Neck Verse

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> Because they could not read, thou hast hanged them; when, indeed, only for that cause they have been most worthy to live.
>
> —Shakespeare, *Henry VI, Part 2*, IV.7, ll. 41–46

> consider
> the human riddle of the neck verse.
> Recitation of Psalm 51
> was once considered
> sufficient reason to spare
> a certain class of soul
> from the noose.
>
> —Laura Da', "The Neck Verse"

In anglo-american law, from the Middle Ages through the beginning of the nineteenth century, capital punishment was meted out for offenses that would be classified today as noncapital crimes or misdemeanors—most notably theft. During that period, Anglo-American law relied upon a hierarchy of capital punishments keyed both to the type of crime committed (thus larceny might be punished by hanging but treason by drawing and hanging, or burning) and to the status of the felon (clerical or lay, male or female, Christian or non-Christian).[1] Not surprisingly, medieval criminal law amassed a number of mitigations—immunities, pardons, and reprieves—intended to prevent or defer execution. To take an example from English common law, if the noose broke at the gallows, the criminal was not rehanged unless ordered to hang until dead.[2] To take another example, after 1387, a pregnant woman convicted of a capital crime could not be executed until three months after the baby's birth, by which time she might arrange a pardon.[3] Pleading the belly remains a controversial topic in international

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law, although at present, the only country in which a pregnant woman may be executed is Saint Kitts and Nevis.[4]

Medieval mitigations have been regarded in a variety of ways: as acts of mercy, as discretionary measures, and as travesties of justice. For postmedieval English and American writers, they also represent the past of the law: since at least the eighteenth century, they have formed the backbone of legal histories describing the passage from premodern to modern law and from a less to a more equitable distribution of justice. I argue that the mitigations inherited from the Middle Ages are "medievalisms-at-law," serving both as anachronisms—throwbacks to an ostensibly more brutal, corrupt, or superstitious age—and as touchstones for modernity. When current, they often feel out of time because death is on the line; when obsolete, they abide, both in literature and in law. Seemingly conducive to progressive histories, they threaten to drag modernity back into the Middle Ages. As we will see, moreover, the mitigation can be used not only to obtain mercy for some, but also to prevent others from claiming the same benefit. Indeed, its potential both to save and to exclude is part of what reactivates the mitigation in postmedieval English literature and law.

Finally, if medieval mitigations help generate modern legal histories, they also inspire narratives about legal redemption. From *Piers Plowman* (c. 1370s) to Mark Twain's *A Connecticut Yankee in King Arthur's Court* (1889), the forgotten legal remedy and eleventh-hour pardon are events primed for drama, emotion—and even satire when death is forestalled. These juridical dramas challenge traditional periodizations of legal and literary history by linking medieval and modern in unexpected ways. Indeed, the narrative excitement surrounding these events can be understood as a cathexis with the medieval, a moment in which literary and juridical energies converge in retaining what has been set aside or forgotten.

One such mitigation was the benefit of clergy, an English compromise with canon law. Benefit of clergy allowed a cleric, by virtue of his privileged status, the right to be tried in front of his bishop rather than in front of a secular judge (*privilegium fori*), an idea that has recently resurfaced in discussions of sexual abuse by clergy.[5] In canon law proper, this divinely ordained status applied to both civil and criminal law. However, in medieval England, what was termed the "benefit of clergy" (*privilegium clericale*), the procedure by which clergy were transferred from secular to ecclesiastical court, was permitted to clergy only in criminal cases in which the death penalty was issued and limited only to "clergiable" offenses.[6]

Fourteenth-century English law gave another spin to the benefit of clergy: the reading test, or what came to be known by the later fifteenth century as the "neck verse," the verse that saves one's neck. With the neck verse, a lay man accused of a capital crime had the option to plead his clergy—to prove his status as a clerical person and thus be removed from secular to ecclesiastical jurisdiction—by reading aloud a text set by an ecclesiastical officer (the ordinary). This custom arose by the late thirteenth century, was formalized as statute in 1351/1352 (25 Edw. III stat. 3, cap. 4), extended to women in the seventeenth century, and abolished in 1706 (5 Anne, cap. 6), only to carry on for more than a century in the American colonies.[7]

If successful in proving his clergy, the defendant would be claimed by the ordinary and tried in ecclesiastical court, which did not administer the death penalty. The specific reading was not prescribed by law; many records state simply that the book was handed by the ordinary to the accused and that the accused "read like a clerk" (*legit ut clericus*). Over time, however, the reading came to be identified with the first verse of one of the penitential psalms, Psalm 50/51 ("Miserere mei, Deus" [Have mercy on me, O God]).

In this essay, I propose neck verse as a lens with which to examine simultaneously the collusions between law and literature and the medievalisms of Anglo-American law. Recently, medievalists have shown how law and literature coproduce legal concepts such as witnessing, representation, constitutionalism, and consent.[8] In a similar vein, neck verse shows how legal and literary texts coproduce ideas about personhood, criminality, and justice. As the first half of this essay argues, neck verse characterizes medieval English writers' substantial investments in law. In this literature, neck verse refers at once to a specific procedure in criminal law and, more generally, to the ways that legal remedies make critical distinctions between jurisdictions and persons**.** In the broadest view, the convergences between medieval law and literature might be called neck verse wherever the stakes of reading are higher, dire, and morally fraught.

If neck verse offers an approach to studying premodern law and literature, it also offers a way of reading postmedieval legal and literary histories through their anachronisms. The second half of this essay argues that the history of neck verse describes a history of law that extends beyond the Middle Ages and across the Atlantic to the American colonies where it became a powerful form of medievalism.

A Very Brief History of the Benefit

Neck verse tells the story of how, in later medieval England, clerical privileges were extended to the laity, and how, in the process, a *clericus* was redefined in English law as a legal—that is, an artificial, notional, or moral—person. This clerical person in law emerged from, and was shaped by, competing jurisdictions. The story begins with Archbishop Thomas Becket, who famously defended the liberties of the English church against Henry II, specifically the right of criminous clerks to be tried in ecclesiastical court, the protection of clerical property from seizure by the Crown, and the notion that degradation from holy orders was sufficient punishment for felony. After Becket's murder, and with the exception of nonclergiable crimes, clerical defendants accused of committing a felony could be transferred from lay to ecclesiastical court.[9] The benefit of clergy was beneficial to clergy insofar as ecclesiastical trials were unlikely to result in hanging: at best, the accused underwent compurgation and was cleared; at worst, he was imprisoned indefinitely or degraded (conditions in bishops' prisons were often abysmal, and ecclesiastical officers took pains to avoid security breaches so as not to appear negligent).[10] Twelfth-century European canon lawyers considered clerical immunity a divinely granted privilege, citing Psalm 105:15, "Don't touch my anointed." In England, by contrast, even after the Becket affair, clerical immunity looked more like an exemption than like a privilege.[11]

According to Henri de Bracton, the putative author of the influential thirteenth-century treatise *De Legibus et Consuetudinibus Angliae*, recognizing a cleric was not a problem; the real issue was determining the jurisdiction based on the subject matter. If the matter had to do with penance or marriage, it ought to be addressed in an ecclesiastical forum; if it had to do with property or an act of injury, it ought to be addressed in the secular forum. Some of Bracton's colleagues object that clerics should not be required to answer to any plea before a secular judge. He disagrees: they should be required to do so in all matters that pertain to secular court except in criminal cases in which a layman would be condemned "ad amissionem vitae vel membrorum" [to the loss of life or members].[12] In such situations, a secular judge simply does not have the cognizance (the action of judicial notice) to punish a clerk: "quia iudex secularis degradare non potest non magis quam ad ordines promovere" [Because a secular judge can no more degrade than he can promote to higher orders].[13]

How, then, was a cleric recognized as a cleric? Before the mid-fourteenth century, when the reading test was introduced, tonsure and habit usually sufficed, but even before that time, clothing did not reliably

make the man. In 1293, at the arraignment of Nicholas of Cerne in Bedfordshire, his newly shaven tonsure provoked some skepticism.[14] In 1307, Robert of Godesfeld, though he had the tonsure, was discovered by the ordinary in a lay habit ("in habitu laicali et vestibus stragulatis") and was returned to the marshal.[15]

By the early fourteenth century, however, it appears that some performance of literacy was helping to identify a cleric and save him from the noose. In a handful of cases from the end of Edward I's reign, literacy bolstered prisoners' claims to clergy but did not constitute independent proof.[16] Indeed, for this reason, professions of literacy also had the potential to backfire. In a fascinating case from 1326 entered in the Pleas Before the King's Bench (the appellate court at Westminster), Henry Lamberd was indicted for multiple robberies in Warwickshire.[17] When asked how he wished to clear himself, he responded in English (*anglica lingua*) that he was a clerk. When asked if he knew how to speak Latin or French, Henry retorted that he was English and English born (*anglicus et in Anglia natus*) and therefore it was proper for him to speak in his mother tongue (*lingua sua materna*). According to the record, he subsequently refused to speak in any other language. Presumably, he was not able to do so.

Henry's insistence on speaking English was probably worth recording because it caused confusion. If Latin—the secret handshake of the Church and the official language of literacy—or French—a marker of the elite—would have gone some distance in identifying him as a cleric in ways that evidently were difficult to establish simply by looking at him, speaking English may have had the opposite effect. Indeed, when the ordinary, the archdeacon of Westminster, arrived to claim Henry, he found that he was dressed inappropriately for the part. Not only did Henry lack habit and tonsure, but he was also sporting the tell-tale particolored cloth cut crosswise (*vestibus stragulatis ex transverso talliatis*), which suggested either that he was a layperson or else a cleric traveling incognito.[18]

If Henry's English was an evasive tactic, it shows how talking like a clerk had the potential to confer clerical personality in ways that the reading test was later designed to do. Interestingly, too, Henry prioritized a national habitus over a clerical one (I am English, so I speak English), anticipating later class conflicts, such as the 1381 Revolt or Jack Cade's Rebellion, in which native Englishness competed with social rank in claims to political power. Henry's example, in other words, shows how the benefit of clergy was already functioning as a medievalism-at-law, summoning not a redemptive past but an imminent future in which the laity could become clerics in law.

By the 1340s, the reading test, as a marker of clergy, was already trending in literature in advance of the statute. A dramatic example appears in the *Philobiblon*, a Latin treatise on the love of books written in 1345 by Richard de Bury, Bishop of Durham, a notorious collector.[19] Throughout the *Philobiblon*, de Bury staunchly defends clerical privilege, exemplified for him by physical books, which are treated by the ignorant laity as commodities or worse. In the *Philobiblon,* he lists all the reasons why the clergy ought to value their books, reaching a crescendo with the benefit of clergy: a book can literally save a clerk's neck if he accepts the volume and recites the verse. Here, de Bury describes the plight of a lapsed cleric, trembling before the gibbet, who is suddenly rescued by the material book: "Then straightaway touched with pity we [the books] run to meet the prodigal son and snatch the fugitive slave from the gates of death. The book he has not forgotten is handed to him to be read, and while with lips stammering with fear he reads a few words, the power of the judge is loosed" [Tunc misericordia statim moti occurrimus filio prodigo et a portis mortis servum eripimus fugitivum. Legendus liber porrigitur non ignotus et ad modicam balbutientis praetimore lecturam judicis potestas dissolvitur].[20] In this lurid tale, de Bury equates the *literatus* with the clericus, insisting that literacy can recognize even a cleric unrecognizable to himself. De Bury's personified book is, in essence, an ordinary, a clerical body with the power to save other clerical bodies from harm. The book as body confirms what, in the moment of crisis, feels like an ancient, nearly forgotten privilege; from our perspective, it looks like a last-ditch attempt to distinguish a real cleric from a notional one, that is, the legal trope through which a human being can be unordained and yet, for the purposes of pleading, can be said to be "like a clerk."

If ordained clergy were generally recognized as clergy in context, with the institution of the reading test in 1352, theoretically any Christian man convicted of a felony who could read Latin could be transferred to the bishop and avoid the death penalty. From the mid-fourteenth century, in other words, reading had the potential to extend the privilege of the clericus from a tonsured and ordained man to a legal person.[21] The Gaol Delivery Rolls of the late Middle Ages attest to a significant increase in the number of defendants who claimed the benefit but were recorded with lay professions: tailors, smiths, shipmen, and websters (*BC* 76–85).[22] However, the procedure by which a layman was transformed into a cleric in law was not always smooth. In 1345, William of Colchester initially went unclaimed by the ordinary because he didn't know how to read ("eo quod legere ignorat" is written above the line) and was later claimed because he did (*BC* 72–73). We wonder what demonstration

of literacy might have taken place in the interval. The Gaol Delivery Rolls also document cases of neck verse gone wrong, such as the one involving John Trotter, who in 1366 claimed to be a clerk, was handed a psalter ("quoddam salternum") by the ordinary, seemingly could not read or sound out the text ("legere" or "sillabicare")—referring to the first stages of formal Latin learning—but could repeat some passages by heart. The ordinary next presented Trotter with an upside-down Psalter ("salternum reversum"), which reportedly left the defendant unfazed. It turned out he had been coached by two boys who had been snuck into his cell by the jailor, Robert de Goldington. The ordinary pronounced him a layman and not literate, knowing nothing of letters ("laicus et non literatus nec aliqualiter sciuit literaturam") (*BC* 73).[23]

Trotter's case documents the transition of clericus from an ordained to a legal person and from tonsure and habit to literacy.[24] However, as in the case of Henry who refused to speak in Latin, Trotter had to contort himself to fit a legal definition of clergy and spectacularly failed to do so. Clearly, if reading could save men from the gallows by presenting them as notional clerics, it could also be performed in ways that stressed or finessed the gap between a legal person and a bonafide clerk. It is precisely the life and death distinction between the two that would capture the imagination of later writers exploring the relationships among literacy, personhood, and justice.

Up to One's Neck in Verse

In the famous Pardon scene in the allegorical dream-vision *Piers Plowman*, a plowman named Piers invites a priest to read Truth's Pardon aloud. We learn that there are actually two versions of the text: the one read aloud—consisting of a brief quotation from the Athanasian Creed and severely contractual in tone (those who do good will go to eternal life, those who do bad to eternal fire)—and a longer version offering exemptions for merchants who give charity and lawyers who work *pro bono* (B.7.1–51).[25] This famous episode—and, indeed, the poem as a whole—could be described as neck verse: literature in the shadow of the gallows, structured by moments of crisis and reprieve. Neck verse, as we have seen, involves acts of cognizance and judgment, and it posits literacy as the means to redemption. Neck verse attempts to fix persons in law, but, in doing so, it also introduces the possibility that anyone could be saved at the last minute through a mitigation ancient or forgotten.

By this definition, neck verse, though an English legal procedure, is not only an English phenomenon. Consider, for instance, the popular

thirteenth-century tale of the cleric Théophile, who draws up a contract with the devil only to be saved through the intervention of the Virgin, who destroys the contract.[26] Or take the allegorical dream-vision *Le Pèlerinage de l'ame* (*Pilgrimage of the Soul*) composed by Guillaume de Deguileville (fl. 1330–1355), an inspiration for *Piers Plowman*. In that poem, the dreamer is led postmortem into the divine court, where he worries that his sins will outweigh his good deeds on the scales of justice. The devil, it turns out, has submitted a weighty transcript against him. To the dreamer's relief, Mercy produces a charter of pardon that tips the scales, literally, in his favor.[27] In these episodes, the sinner, finding himself in an unfamiliar jurisdiction, must hope for a legal remedy to save his neck. That remedy might come in a variety of forms, but it must be read in order for it to be claimed.

In texts like *Le Miracle de Théophile* and Deguileville's *Pèlerinages*, neck verse refers not only to the saving charter but also, more broadly, to the saving power of narrative. Might a narrative be labeled neck verse if it lacks the procedure but is driven by the fear of death and the longing for reprieve? Could *Sir Gawain and the Green Knight* (c.1390), for example, be read as neck verse? In this interpretation of the poem, Gawain moves from one jurisdiction to another, from Arthur's court to Bertilak's castle to the chapel of the Green Knight, which abides by its own judicial code: "You cut off my head, and I'll cut off yours." Gawain's reprieve comes about through the judgement of the Green Knight, who acts as both secular and ecclesiastical authority, granting Gawain his penance at the edge of the axe.[28] To be sure, a neck does not neck verse make. Perhaps Gawain's reprieve can be read as neck verse if it is seen as a compromise between spiritual and secular jurisdictions, with the consequent creation of a legal person—a fully repentant knight—who, beyond his wildest hopes, turns out to be a person worthy of redemption.

By this definition, *Piers Plowman* is classic neck verse. The Pardon aside, *Piers Plowman* is studded with legal images, many of them legal documents: Meed's Charter, Truth's Pardon, Peace's Patent, and Moses's Patent. These documents pop up at moments of theological crisis when the poet is trying to offset justice with mercy or where the possibility of being saved seems especially slim. The poet is also invested in procedures that revolve around rarely invoked mitigations. In Passus B.18/C.20, for example, Christ, who has just harrowed hell, delivers a victory speech jam-packed with rationales for saving humankind. Christ is prepared to be generous, explaining that, as divine judge, he is authorized to pardon even condemned criminals, and thus even Christians already consigned to hell might not be judged to death perpetually. An analogy with contemporary legal procedures follows, detailing two unusual customs:

It is noght used on erthe to hangen a feloun
Ofter than ones, though he were a tretour.
And if the kyng of that kyngdom come in that tyme
There the feloun thole sholde deeth or oother juwise,
Lawe wolde he yeve hym lif, and he loked on hym.
And I that am kyng of kynges shal come swich a tyme
Ther doom to the deeth dampneth alle wikked;
And if lawe wole I loke on hem, it lith in my grace
Wheither thei deye or deye noght for that thei diden ille.
Be it any thyng abought, the boldenesse of hir synnes,
I may do mercy thorugh rightwisnesse, and alle my wordes trewe.
(B.XVIII. 380–390)

[It is not customary on earth to hang a felon
More than once, even if he were a traitor.
And if the king of that kingdom should happen to come
Where the felon was supposed to suffer death or other punishment,
According to the law, the king can save his life, if he looks at him.
And I who am the king of kings shall come at a certain time
Where all wicked are damned by the doom of death;
And, legally, if I look upon them, it lies in my grace
To decide whether they die or not, whatever bad deed they did.
Whatever the penalty entails, the boldness of their crimes,
I may confer mercy through righteousness and all my true words.]

The analogy begins by explaining that felons are not hanged twice, referring to the unusual event in medieval law when, if someone gives the slip at the gallows—if the rope breaks or if the condemned man is cut down before gasping his last breath—he is not rehanged, however disappointed the crowd.[29] The unlikelihood of his survival suggested it be treated as a miracle, and medieval kings were known to give pardon to nearly hanged criminals out of the charity that such miracles demand.[30] Christ's speech may be alluding to the well-known case of Walter Wynkeburn, who was hanged at Leicester in 1363 yet revived in the cart and rushed to Leicester Abbey so as to prevent him from being rehanged. Wynkeburn was pardoned by Edward III, who happened to be in Leicester at the time.[31] Even traitors are not hanged twice, Langland adds with cold comfort, reminding his readers that, after 1351, traitors might suffer multiple deaths: drawn, hanged, and disemboweled (25 Edw III stat. 5, cap. 2).

The analogy continues by explaining that, if the king should arrive at the gallows at the moment of punishment and give a sign ("and he loked on hym"), he may release a condemned prisoner. This line appeals to the ancient tradition that a king could pardon anyone about

to be executed, if he happened to be passing by. For example, in 1397, William Walshman was convicted of stealing a silver pendant and sentenced to death. Luckily for him, Richard II happened to be passing by the site of execution and ordered William's release and pardon.[32] Likewise, Christ can pardon even those already sentenced to hell.[33]The king's prerogative survived in cultural memory: at the end of Bertolt Brecht's *The Threepenny Opera* (1928), a darker version of John Gay's *The Beggar's Opera* (1728), the condemned villain is pardoned in honor of the Queen's coronation.

Elsewhere in *Piers Plowman,* with the use of the exemption (the failed hanging) and the rarely used remedy (the royal look), poetry reveals itself to be neck verse. Christian theology is always already indebted to legal language, but the comparison of Christ's law to contemporary English law raises the stakes of the relationship between legal practice and literary verse: Christ through his absolute power may grant mercy even to the worst sinner, but that man has a noose about his neck that may or may not break. Will the king ride by? Will he turn and look? This is literature in the shadows of the gallows and at the limits of the law.

So far, I have suggested some ways that medieval literature and law collude in shaping narratives about near-death escapes and in fashioning a hair-raising theological poetics. This poetics draws from an archive of mitigations, such as the benefit of clergy, designed to reduce the severity of criminal law and temper justice with mercy. Elsewhere in Piers Plowman, the poet also refers directly to the benefit and to the reading test. In one passage, a character named Imaginatif is defending the special status of the clergy—both "the clergy," that is, the people who preach and teach, and "clergie," the book learning that priests transmit to others in order to save them from hell. Imaginatif explains that we need the special learning that defines the clergy and that the clergy transmit to laypeople—it is not enough simply to be ignorant but good:

> Wo was hym marked that wade moot with the lewed!
> Wel may the barn blesse that hym to book sette,
> That lyvynge after lettrure saved hym lif and soule.
> *Dominus pars hereditatis meae* is a merye verset
> That hath take fro Tybourne twenty strong theves,
> Ther lewed theves ben lolled up—loke how thei be saved!
> (B.12.185–190)
>
> [Woe is he who has to consort with the ignorant!
> Blessed is the child who is taught to read,
> Because following the word will save him life and soul.
> "The Lord is my inheritance" is a merry verse,

Which has redeemed from Tyburn twenty strong thieves,
Where illiterate thieves are hung—look how they are saved!]

This passage begins by floating the idea that ignorance spiritually disables the laity. Fortunate are those who are taught to read Latin as children because letters will save them, life and soul. Learning to read means learning how to read the Psalms, which, in turn, teach you what to believe and how to mourn your sins. Imaginatif continues to develop the idea that reading can save one's soul by citing the benefit of clergy and its "murye verset." In doing so, he transfers the spiritual benefits of psalmic literacy to a more contested site of this-worldly legal performance: in his day, thuggish thieves (twenty "lewed" and "strong") sentenced to hang at Tyburn can avoid the noose by reading a verse from the psalm.[34]

The slippage in these lines between spiritual literacy and the reading test should give us pause. Surely the saving power of the psalms is not equivalent to the literacy of murderers and thieves! On the one hand, the poet, who has a habit of setting up risky comparisons, is using criminality in the temporal mode to talk about sin in the spiritual mode. On the other hand, the Psalms are so indispensable as expressions of contrition that their most worldly application, the benefit of clergy, proves their value for all of humanity. To put this idea another way, Langland uses the reading test as a radical test case for literacy's spiritual benefits. Reading can save us in a pinch if we are willing to take the leap and imagine that mercy can be justice and that anyone—cleric or layman, saint or thief—can claim the benefit.

* * *

The last decades of the fourteenth century were heady days for neck verse. For poets such as Langland, the mitigation fueled the salvational imaginary, helping readers negotiate the gaps between real and legal persons, worldly and spiritual jurisdictions, and damnation and redemption. However, the term "neck verse" does not appear until the later fifteenth century, by which time the procedure had aroused a good deal of skepticism about its uses and abuses. Does it unfairly exclude illiterates, or does it unfairly spare the guilty?

The term is first attested in the morality play, *Mankind* (c.1470), in which lowlives Nought, Nowadays, and New Guise tempt a simple everyman named Mankind. Led astray by these rascals, Mankind despairs in his salvation and nearly hangs himself but is rallied by Mercy, to whom he confesses and repents. At one point, Nought, Nowadays, and New

Guise announce that they are going on tour of the countryside to steal from prominent townsmen. New Guise advises them first to learn their "neke verse" so they can avoid a "cheke" (*M* 734–53)[35]; if they should be arrested for stealing, they don't want to hang for it. In their absence, the devil Tutivillus fools Mankind into believing that his confessor, Mercy, has met this exact fate: Mercy has stolen a horse and been hung on the gallows ("But yet I herde seye he brake his neke as he rode in Fraunce;/But I thinke he ridith on the gallows, to lern for to daunce" [*M* 597–98)]). Mankind believes Tutivillus and abandons hope in Mercy: "Whope, who! Mercy hath brokyn his nekekicher, avows,/Or he hangith by the neke hye upp on the gallowse" (*M* 607–8). When the three rascals return from their expedition, one of them, New Guise, informs the audience that he was about be hanged but the noose broke in two.

> I was twichyde by the neke—the game was begunne,
> A grace was, the halter brast asonder: *Ecce signum!*
>
> My body gaff a swinge when I hinge upon the casse.
> Alasse, he will hange such a lighly man and a fers[e]
> For stelinge of an horse—I prey Gode gif him care! (*M* 616–17, 620–22)

By contrast, his pal Mischief, a "convicte" clerk, "coude his neke-vers" (*M* 619). Later, New Guise encourages Mankind to commit suicide and, while demonstrating how to do it, nearly hangs himself with the noose still dangling from his neck.

In a literal sense, *Mankind*, with its aborted hangings, broken ropes, and legal tall tales, is a play about neck verse, rehearsed in verse and brought about within the dramatic frame. It is also a play about forgotten privileges and last minute reprieves. In *Mankind,* the benefit of clergy is unbeneficial for society at large: crime goes unchecked because of loopholes like the reading test, and lowlives bring good folk into turpitude and despair. Nevertheless, the allegory of salvation that is *Mankind* depends exactly on this idea that (almost) anyone in temporal or spiritual court can read and claim the benefit. The benefit of clergy, by differentiating between persons, gets to the heart of the drama of salvation: how might sinners obtain mercy at the very last minute, despite their status, and beyond their deserts? In *Mankind,* as in *Piers Plowman,* legal exemptions have outsized imaginative and cultural power.

Blackstone's Middle Ages

Embedded in literary representations of law are the seeds of legal history. In the case of *Mankind,* that history is a Catholic one: procedures such as neck verse allow crime to flourish, and yet they are essential to the operations of justice and mercy both in this world and in the world to come. In a post-Reformation frame, neck verse has inspired different versions of English legal history. For example, some modern scholars consider the test democratizing because it expanded the category of clerk to the laity (*BC* 91), and in doing so helped transform English law from religious to secular and from "uncontrolled abuses of clerical immunity" into "an institutional exigency specific to the lay courts."[36] Others have followed the nineteenth-century historian F. W. Maitland, who complained that the reading test permitted abuses for too long; after all, "Cruelty in such matters is better than caprice."[37] Still others have criticized the test as a corruption of justice because, even when extended to the laity, it favored some people over others.[38] It was the great eighteenth-century jurist William Blackstone who would grasp just how critical medieval mitigations were to the construction of modern legal history.

From the early Tudor period forward, as eligibility for the benefit of clergy expanded, the kinds of crimes that were considered clergiable were increasingly limited.[39] From the late fifteenth century, for example, a layman convicted of a capital crime who could pass the reading test and who in theory could be ordained as a priest—that is, a physically able Christian man— might claim the benefit but only once.[40] During the next two centuries, the benefit was hemmed in by restrictions—for example, in cases of homicide, theft of goods worth over forty shillings, petty treason or the murder of a superior by a subordinate (Benefit of Clergy Act of 1496, 12 Hen. 7, cap. 7), and rape and burglary (Benefit of Clergy Act of 1575, 18 Eliz I, cap. 7); significantly, this act also denied purgation to clerks convict, who could no longer be handed over to an ordinary. Laymen who claimed the benefit were branded on the left thumb with an M for murder or a T for theft and other crimes, rather than being handed over to the ordinary; this would be the fate of playwright Ben Jonson, who was tried for manslaughter.[41] In the seventeenth century, the benefit of clergy was extended to women (3 Will. & Mar., cap. 9), and in 1706, under Queen Anne, it was extended to the illiterate when the reading test was abolished (5 Anne, cap. 6). Together, these acts extended the benefit of clergy to nearly the whole population by fully fictionalizing the notion of a cleric. If, in the fourteenth century, the reading test's extension to the laity had partially fictionalized clergy,

the elimination of the reading text completed the fiction: in the legal realm, you no longer had to be able to read in order to be "like a cleric."

By the time that Blackstone published his landmark *Commentaries on the Laws of England* (1765), the reading test had been abolished, but the benefit of clergy was still in play—much to Blackstone's displeasure. In Blackstone's England, almost anyone convicted of a capital offense could claim the benefit of clergy: ordained clerics, members of the peerage, and common people—male or female—who could claim a one-time reprieve from death, receiving as punishment burning in the hand, imprisonment up to a year, or in the case of petty larceny, deportation to the colonies (Transportation Act of 1717, 4 Geo. I, cap. 11).[42]

For Blackstone, the privilegium clericale tells the nation's legal history in miniature, but although this history augers progress, it is a halting progress hindered by anachronisms. Its origins lie in the papal abuse of secular powers, through which the Church took advantage of the goodness of princes—a theme that would be sounded by subsequent legal historians. For Blackstone, the survival of the benefit of clergy in his day is out of step with the Protestant Reformation: "It became high time . . . to abolish so vain and impious a ceremony."[43] Happily, he declares, the English legislature has "converted, by gradual mutations, what was at first an unreasonable exemption of particular popish ecclesiastics, into a merciful mitigation of the general law, with respect to capital punishment" (*C* 370). The real breakthrough, according to Blackstone, was the abolishment of the reading test under Queen Anne, which forced the law to shed its Catholic origins. For him the reading test neither leveled the playing field nor empowered the secular arm. It was rather a pervasive legal abuse that extended both the life of papal influence in England and ecclesiastical jurisdiction in common law matters.

In a characteristic understatement, Blackstone calls the benefit of clergy an "intervening circumstance" of "no small curiosity" in the history of the nation (*C* 2:365). And yet, he admits, despite the elimination of the reading test, this medieval procedure continues to haunt the law and has proven difficult to banish: "In times of ignorance and superstition that monster in true policy may for a while subsist" (*C* 2:371). Theodore Plucknett, in his *A Concise History of the Common Law*, would pick up this thread from Blackstone: "Benefit of clergy was abolished in 1827, but its ghost continued to haunt the law until less than a hundred years ago."[44] For Plucknett and Blackstone, this mitigation is the bane of a modernizing jurisprudence.

Blackstone uses the benefit of clergy to write a concise history of English common law, one in which legal reform can hardly keep pace with modernity and in which medieval relics threaten to drag the nation

back into its popish past. In writing this history, he asks some familiar questions: Does literacy enable or impede the distribution of justice? Are mitigations ever just, or do they perpetuate injustice? And, in the final analysis, can law ever shed its medievalisms and become fully modern?

A related question, somewhat buried in Blackstone, raises the problem of non-Christians, which, as we shall see below, anticipates the transformation of the benefit of clergy in early American law.[45] Reformation-era scholars were interested in medieval procedures, such as the benefit of clergy, that excluded "legally impossible" persons, such as Jews, who were expelled from England in 1290. These extreme cases and "what-if" narratives were useful ways of teaching subjects that had little practical application in postmedieval law. Questions such as, "What would happen if a Jew did x or y?" were particularly interesting to Reformation scholars because Jews, along with other non-Christians, such as Turks, pagans, foreigners, and people with physical disabilities (e.g., blindness), represented the "outer orbit of the English law of persons."[46] As Bush argues, the shape of early modern legal discourse can be explained in part by "the continuing importance of inherited and outdated legal categories."[47] In seventeenth-century mercantile law, for instance, medieval Jews functioned as surrogates regarding issues of land seizure and foreign-trade monopolies. Even when Dutch Sephardic Jews began to be readmitted to England in the 1650s, followed two centuries later by an influx of Jewish refugees from Eastern Europe, the Jewish community would continue to be burdened with "archaic, dysfunctional disabilities" until the end of the nineteenth century.[48] This was true for several reasons, including the fact that pre-Expulsion Statute of the Jewry (*Statutum de Judaismo*, 1275)—which legislated Jewish oath-taking, the wearing of distinguishing badges, and Jewish occupations and employment, and which proved so useful to legal scholars during the Jews' absence—had never been repealed.[49]

It is not surprising, then, that Blackstone finds Jews difficult to assimilate to his narrative about the benefit of clergy, which does double duty as a progressive history of English law. Some of his fellow jurists maintain that, before the abolishment of the reading test in 1706, Jews could not claim the benefit: a clerical person in law had to be able to read Psalm 50/51, and, presumably, Jews could not or would not read the Christian version of the text. Since then, Jews may claim the benefit because they don't have to read the psalm. Blackstone disagrees with his fellow jurists: in practice, he says, Jews are still incapacitated when it comes to the benefit of clergy, but he declines to explain why (*C* 2:371–72).

Perhaps the reason Blackstone has trouble assimilating Jews is because Jews are, like the benefit of clergy, an anachronism with respect to Eng-

lish common law. Once present, then absent, they have re-established a community in England during a period in which jurists were taking stock of English law. In medieval England, their presence as a persecuted minority helped shape a body of law that distinguished between persons by redefining what it meant to be a Christian and therefore a fully moral human being. Similarly, the benefit of clergy helped shape a body of law that relied on ecclesiastical notions of what it meant to be a fully empowered Christian. In the later Middle Ages, the benefit of clergy was extended to laypeople who could demonstrate literacy but also who could, in theory, be ordained. Their legal fitness to claim the benefit depended on their eligibility for the priesthood—as physically able and adult Christian men—even as the notion of a clericus was well on its way to becoming a legal person and a royal exemption rather than a clerical privilege. (Bizarrely, a layman's plea for clergy could be contested if the pleader was proven to be a bigamist, according to the ecclesiastical definition of bigamy as serial marriage or marriage to a widow, which, in canon law, disqualified clerics from receiving full tonsure.)[50] Yet, even after the abolishment of the neck verse, English law continued to rely on a Christian idea of personhood with regards to many legal matters, such as witnessing, oath-taking, property transfer, and blasphemy. It is one thing to remove the benefit from the clergy and quite another to remove the clergy from the benefit.

Generally speaking, Blackstone has little to say about Jews, but he does mention the Jewish Naturalization Act, which had been passed as an Act of Parliament in 1753 (26 Geo. II, cap. 26). The act was repealed when it unleashed a storm of antisemitism. Blackstone skirts the issue, concluding the chapter by remarking of the repealed "Jew-bill," "Therefore peace be now to its *manes* [ghosts]" (*C* 1:237). One suspects Blackstone of conflating legislation about Jews with the English Jewish community, both of which haunt a nation attempting to modernize.

American "Benefits"

If we pronounce the reading test dead in 1706 and the benefit of clergy dead in 1827 (7 & 8 Geo IV cap. 28), we will seem to have closed an ancient chapter in legal history. For Blackstone, the death of this monstrous anachronism could not come soon enough. For him, deportation to the colonies heralds the end of the Catholic Middle Ages and the start of a great new chapter in criminal law. Blackstone hoped that the benefit of clergy would soon go the way of its reading test, and yet it remained, along with the reading test, "a *fundamental* feature of colonial

criminal justice in the Chesapeake colonies" and elsewhere long after its abolishment in England.[51] Recorded as early as 1628 in Virginia and 1636 in Maryland, the benefit of clergy would later feature prominently in the aftermath of the Boston Massacre of 1770.[52] In that incident, two British soldiers, Kilroy and Montgomery, were convicted of firing directly into the crowd. Defended by future president John Adams, the soldiers successfully claimed the benefit. Notably, the benefit of clergy was one of several sections of the draft Constitution rejected by Benjamin Franklin; it is strange to think that if it had been enshrined in the final document, it would shape American juridical thought today.[53]

The American benefit of clergy extended the life of the English Middle Ages and, broadly speaking, performed similar functions in eighteenth- and nineteenth-century America as it did in premodern England. In the colonies, Blackstone's "monster in true policy" became a powerful anachronism that US legal historians would associate with medieval England. As we will see, the benefit of clergy in colonial law was at once an innovation and a throwback to the system so decried by Blackstone. Although British colonists did not establish ecclesiastical courts in North America, some of the legal questions that attended the benefit of clergy concerning jurisdiction (ecclesiastical vs. secular) and persons (clerical vs. lay, male vs. female, Christian vs. non-Christian) took on peculiar new forms in the colonies.[54] Ultimately, US legislators seized on the benefit of clergy as a way of distinguishing slave and free law codes, as well as enslaved, indigenous, free white, and free Black persons.

One reason that the benefit of clergy survived longer in the US than it did in England was the independence of state legislatures. For example, South Carolina adopted the benefit of clergy for women in 1712, but North Carolina denied women the benefit until 1806–a full century after it was extended to English women and just two decades after England abolished it altogether.[55] Fourteen years after the neck verse was repealed in England, it remained "an essential element of the clerical privilege" in New York; between 1750 and 1776, it was applied seventy-three times in that state.[56] Furthermore, although the abolishment of the benefit of clergy for white people in several states, including Pennsylvania and Virginia, preceded its abolishment in England in 1827, when workhouses and prisons began to be substituted for existing penalties, Southern state legislatures continued to use it to discriminate against nonwhite and enslaved persons in law, for reasons discussed more fully below.

These emendations to, and holdovers from, British law accomodated and justified a slaveholding society. Colonial lawmakers considered enslaved people to be valuable property; hence in 1732 the Virginia House of Representatives passed a law declaring it a felony without benefit of

clergy for anyone to help an enslaved person escape.[57] In colonial Georgia, killing an enslaved person in the heat of passion or as a result of undue correction was considered a clergiable first-time crime for whites so long as monetary satisfaction was made to the owner.[58] But enslaved persons in colonial America were also, eventually, mostly Christian. The benefit of clergy, as it was redesigned for slave law, acknowledged enslaved persons as Christians under the law without conceding to them the legal benefits that Christianity might entail. In this way, the very loophole that gave medieval laymen access to clerical privilege actually prevented enslaved persons in America from claiming the privileges of those considered to be fully moral human beings: white, Christian men.

A landmark case concerned an enslaved woman, Mary Aggie, who in 1728 sued for her freedom in Virginia on the basis that she was a Christian. Her suit was rejected; as early as 1667, the state of Virginia had determined that baptism was no freedom. Shortly afterwards, in 1730, her owner accused her of stealing bedsheets over forty shillings, a capital crime for which she would have likely hung. Aggie claimed the benefit of clergy by proving her Christianity through an interrogation of her faith.[59] As the case of Aggie shows, the benefit of clergy gave colonial state lawmakers an opportunity to redefine Christian justice for those they wanted to keep in bondage and safeguard as property. In doing so, they activated the potential of the benefit simultaneously to extend mercy and to withhold it, and to blur and sharpen differences in status.

Specifically, in 1732, in the wake of Aggie's trial, the Virginia General Assembly passed an act allowing enslaved persons, women, and Native Americans to claim benefit of clergy for first-time felonies except where prohibited by English statute, as in cases of insurrection or murder.[60] These persons were not required to undergo the reading test administered to free white men. In Virginia law, however, enslaved people who claimed the benefit were subjected to thirty-nine lashes "well laid on" in addition to the branding of the thumb.[61] Significantly, too, the very same act took away the right of testimony from nonwhite Christians, citing their "base and corrupt natures."[62] What Fagundes observes more generally about legal personality holds true for the American clericus: that it "reflects and communicates who counts as a legal person, and to some extent, as a human being."[63] In sum, if the benefit appeared to be a concession to enslaved people, it was actually bundled with other legislation intended to define what it meant to be Christian in a racist, slaveholding society.[64]

As Anthony Parent has argued, the instigator of the Virginia legislation, Governor William Gooch, who had followed Aggie's earlier trial and who had brutally suppressed the Chesapeake Rebellion in 1730,

realized that in order to avoid insurrection, "the oppressed class had to be persuaded to acquiesce in the constituted power," and which could be done by granting legal concessions and benefits.[65] At the same time, Gooch was concerned to maintain the Christian character of Virginia law. Looking at these concessions and benefits from a different angle, however, we can see that they could be used strategically to make distinctions between religion and race. The benefit of clergy and witness testimony were used together to restrict the rights Christianity conferred and to whom within an American legal context**.** In medieval England, the legal person of clericus designated a notional cleric whose privileges could be enjoyed in certain contexts by certain laypeople: those who were Christian, literate, and male. Notably, in American slave law, clericus came to designate not a notional cleric but a notional Christian, an identity that afforded the claimant a provisional and limited humanity.

As mentioned above, although the benefit of clergy was abolished in federal law in 1790, it carried on fitfully in state slave law. Each state had a slightly different timetable: although the benefit of clergy was abolished for free persons in Virginia as early as 1796, it remained legal as applied to enslaved persons until 1848.[66] In North Carolina, enslaved persons were not admitted to the benefit of clergy until 1816 and did not lose the privilege until 1854.[67] Abolished in Kentucky for free persons in 1789, the benefit of clergy remained on the books for enslaved persons until 1847.[68] Significantly, the 1796 Virginia law, while doing away with the benefit of clergy for free persons, also abolished the death penalty for free persons for all crimes, with the exception of murder in the first degree.[69] By contrast, enslaved persons retained the benefit of clergy but also the death penalty for nonclergiable crimes, such as manslaughter.

Once again, then, we see that the loss of the benefit of clergy for white people was, in the big picture, a gain for them at the expense of the enslaved. The "benefit of clergy" may sound like a concession to the downtrodden or a privilege for the elite, but in fact its retention in American slave law recast it as an "idiom of servility."[70] If the benefit offered the American clericus a temporary reprieve from death, it also emphasized the contingent and provisional status of the enslaved.

Reportedly, the last case that took place in Kentucky in 1846 involved an enslaved man, Bird, who was convicted by two juries of raping a white woman, a capital crime for enslaved persons in all slaveholding states.[71] The judge, Richard Buckner, allowed the defendant to claim the benefit of clergy as a discretionary measure; perhaps, as Marion Lucas suggests, the judge thought that there was not enough evidence to prove Bird's guilt.[72] Although benefit of clergy had been removed back in 1789 (2 Litt. Laws Ky), section 14 of that act excluded enslaved persons from the

new provisions, probably with the intention of both protecting property and keeping the option of hanging slaves for unclergiable crimes such as rape.[73] According to Lewis McQuown, writing dramatically about this case in 1882, the crowd went mad with rage, "and threats were openly made against the life of the judge."[74] But the judge, says McQuown, was determined to maintain his independence in the face of opposition, like "one of the old Judges of England" resisting the incursions of the Crown.[75] For McQuown, who believes that Bird deserved to die, there is still something to be admired in judicial independence, an ancient quality. The prisoner was consequently saved from death but received the brand and flogging administered to first-time nonwhite offenders. In this case, the benefit of clergy generates courtroom drama because it is an anachronistic mitigation, at once a loophole in the American criminal code and a holdover from the medieval past. Indeed, the drama in McQuown's account turns on the mitigation's anachronistic character: even though it is on the books, it feels as if it is operating in a different time. This anachronism lingers in slave law, not simply because it has the potential to save lives, but also because it does the work of distinguishing enslaved from free.

Old laws never die, nor do they entirely fade away; instead, they go on to create new histories of law and nation. From the mid-nineteenth through the mid-twentieth century, dozens of potted histories of the benefit of clergy sprouted up in law journals and in general interest publications with a progressive bent. Although many of these focus on historical injustices, they tend to turn a blind eye to more recent American ones. In 1888, for example, Amasa Eaton, a Rhode Island attorney, retold the history of the benefit in *The Woman's Journal*. For Eaton, the history of English law is a history of injustice toward women: just as feudal law prevented women from inheriting property, so, too, clerical privilege barred women from claiming the benefit. Even when the privilege was extended to laymen under the Tudors, women were shamefully excluded. Eaton leaves his readers with this final shocking point: the whipping of women who claimed benefit of clergy remained on the English statute books until 1820. "This," writes Eaton, "was our ancestors' idea of a mitigated form of punishment for light offenses."[76]

From the perspective of gender, this history may seem progressive, but, notably, Eaton, advocating for Northern white women, entirely skips over the benefit of clergy in America. As early as 1851, however, a history of the benefit published in *The Prisoner's Friend* (a journal dedicated to improving prison conditions and abolishing the death penalty) admitted that American legal practice was continuing to make the kinds of distinctions between persons and jurisdictions that English law had relegated to

the past. Specifically, in Virginia, Kentucky, North Carolina, and South Carolina, gendered distinctions are being made between clergiable men, who are branded, and clergiable women, who are whipped, placed in stocks, or imprisoned for a year. If women are considered less clergiable than men, "It is not to be wondered at that '*benefit of clergy*' should still be retained in some of the slaveholding states when we remember that only one in one hundred and fifty five can read!"[77] For the author—likely the editor, the Boston minister Charles Spear—the barbarism of the past, under the sign of the Middle Ages, survives in backward Southern states that maintain slavery and retain medieval laws.

Eaton and Spear show how medievalisms-at-law obstruct social justice at the same time that they generate progressive legal histories. Yet neither acknowledges that the clericus, designed to mitigate the severity of criminal law, has, in their own time, perpetuated racial discrimination by distinguishing between persons across jurisdictions**.** In 1923, however, William K. Boyd, a legal historian, published in the *Journal of Negro History* a short history of the benefit of clergy beginning with medieval England and ending with nineteenth-century American slave law, where "the ghost of the benefit of clergy would not down."[78] As Boyd notes, the benefit always benefits someone at the expense of others; in this case, says Boyd, though applied to enslaved persons, it actually benefitted enslavers who, with the collusion of juries, aimed to protect their property from destruction through capital punishment or disuse in prison. Boyd, conjuring up Blackstone's ghost, realizes that the anachronistic mitigation not only helped to shape Anglo-American law, but also continued to haunt it.

Sensational cases like the 1846 Kentucky rape case captured the imaginations of turn-of-the-twentieth-century literary writers as well as those of legal historians. One story, "Stringtown on the Pike: A Tale of Northernmost Kentucky," published in 1900 and based loosely on the Kentucky case, was written by the popular author John Uri Lloyd. In this story, a free Black man named Old Cupid is wrongly accused of stealing and is about to be sentenced to hang. His lawyer ingeniously recalls the benefit of clergy for first-time offenders, and the judge, believing in Cupid's innocence, permits him to claim the benefit. However, the judge also requires the defendant to prove his clergy through a strange reading test. "The aged negro opened the book and read (or repeated) word for word the Constitution of the United States and . . . handed the book back to his champion"[79] The courtroom swoons, a tiny girl wails, and a Shylockian Jew named Moses threatens Old Cupid with the burning iron. Yet, in the end, the defendant's dignity moves the judge to waive even the iron.

In this story, the details of the original case have been altered to provoke sympathy for the accused. The crime has been downgraded from rape of a white woman to petty theft, and the status of the defendant has been upgraded from an enslaved to a free man, who is, additionally, elderly, poor, and affectionally regarded. The stakes feel higher as a result: will innocence prevail? The benefit of clergy, remembered but obsolete in 1900, saves the day; a blast from the antebellum past, it proves redemptive within the fiction of the story. But this anachronism contains a further anachronism, one that ramps up the legal drama: the reading test. In this story about old-time Kentucky, it is neck verse that proves a Black man to be authentically American through an American revision of a medieval legal custom. The legal fiction is not one of clergy but of citizenship. It is invoked by reading (or repeating) not a penitential psalm but another sacred text, the US Constitution, which, in 1868, had acquired its fourteenth amendment establishing the citizenship of all persons born or naturalized in the US. This medievalism-at-law identifies persons in law, and it does so, remarkably, by conjuring up a defunct literacy test. If reading once identified legal Christians, it now claims to identify American citizens. Significantly, too, by resurrecting the neck verse, this story casts back into the antebellum years the literacy tests of Jim Crow era. These tests—officially banned by the Voting Rights Act of 1965—were intended to deter prospective Black (as well as Latinx and Native American) voters by requiring them to "prove" their citizenship, either by taking a civics test—or by reciting from memory either the Constitution or the Declaration of Independence.

Of Benefits and Bicycles

This essay has shown, among other things, how US jurisprudence is tangled up with medieval law. Of course, many procedures and protections, such as trial by jury and freedom from unlawful searches, descend from the English Middle Ages and are enshrined in the Constitution. But antiquated or obsolete laws also continue to have traction by affording loopholes, by distinguishing between persons, and by keeping multiple jurisdictions in play. These modern entanglements with the medieval are especially visible at moments of crisis, and it is at such moments that literary and legal histories often collide.[80]

Such moments, which showcase the legal drama—the juridical close-shave—also have a way of pointing readers from legal procedure to literature writ large. For example, if neck verse refers to the legal performance of literacy, it also draws our attention to the mitigating power of

narrative, as we saw with the play *Mankind*, in which the near hanging of thieves who recall their neck verse reminds us that Christian redemption is a kind of a dramatic performance, or with "Stringtown on the Pike," in which the Bible is replaced with the Constitution.

The drama of the benefit of clergy further alerts us to the ways in which literature archives and periodizes the law, making sense not only of the law's past but also of its troubling anachronisms. To take an example, Edward White, writing in 1912 about the 1846 Kentucky case in *American Law Review*, declares himself, like Blackstone two centuries earlier, ready to close the chapter on the benefit of clergy, which "bred much crime and operated, for centuries, as a great impediment in the impartial enforcement of the criminal laws of England and the United States."[81] Whereas in the olden days, Anglo-American law privileged the elite, today's law aims for distributive justice. This is not to cast aspersions on the common law, White says, but rather to point out that, like early English literature, early English law was saddled with the superstitions of the culture at large. "Because of such an unjust practice [benefit of clergy] the common law is not to be condemned any more than is the literature of the same period of English history, because of the introduction of ghosts, witchcraft and enchantment into the literary masterpieces of the past centuries, for these beliefs were prevalent at the time."[82]

Here the anachronistic mitigation, the benefit of clergy, is used to fashion a legal and literary past characterized by injustice and fantasy. Happily, continues White, the very backwardness of medieval mitigations makes one appreciate how far the law has come. "Nothing is calculated to encourage more respect for the modern procedure of US and English courts than reading the history of some of the unequal and unjust privileges and exemptions which obtained in the administration of the English law until a comparatively recent date."[83] Here, White aims to exorcize the ghosts of the law and send them packing to the Middle Ages, while admitting that they have been hard to dislodge, by which he may be referring to their survival in the US South.

Indeed, by comparing legal mitigations to literary masterpieces, he reveals just how difficult it is to jettison old customs, especially when they are preserved in literary texts. It is telling, perhaps, that, when discussing the 1846 case, White repeats the spurious detail about the Constitution, which he must have lifted from the fictional "Stringtown on the Pike." Such mitigations persist in literature and in law, not simply because they reflect modern attitudes, but also because they can adapt to modern needs. Indispensable to constructing literary and legal histories, mitigations guarantee the future all the possibilities of the anachronism.

White's analogy between literary and legal superstitions raises questions about the complicity of law and literature in the transmission of the anachronism and about the synchrony of literary and legal histories. These questions are similarly entertained by another early twentieth-century legal historian, Newman Baker, who pauses his account of the "Benefit of Clergy" (1927) at the Renaissance, where he inserts a miniature history of English texts that cite the neck verse.[84] This medievalizing list consists of popular undated ballads, followed by Christopher Marlowe's *Jew of Malta* (1590), Shakespeare's *King Lear* (1606), Samuel Butler's mock-heroic epic "Hudibras" (1663), Sir Walter Scott's "Lay of the Last Minstrel" (1805), Donne's *Satires* (1593–97), and Inigo Jones's architecture (d.1652). It seems that literature, by preserving evidence of ancient law, supplies the missing details of legal history while anchoring them to an ancient tradition. But Baker's literary history also hints at the ways that literature itself might be a kind of neck verse, an anachronistic mitigation simultaneously out of sync with and inextricable from the law. Literature dogs the law, reminding readers not only of a juridical past, but also of the potential for that past to resurface in the present, providing an escape hatch from death.

The notion that literature itself is the medieval mitigation is on full display in Twain's *A Connecticut Yankee in King Arthur's Court*.[85] In the novel, an enterprising Hartford industrialist travels back in time to sixth-/fifteenth-century England, where he dazzles the court with his technical know-how. Of course, Twain adored early English literature: entire passages of *Connecticut Yankee* are lifted from Thomas Malory's *Le Morte D'Arthur* (c.1469); he also wrote the *The Prince and the Pauper* (1881), which takes place in Tudor England, and *The Personal Recollections of Joan of Arc* (1896), which he considered his best work.[86] But he was concerned that Americans had not faced up to their cultural legacies, whether the legacy of feudalism or the legacy of slavery, which, for Twain, were interconnected.

Like all good time-traveling novels, *Connecticut Yankee* revels in anachronisms, which are largely deployed for humorous effect. However, it also uses anachronisms—its medievalisms-at-law—to call attention to the evils of bondage. The time-traveler (the Boss) persuades King Arthur that they should disguise themselves as peasants in order to witness first-hand the injustices of Church and feudal law. In this guise, they observe with horror all sorts of cruel laws that benefit the ruling classes: *droit du seigneur* (lord's right), the execution of a woman who stole a loaf of bread, the torture of a poor man who won't confess (because confession would mean the confiscation of his family's meager holdings), the demise of a villein family interdicted by the Church—the list goes

on. These laws come from different regions and periods: the droit du seigneur, though a common plot point in literature, may not, in fact, have been a feudal custom in the medieval West, although it did have a notorious afterlife in US slavery.[87]

Eventually the King Arthur and the Boss are kidnapped and sold into slavery, march through England in a chain gang, revolt against their captor, and are about to be hanged in front of a large crowd. The King, stiff with dignity, assumes his status will save him from the gibbet, but the crowd merely jeers. Just in the nick of time, Lancelot and his men arrive on a fleet of bicycles to save both Boss and King. In a reversal of the medieval procedure, the saving anachronism arrives from the present to redeem the past. At the center of Twain's satire is the conviction that human beings are equal—and that slavery is wrong—but so is any sort of special privilege. Why should this king be spared? And yet Twain is unwilling to go down the path of regicide, not only because Arthur is a beloved literary figure, but also because he stands for medieval literature at the limits of the law, the saving power of the neck verse.

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NOTES

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1 Trevor Dean, "Punishment," in *Crime in Medieval Europe: 1200–1550* (London: Routledge, 2014), 118–43.

2 Robert Bartlett, *The Hanged Man: A Story of Miracle, Memory, and Colonialism in the Middle Ages* (Princeton, NJ: Princeton Univ. Press, 2004), 42ff.

3 Sara M. Butler, "More than Mothers: Juries of Matrons and Pleas of the Belly in Medieval England," *Law and History Review* 37, no.2 (2019): 353–96; and "Pleading the Belly: A Sparing Plea? Pregnant Convicts and the Courts in Medieval England," in *Crossing Borders: Boundaries and Margins in Medieval and Early Modern Britain*, ed. Sara M. Butler and K. J. Kesseling (Leiden: Brill, 2018), 131–52. See, for example, the 1388 case in which Elizabeth Walton was found guilty of conspiring with servants to kill her husband. A co-conspirator, Robert Blake, was handed over to the ordinary and presumably, avoided the death penalty because of his clerical status. John Ball, a servant, was sentenced to be drawn and hanged. Matrons confirmed that Elizabeth was pregnant, so her sentence was stayed until the next gaol delivery (after which she was burned at the stake). G. O. Sayles, ed., *Select Cases in the Court of King's Bench under Richard II, Henry IV and Henry V, Volume VII* (Selden Society 88 for 1971), 54–55; Coram Rege Roll, no. 508 (Easter, 1388), m.4 (Crown).

4 Amy Moreland and David Watson, "Women's Representation and Capital Punishment," *Journal of Women, Politics & Policy* 37, no.4 (2016): 495.

5 Kieran Tapsell, "Canon Law and Child Sexual Abuse Through the Ages," *Journal of the Australian Catholic Historical Society* 36 (2015): 113–36.

6 Richard H. Helmholz, *The Oxford History of the Laws of England*, vol.1, *The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford: Oxford Univ. Press, 2004), 511–14.

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28 Citations of *Sir Gawain and the Green Knight* are to Ronald Waldron et al., *The Complete Works of the Pearl Poet* (Berkeley: Univ. of California Press, 1993), lines 2390–94.

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32 Sayles, ed., *Select Cases in the Court of the King's Bench Under Edward II, Vol III* (Selden Society, vol. 88 for 1971), 89–90; Coram Rege Roll, no. 543 (Hilary, 1397), m.58d.

33 Royal discretionary powers were understood to moderate the severity of the law, upholding the king's promise to balance justice with mercy. See Lacey, *Royal Pardon*, 70–77; and Thomas McSweeney, "The King's Courts and the King's Soul: Pardoning as Almsgiving in Medieval England," *Reading Medieval Studies* XL (2014): 159–75.

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36 Connie Kendall, "Nooses and Neck Verses: The Life and Death Consequences of Literacy Testing," in *Rhetorical Agendas: Political, Ethical, Spiritual*, ed. Patricia Bizzell (Mahwah, NJ: Lawrence Erlbaum, 2006), 100.

37 Frederic William Maitland, "Outlines of English Legal History," in *The Collected Papers of Frederic William Maitland*, ed. H. A. L. Fisher (Cambridge: Cambridge Univ. Press, 1911), 2:465.

38 Penny Crofts, *Wickedness and Crime: Laws of Homicide and Malice* (London: Routledge, 2013), 170–71. This last objection was also voiced by early English writers. One fourteenth-century sermon writer, for example, compares choosing different procedural paths (trial by jury, benefit of clergy, standing mute, appeal) to choosing different approaches to

religious confession. The sermon writer rules out pleading benefit of clergy "because no one should receive other than what is deserved, thereby having a privilege above others" (qtd. in Elizabeth Papp Kamali, *Felony and the Guilty Mind in Medieval England* [Cambridge: Cambridge Univ. Press, 2019], 309).

39 Skousen, "Have Mercy upon Me O Lord"; Green, *Verdict*, 117–18, 135–39; and Crofts, *Wickedness and Crime*, 171.

40 For a discussion of disabilities pertaining to clerical privilege, see Sir John Baker, "Privileges and Immunities," in *The Oxford History of the Laws of England*, vol. 6, *1483–1558* (Oxford: Oxford Univ. Press, 2003), 531–52, esp. 532–33.

41 The development of the benefit of clergy in the early modern period helped to define the category of manslaughter. Previously, the gap between misdemeanor and felony was too large. By making the first felonious offence clergiable (for clergiable crimes) and the second offence non-clergiable (for clergiable crimes), the law partially closed that gap. See Skousen, "Have Mercy upon Me O Lord," 88–131; Green, *Verdict*, 118ff; Bellamy, "Benefit of Clergy in the Fifteenth and Sixteenth Centuries," in *Criminal Law and Society in Late Medieval and Tudor England* (Gloucester: Alan Sutton, 1984), 115–72; and Theodore F. T. Plucknett, *A Concise History of the Common Law*, 5th ed. (The Lawbook Exchange, Ltd., 2001), 439–41.

42 David Meredith and Deborah Oxley, "Condemned to the Colonies: Penal Transportation as the Solution to Britain's Law and Order Problem," *Leidschrift: Organisatie en regulering van migratie in de nieuwe tijd* 22 (2007): 19–39.

43 Sir William Blackstone, *Commentaries on the Laws of England; in Four Books*, ed. Thomas M. Cooley (Chicago: Callaghan and Company, 1872), 2:368 (hereafter cited as *C*).

44 Plucknett, *A Concise History*, 441.

45 On the formal underdevelopment of English slave law and the usefulness of that underdevelopment for colonial American enslavers and legislators, see Jonathan Bush, "Free to Enslave: The Foundations of Colonial American Slave Law," *Yale Journal of Law & the Humanities* 5, no. 2 (1993): 417–70.

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47 Bush, "'You're Gonna Miss Me,'" 1223.

48 Bush, "'You're Gonna Miss Me,'" 1248ff, 1226.

49 Bush, "'You're Gonna Miss Me,'" 1226; Paul Brand, "Jews and the Law in England, 1275–90," *The English Historical Review* 115, no. 464 (2000): 1138–58.

50 This was an English adoption of the 1274 Council of Lyon decision of *Omni priviligio clericali nudati* (*Statutum de Bigamis*, 1276, 4 Edw. I).

51 Jeffrey K Sawyer, "'Benefit of Clergy' in Maryland and Virginia," *The American Journal of Legal History* 34, no.1 (1990): 50.

52 Bradley Chapin, *Criminal Justice in Colonial America, 1606–1660* (Athens: Univ. of Georgia Press, 2010), 48–49.

53 See, for example, Stephen A. Smith, "Prelude to Article VI: The Ordeal of Religious Test Oaths in Pennsylvania," *Free Speech Yearbook* 30, no. 1 (1992): 1–25.

54 Lloyd Bonfeld, "Canon Law in Colonial America: Some Evidence of the Transmission of English Ecclesiastical Court Law and Practice to the American Colonies," in *Canon Law in Protestant Lands*, ed. R. H. Helmholz (Berlin: Duncker & Humblot, 1992), 253–71.

55 Julia Cherry Spruill, *Women's Life and Work in the Southern Colonies* (New York: W. W. Norton, 1998), 336–37; Henry Potter et al., *Laws of the State of North-Carolina* (Raleigh, NC: J. Gales, 1821), chap. 697.

56 George Dalzell, *The Benefit of Clergy in America* (Winston-Salem, NC: John F. Blair, 1955), 150–51.

57 Philip J. Schwarz, *Slave Laws in Virginia* (Athens: Univ. of Georgia Press, 2010), 123. For more on Virgina's penal measures in the eighteenth century as inherited from English law, see Kathryn Preyer, *Blackstone In America: Selected Essays of Kathryn Preyer*, ed. Mary Bilder et al. (Cambridge: Cambridge Univ. Press, 2009), 133–34. On federal laws that protected slavery by balancing the status of enslaved people as persons and property, see Paul Finkelman, "Slavery in the United States: Persons or Property?," in *The Legal Understanding of Slavery: From the Historical to the Contemporary*, ed. Jean Allain (Oxford: Oxford Univ. Press, 2012), 105–34. On the construction and persistence of whiteness as property see Cheryl I. Harris, "Whiteness as Property," *Harvard Law Review* 106, no. 8 (1993): 1707–91, as well as Harris's reflections on that earlier essay in Harris, "Reflections on Whiteness as Property," *Harvard Law Review Forum* 134, no. 1 (2020): 1–10.

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59 Anthony S. Parent, *Foul Means: The Formation of a Slave Society in Virginia, 1660–1740* (Chapel Hill: Univ.of North Carolina Press, 2003), 260–62; McIlwaine, H. R. et al., *Executive Journals of the Council of Colonial Virginia* (Richmond: Virginia State Library, 1925), 243; Terri Snyder, *Brabbling Women: Disorderly Speech and the Law in Early Virginia* (Ithaca, NY: Cornell Univ. Press, 2014), 113–15.

60 Schwarz, *Slave Laws*, 88; and June Purcell Guild, *Black Laws of Virginia: A Summary of the Legislative Acts of Virginia concerning Negroes from the Earliest times to the Present* (Richmond: Whittet & Shepperson, 1936), 154. See also Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705–1865* (Baton Rouge: Louisiana State Univ. Press, 1988).

61 Morris, *Southern Slavery and the Law*, 233. On corporal punishment for enslaved persons claiming benefit of clergy in different states, see Jeff Forret, *Slave Against Slave: Plantation Violence in the Old South (*Baton Rouge: Louisiana State Press, 2015), 122ff.

62 William Waller Hening, *The Statutes at large: Being a Collection of all the Laws of Virginia, from the First Session of the Legislature in the Year 1619* (New York: R & W & G. Bartow, 1823), 4:326–27; and Guild, *Black Laws of Virginia*, 154.

63 Dave Fagundes, "What We Talk About When We Talk About Persons: The Language of a Legal Fiction," *Harvard Law Review* 114, no. 6 (2001): 1746.

64 See A. Leon Higginbotham Jr. and Anne F. Jacobs, "The 'Law Only As an Enemy': The Legitimization of Racial Powerlessness through the Colonial and Antebellum Criminal Laws of Virginia," *North Carolina Law Review* 70 (1992): 1010–11. The benefit was not offered to enslaved persons convicted of manslaughter, breaking and entering, and taking away goods the value of 5 shillings, which were clergiable offenses for whites in 1765; later, manslaughter was made a clergiable offense for enslaved persons in Virginia, but only if the victim was another enslaved person. In Virginia, insurrection was considered a non-clergiable crime for enslaved persons and often resulted in horrific executions.

65 Parent, *Foul Means*, 161, 259–60.

66 See Schwartz, *Twice Condemned*, 19, 21, 75–76 and *Slave Laws in Virginia*, 71–72, 74, 82, 88.

67 See Timothy Huebner's account of these procedures in the trial of Caesar: "The Roots of Fairness: State v. Caesar and Slave Justice in Antebellum North Carolina," in *Local Matters: Race, Crime and Justice in the Nineteenth-Century South*, ed. Christopher Waldrep and Donald G. Niemen (Athens: Univ. of Georgia Press, 2001), 29–52.

68 Marion Lucas, *A History of Blacks in Kentucky: From Slavery to Segregation, 1760–1891* (Lexington: Univ. Press of Kentucky, 2003), 48.

69 Higgenbotham and Jacobs, "Racial Powerlessness," 1011.

70 Colin Dayan, *The Law is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton, NJ: Princeton Univ. Press, 2011), 4.
71 For a fascinating history of rape as a capital crime originating in slave laws that refused benefit of clergy to enslaved persons who raped or intended to rape white women, see the *amicus* brief filed by the NAACP in Kennedy vs. Louisiana (La.Sess.Acts 1957, p.7).
72 Lucas, *A History of Blacks in Kentucky*, 48–49. Notably, in 1844, Richard Buckner had presided over the much-publicized case of a teacher, Delia A. Webster, who was accused of helping enslaved people escape and who late wrote an account of her trial.
73 C. S. Morehead and Mason Brown, *A Digest of the Statute Laws of Kentucky* (Albert G. Hodges, 1834), 1:381.
74 Lewis McQuown, "The Last of the Benefit of Clergy," *The Kentucky Law Journal* 2 (1882): 104–105.
75 McQuown, "The Last of the Benefit of Clergy," 104.
76 Amasa Eaton, "Benefit of Clergy," *The Women's Journal* (1888), 172.
77 "Benefit of Clergy," *The Prisoners' Friend: A Monthly Magazine Devoted to Criminal Reform, Philosophy, Science, Literature, and Art* 3, no. 12 (1851): 551–52.
78 William K. Boyd, "Documents and Comments on Benefit of Clergy as Applied to Slaves," *The Journal of Negro History* 8, no. 4 (1923): 447.
79 John Uri Lloyd, "Stringtown on the Pike: A Tale of Northernmost Kentucky," *The Bookman, An Illustrated Literary Journal* 11 (1900): 269.
80 As illustrated by Judge Bruce Schroeder's potted—and garbled—history of medieval justice and the trial by ordeal at the Kyle Rittenhouse trial on November 1, 2021. For the transcript of Schroeder's remarks and Thomas Lecaque's analysis, see Lecaque, "Kyle Rittenhouse's Trial Will End in a Verdict. The Nation's Trial By Ordeal I want," *History News Network*, November 14, 2021, https://historynewsnetwork.org/article/181758.
81 Edward White, "Benefit of Clergy," *The American Law Review* 46 (1912): 93.
82 White, "Benefit of Clergy," 93.
83 White, "Benefit of Clergy," 78.
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85 Mark Twain, *A Connecticut Yankee in King Arthur's Court*, ed. M. Thomas Inge (Oxford: Oxford World Classics, 1998).
86 See Ronald Jenn and Linda A. Morris, "The Sources of Mark Twain's *Personal Recollections of Joan of Arc*," *Mark Twain Journal* 55, no. ½ (2017): 55–74.
87 Alain Boureau, *The Lord's First Night: the Myth of the Droit de Cuissage*, trans. Lydia G. Cochrane (Chicago: Univ. of Chicago Press, 1998).