in my epilogue, I echo what Pollock and Maitland long ago observed: that felony has only ever been defined in the law by its consequences.[1] In the medieval period, this meant the loss of life and property, and now it means more than a year in prison and (depending on the state) permanent collateral consequences. The appellation "felon" can also outlast the punishment, as Taylor demonstrates with her meditation on how we might now combine the titles "felon" and "president." Given the severity of these consequences, I found it curious that the law never bothered to articulate what qualities make a crime felonious.

Butler and Ristroph make related objections to how I have framed this problem. For Butler, this problem is no problem because the answer is obvious. If the offenses that fell under the rubric of felony (in the medieval period, this was usually murder, rape, arson, robbery, treason, and sometimes counterfeiting, conspiracy, and false purveyance) were clear to the justices, why define it? “Why define something if you don’t have to?” as she puts it. Ristroph builds on this observation to object: if the offenses that fell under the rubric of felony were known, then the category *was* defined, and any work the communities did to prosecute the crime were not the work of definition but of classification, of accurately sorting according to the law’s definition.

Of course, any limitations on a term can count as a definition of a sort, and so I grant that we might consider a list of offenses prosecutable as felony to be a kind of definition. And so the question seems to be twofold: were medieval lawmen not accustomed to giving more precise definitions, such that felony’s definition-by-list would simply be a feature of medieval law more generally? And then, if felony’s definition *was* less precise than usual, did it nevertheless provide sufficient guidance to prosecute the crime?

It is true that modern historians are curious about things that medieval lawmen did not find interesting enough to write down (much to our frustration), and maybe legal definitions is just one of those places: an incidental, rather than meaningful, lacuna. But in the case of definitions and distinctions, I have often found that the interest of medieval lawmen exceeds my own. Take the example of disseisin, which is the seizure of land. Glanvill, a legal treatise from around 1187, dedicates more than twenty chapters to the subject. The treatise divides disseisin into two stages: the initial intrusion onto the land and the tenancy of it (Book XIII, Chapters 32-39).[2] The initial intrusion might be violent or peaceful, it might be through legal claim or by vigilante force, and it might be upon a claim that is itself firm or tenuous. The quality of the tenancy varies depending on what one does with the land (and the people on it). Pick any combination of these and disseisin is a distinct act, one that must be addressed with a unique procedure. After encountering such exquisite attention, it is hard not to be struck by the definition of robbery: “the crime of robbery poses no special problems” (Book XIV, Chapter 5—in its entirety).[3]

So the efforts dedicated to defining felony and its constituent acts were rather less than what medieval lawmen were capable of. This leads to the next question: was this level of effort nevertheless sufficient? We may take the example of murder, which Bracton (a legal treatise from about fifty years after Glanvill) defines as “the slaying of man by the hand of man.” This passage is notable because it goes on to offer (by way of negation) one of the few descriptions of what makes an act felonious. “By the hand

of man" is an important part of the definition, the passage clarifies, because it excludes "those who have died by misadventure," and those "slain or devoured by beasts and animals which lack reason; such persons cannot be said to be murdered feloniously since animals which lack reason cannot be said to commit *injuria* or felony."[4]

If medieval communities tasked with prosecuting murders considered this a sufficient definition for their work, then they would have been able to call every intentional death caused by a reasoning human "murder." But they never did this. Instead, they made far finer distinctions based on the qualities of the actor, the actor's state of mind, and the act. This work was classification, but it created patterns not contained in the standard definition: killings that were preplanned, killings that involved malice, and killings that were not in self-defense or the heat of the moment were considered murder, and the rest were generally not. The definition that the California Penal Code offers today—"murder is the unlawful killing of a human being, or a fetus, with malice aforethought"—bears greater resemblance to the discernment of the communities that prosecuted felony than it does to the definition in the legal treatise.[5]

The argument of my book is that this classification of acts *was* definitional work. As Jahner's response demonstrates, this answer reflects a larger medieval understanding of process as constitutive, rather than prefatory, to creation. As Jahner's own work has shown, in the medieval context to take an account of something was also to constitute it. Where legal treatises did not offer sufficient guidance for this account, people turned to "not-law" in order to constitute their definitions of felony. For example, in 1321 in London, a man named John took his horses to the water in Houndsditch, where they knocked over Richard's tanning equipment. Furious, Richard had attacked John with an iron staff, and John had struck Richard and killed him. The jury deciding John's murder charge had found that John had "wanted to kill [Richard]" (*interfecisse voluit*), and they needed to know if intending death in the moment was enough to make the slaying a felony, or if he would have needed to plan the death beforehand. Bracton's definition would include both situations. But literary and penitential treatments of sin discuss premeditation in detail, and usually describe it as Geoffrey Chaucer's Parson does: one is culpable when the act is "thought through and planned beforehand, with a wicked will to do vengeance, to which his reason consents" (540).[6] This is indeed what John's jury found. Though John had intended Richard's death, he did so "without malice" (*sine malicia*) and "on impulse" (*ex impetus*), and was therefore not guilty of felony.[7]

**"Frounce": The Intrusion of Literary Study into Other Disciplines**

We moderns are far from the first to object to interdisciplinarity. John Gower is remembered as a poet for his *Confessio Amantis*, a wide-ranging

anthology of popular stories in verse. But he was a man of the law first. He articulated a sentiment that anyone contemplating an interdisciplinary project has surely heard many times: don't. He cautioned that rhetoric's aesthetic loyalties will always "color in another way" the law's terms of art, and that when "a man learns the school/Of rhetoric's eloquences…a man will justify/His words in disputation,/And construct upon his conclusion/His argument in a form/That may deform the plain truth" (Book 7, lines 1630-38).[8]

Gower makes this pronouncement in a section on the trial of Catiline for planning a coup. Medieval writers recognized this trial as the source of a famous speech by Caesar, calling for mercy and restraint. But Gower emphatically takes the side of Silanus, who demanded the death penalty for Catiline and his conspirators. "Treason should have/A cruel death" (1610-11) according to the law, Silanus said, and Gower describes this position as "beholden to truth and the common profit." Rhetoricians might do as they please, but a man of the law ought to "pronounce/His tale plain without frounce" (1593-94).

I have always thought that "frounce" describes well the quality of literary study to which other disciplines often object. There is a certain lateral, associative thinking that disciplines like law—and to some extent history—detect in literary scholars' treatments of language which seems poised to destabilize terms that, in their place, have very specific functions. And, I think, there is an implicit assumption that the judgment of those literary scholars will always fall on the side of frounce, and against the disciplinary demands of other fields.

Two interesting examples arose in this forum. The first continues the issue of definition, though in a different way. In looking for a definition of felony, I admit to being guided by a literary understanding of definition: a positive description of the term's meaning and qualities. Ristroph objects that in the law, a consequence-based definition *is* a definition, and is in fact the only possible definition of a category. She makes the excellent comparison to wickedness and sin. "A search for '*the act* of felony' is a bit like a search for '*the act* of wickedness' or '*the act* of sin,'" she writes. Such a search will be futile because all three of them refer to qualities that lay in the intent and effect of the act rather than the act itself. We cannot now list all the acts that might in the future display wickedness—surely, we discover new ones each day.

But here I see the frounce and oppose it; the similarity between these terms is precisely the problem. For good reason, wickedness and sinfulness are not terms to which we give function in the law. There is no category of crime called wickedness, and while we make laws against acts that are also Christian sins (like murder), the law's internal justification is not sinfulness. There are also many Christian sins (like taking the Lord's

name in vain) that are not illegal. Nor do these terms denote more serious versions of existing crimes, and where aggravating circumstances do overlap with wickedness or sin (like a lack of remorse, for example) this overlap is understood to be coincidental and not causal. But the law does use felony in this way. It *is* a category of crime, and in many cases a felony crime is a more serious version of a lesser crime.

Perhaps it seems safe to use felony in this way because “felony” and “felon” technically do not enjoy extra-legal use anymore. Unlike in the historical moment that this book describes, I could not accurately call someone a “felon” in modern English who had not been convicted of a felony. This might have given the impression that “felony” now has no meaning outside of the ones the law assigns to it. But of course, as anyone who has suggested reforms to felony or its collateral consequences knows acutely, the term *does* have a live social meaning. Our not-law concepts of felony have inhibited support for commonsense reform, and they have impeded recognition of how felony charges have been weaponized. As Taylor points out, that Donald Trump has suffered few of the legal consequences of being a felon but is still eager to rid himself of the title is proof that the term means something beyond the law.

Taylor’s example of Criseyde demonstrates what can happen when we allow associations and definitions to linger without addressing them. She rereads Criseyde’s crucial moment of betrayal—the act that makes her the precedent for all future female crimes—and finds that some steps have been skipped. Criseyde never expresses her change in affection, and even the narrator disavows responsibility for the claim, casting it into hearsay: “men sayn” (uncomfortably close to Trump’s favorite line, “some people are saying”). That is, honest and skillful as it might sometimes have been, I do not think that the work of these communities created a definition of felony that is sufficient or fit for the law. In fact, my argument is the opposite: that felony’s long and persistent history of drawing on narratives of wrongdoing and stock villains is what has made it *unfit* for the law.

Ristroph argues that felony is not a place where not-law has constrained law, and I would agree; it is a place where it has emboldened it, licensed it to act in ways that are not consistent, reasonable, and just. Felony procedure today is far from its ad hoc beginnings and the ground that once was subject to lay moral reasoning is now a highly professionalized system that can deploy felony as a method of control. But its social meaning continues to interfere with its function, and it does so in ways we are not always conscious of, in part because we do not take pains to keep it separate, or to give felony a legal meaning to replace its social one.

On to another example of frounce. I think that Butler’s objection to my use of the term “failure” to describe robbery and the medieval legal system (an objection other historians have also expressed) is a good example of how

the literary terminology can cause uneasiness for historians. She objects that Chapter 4 is "built on the premise that English criminal justice was a failed system," noting my use of the term "failure" in the chapter. In Chapter 4, I draw a parallel between a robber in *Piers Plowman* who is repeatedly condemned but never punished and the high acquittal rates of robbery. The robber in *Piers Plowman* is the Good Thief, the first person whom Jesus saved, and the poem cannot (scripturally speaking) punish him. But it tries anyway, repeatedly telling the story as though for the first time, describing his guilt, the seriousness of the crime, the punishment he ought to have had. It ends each time lamenting his reward. I call this a gesture of "failure," not to denote a poetic failure, but to describe the gesture itself, in which the poem repeatedly sets a task—punishing the robber—that it knows it cannot complete.

I used the same term to refer to what communities did when they hauled robbers (sometimes the same one) before them again and again, only to acquit almost all of them. I saw this term, "failure," as a way to understand this reality from the perspective of a person who might bring an appeal that they knew would probably not result in a guilty verdict. What motivated this person, and what did they hope to gain by this appeal? This was perhaps just another way of exploring what Thomas Green, Elizabeth Kamali, and Butler herself have already argued: simply putting someone on trial could be punishment in itself, reputational damage was real damage, and juries knew that an acquittal was not always a pronouncement of innocence.[9] But perhaps this is a place where the term seems to add something for a literary scholar that it does not add for the historian. I will say that we in literature have our own versions of this; if you would like to make a literary scholar's eye twitch, just refer to all texts (whether their contents are story-like or not) as "narratives." We all feel a desire to protect the sanctity of our terms, in sanctification's original meaning of "to set apart."

* * *

On the subject of sanctity, I wanted to conclude with a brief thought for other interdisciplinary scholars, those who seek not just to borrow materials from other disciplines but to try to answer their questions as well. It can be easy to feel hard done by the lines of disciplinary sanctity, and of course I have been rebuffed enough times for using the wrong terminology or the wrong methodology—as well as for just being wrong—that I sympathize; this work is fit better for the delusionally confident than for the cautious. But I have come to think that when I run up against a line of sanctity what I have really discovered is an expression of what is at stake in the discipline I have invaded, along with a sense that I have failed to respect it. The joy of interdisciplinary work is not just in crossing bounds, but in understanding them better—in being chastised by Robert Cover's reminder: "It will not do to insist on the violence of strong poetry, and strong poets. Even the violence of weak judges is utterly real—a naive but

immediate reality, in need of no interpretation, no critic to reveal it."[10] Or by Marc Bloch's manifesto: "But history is neither watchmaking nor cabinet construction. It is an endeavor toward better understanding," which requires that the historian represent the past with accuracy, with fidelity, with a servant's heart.[11] I am grateful for the experience of disciplinary sanctity that this project and these generous responses have given me.

---

* California State University, Fullerton.

[1] Frederick Pollock and Frederic Maitland, *The History of English Law Before the Time of Edward I*, vol. 2 (Cambridge University Press, 1st ed. 1895), 465.

[2] G. D. G. Hall, ed. and trans., *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* (Oxford: Clarendon Press, 1994), 246-277.

[3] "Crimen quoque Roberiae sine specialibus intercurrentibus praeteritur." Hall, *Glanvill*, 288.

[4] George Woodbine, ed. and Samuel Thorne, trans., *Bracton on the Laws and Customs of England,* vol. 2 (Cambridge: Belknap Press, 1968), 379.

[5] Cal. Penal Code § 187.

[6] "of herte avysed and cast biforn, with wikked wil to do vengeance, and therto his resoun consenteth; and soothly this is deedly synne." Geoffrey Chaucer, "The Parson's Tale," *The Riverside Chaucer*, eds. Larry Dean Benson and F. N. Robinson (Boston: Houghton Mifflin, 1987), 54.

[7] Helen M. Cam, ed. and trans., *The Eyre of London, 14 Edward II, AD 1321*, vol. 1 (London: Bernard Quaritch, 1968).

[8] John Gower, *Confessio Amantis,* vol. 3, eds. Andrew Galloway and Russell Peck (Kalamazoo: Medieval Institute Publications, 2004).

[9] I am thinking here first of Thomas Green's *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200–1800* (Chicago: University of Chicago Press, 1985), but also Elizabeth Kamali's essay, "The Audacity of Judging Mind in Medieval England," *Journal of Medieval and Early Modern Studies* 53, no. 3 (2023): 493-518.

[10] Robert M. Cover, "Violence and the Word," *Yale Law Journal* 95 (1986): 1609.

[11] Marc Bloch, *The Historian's Craft* (Manchester: Manchester University Press, 1992), 10-11.

Suggested Citation: Elise Wang, “Felony and the Interdisciplinary Frounce,” MCLR+ (crimlrev.net) (June 15, 2025) (https://crimlrev.net/2025/06/15/felony-and-the-interdisciplinary-frounce-elise-wang/).