



“Diversitee bitwene hir bothe lawes”:
Chaucer’s Unlikely Alliance of a Lawyer
and a Merchant

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By the middle of the 1980s, the New Critical tendency to find irony everywhere in Chaucer—and especially in the relationship between the tellers and their Canterbury tales—had begun to provoke a vigorous correction from critics such as David Benson, David Lawton, Derek Pearsall and others.¹ As Pearsall explains, sweepingly ironic readings counter-intuitively reverse “the whole apparent meaning of a story” in favor of exposing “some inadequacy in its teller.”² Such readings can defy common sense, arbitrarily substituting post-Freudian psychological truisms for the religious, historical, and philosophical contexts that were relevant to Chaucer’s own age. Nowhere has this imbalance been more problematic than in readings of the four Canterbury tales set off from the others by their rhyme royal verse form and their explicitly moral or religious themes. Modern readers often possess, as Benson has noted, an aesthetic blind spot when it comes to tales that place moral or spiritual rather than humanistic values at their center.³ And, indeed, that such tales seem immediately unappealing says more about the modern sensibility than the medieval one.

1. For example, see David Lawton, *Chaucer’s Narrators* (Cambridge, U.K., 1985); C. David Benson, *Chaucer’s Drama of Style: Poetic Variety and Contrast in the Canterbury Tales* (Chapel Hill, 1986); and Derek Pearsall, *The Canterbury Tales* (London, 1985).

2. Pearsall, *The Canterbury Tales*, 148.

3. See “Introduction,” to C. David Benson and Elizabeth Robertson, eds., *Chaucer’s Religious Tales* (Cambridge, U.K., 1990), 1–7; also, C. David Benson, “Varieties of Religious Poetry in *The Canterbury Tales: The Man of Law’s Tale* and *The Clerk’s Tale*,” in John V. Fleming and Thomas J. Heffernan, eds., *Studies in the Age of Chaucer, Proceedings 2* (Knoxville, 1987): 159–67; and C. David Benson, “The Aesthetic of Chaucer’s Religious Tales in Rhyme Royal,” in Piero Boitani and Anna Torti, eds., *Religion in the Poetry and Drama of the Late Middle Ages in England: The J. A. W. Bennett Memorial Lectures* (Cambridge, U.K., 1990), 101–17.

At the same time, one or another of Chaucer's religious tales also displays explicit signs that the author was hoping his readers would use the description of the narrator, or some of the prefatory material that he supplies, as evidence to complicate understanding of a specific narrative performance. The *Man of Law's Tale* presents particular difficulties in this regard. While asserting that ironic treatments of the *Man of Law's Tale* are for the most part "far-fetched," Pearsall also acknowledges that this tale remains a "puzzling performance."⁴ Problems of interpretation are piled on top of editorial impediments, for example the difficulty of determining the degree of authorial intentionality associated with the location or framing of this tale. The fragment in which it appears bears marks of imperfect revision, for the narrator promises that he will "speke in prose," leaving rhymes to the prolific Chaucer (II 96),⁵ while the tale itself is composed in rhyme royal. This discrepancy has led many readers to believe that a different tale, perhaps the *Tale of Melibee*, was originally assigned to the Man of Law and inserted here.⁶ The fact that the Man of Law's fragment seems "imperfectly revised" has led some critics to argue that there is no payoff at all for considering the tale within its larger narratorial context. As Pearsall remarks tersely, "This provides good reason for treating the tale as an independent poem rather than as a means of characterising the Man of Law as an inadequate narrator."⁷

But the framing matter cannot be so easily dismissed, and arguments about possible irony in the narrator's characterization continue to haunt criticism of this tale more so than of most others.⁸ On the one hand, the heroine

4. Pearsall, *The Canterbury Tales*, 259.

5. All citations from Chaucer are from *The Riverside Chaucer*, ed. Larry D. Benson, 3rd edn. (Boston, 1987).

6. See the notes to *MLIntro* by Patricia Eberle, *The Riverside Chaucer*, 854–56, at 854; also, Lloyd J. Mathews, "The Date of Chaucer's *Melibee* and the Stages of the Tale's Incorporation in the *Canterbury Tales*," *Chaucer Review* 20 (1986): 221–34. The reference to prose has elicited several different interpretations. A. S. G. Edwards, in "I Speke in Prose: Man of Law's Tale, 96," *Neuphilologische Mitteilungen* 92 (1991): 469–70, argues that "prose" denotes a change of subject matter rather than nonmetrical form; Martin Stevens maintains that "prose" could mean an "organized stanzaic unit with long lines," like rhyme royal ("The Royal Stanza in Early English Literature," *PMLA* 94 [1979]: 62–76, at 69). For a summary of approaches, see A. C. Spearing, *Textual Subjectivity: The Encoding of Subjectivity in Medieval Narratives and Lyrics* (Oxford, 2005), 107–8n9.

7. Pearsall, *The Canterbury Tales*, 259. This remark is widely cited, especially to discredit ironizing readings of Canterbury narrators (e.g., Spearing, *Textual Subjectivity*, 117).

8. Over the past twenty years *MLT* has been grist for a constantly grinding critical mill (the Online Chaucer Bibliography, maintained at the University of Texas, San Antonio, which I visited at the time of this writing, in June 2010, shows 186 books or articles that touch on the tale between 1990 and 2007). Scholars can no longer speak of the "critical evasion" of the tale, as A. S. G. Edwards did in an essay published in 1990, "Critical Approaches to the *Man of Law's Tale*," in Benson and Robertson, *Chaucer's Religious Tales*, 85–94, at 85. The question of the narrator's competence and contribution to the tale continues to be a live one; in fact *MLT* has become a touchstone text for judging

described in the *Man of Law's Tale* exemplifies the virtue and sacrifice of a kind of secular saint; her patience, faith, and forbearance provide a model for all Christians. On the other hand, the narrator's portrayal in the *General Prologue*, and his own words in the introduction and prologue to his tale, muddle a straightforward reading. The framing material begets questions about justice, worldly success, and the role of literary art, while inviting the reader to doubt the Man of Law's narrative authority. This invitation is stunningly on offer just at the seam where prologue becomes narrative⁹ and the narrator fails to repress his reverence for the spoils of commerce, dramatically misconstruing a passage denouncing indigence adapted from Innocent III's treatise on the misery of human life as evidence for the virtue of riches and the advantages earned by the "noble . . . prudent" (II 123) merchant dedicated to pursuing wealth.¹⁰

The theme of merchants is then picked up immediately in the opening lines of the tale where it emerges that not only have merchants supplied the Man of Law with the matter of his tale, but also that they are responsible for conveying the news of the Roman princess Custance that leads directly to her marriage to the Sultan of Syria, the narrative event that initiates the rest of the tale's action and is thus responsible for the sufferings of the heroine. Neither of Chaucer's chief sources, Nicholas Trevet or John Gower, begins the tale

the narrator's competence, and despite the persuasive exposés mentioned earlier of the dangers of systematic ironization, ironic readings continue to flourish. To cite a few examples (all since 1990), Ann W. Astell, "Apostrophe, Prayer, and the Structure of Satire in *The Man of Law's Tale*," *Studies in the Age of Chaucer* 13 (1991): 81–97; Robert B. Dawson, "Custance in Context: Rethinking the Protagonist of the *Man of Law's Tale*," *Chaucer Review* 26 (1992): 293–308; Susan Schibanoff, "Worlds Apart: Orientalism, Antifeminism, and Heresy in Chaucer's *Man of Law's Tale*," *Exemplaria* 8 (1996): 59–96; Conor McCarthy, "Injustice and Chaucer's Man of Law," *Parergon* 20 (2003): 1–18; and my own "Storytelling, Exchange, and Constancy: East and West in Chaucer's *Man of Law's Tale*," *Chaucer Review* 33 (1999): 409–22; I now find the tale's "binary . . . thinking" (410) more a feature of the law the tale describes than of its narrator. A recent article on the tale, Gania Barlow's "A Thrifty Tale: Narrative Authority and the Competing Values of the *Man of Law's Tale*," *Chaucer Review* 44 (2010): 397–420, finesses the problem of the narrator by regarding the tale as an explicit negotiation of narrative authority that deliberately confuses spiritual and economic systems of value (see also her first two notes [397] for a summary of critical approaches to the problem of the narrator). Spearing focuses his discussion of the problems that reside in treating the Canterbury pilgrims as "fallible narrators" on *MLT* (*Textual Subjectivity*, 101–36, published in an earlier version as "Narrative Voice: The Case of Chaucer's 'Man of Law's Tale,'" *New Literary History* 32 [2001]: 715–46).

9. The exact breaks vary, even in the manuscripts most contemporary with Chaucer. In the Ellesmere manuscript, lines 99–133 are designated as a "prologe," whereas lines 1–98 are simply called "the wordes of the Hoost to the compaignye"; in the Hengwrt manuscript, the first 98 lines are described as "prohemie" to the tale, whereas at lines 99 following, "here bigynneth the tale," and there is no additional break between the introductory material and the tale proper.

10. Compare Innocent's actual point, which is that wealth begets licentiousness, boasting, unlawfulness, and other related afflictions: Lotario Dei Segni, *De Miseria Conditiois Humane*, ed. and trans. Robert E. Lewis (Athens, Ga., 1978), 114–17 (1.14).

with the merchants.¹¹ Certainly at this inaugural moment of the story, we are meant to remember that this tale has a teller and to attend to his mercantile preoccupations. This is not, however, to suggest that the presence of such complicating features requires us to attribute the entire tale to a misguided narrator. As A. C. Spearing has rightly noted, a Canterbury tale's "I" "has no single position; it is not a point of origin from which a voice emerges, a point outside the story or outside language, as a speaker is outside what he says, but is merely part of the process of narration." Regarded in this way, the narrative center of the *Man of Law's Tale* "is liberated from fixity . . . [enabling] us to imagine narrative events in a whole variety of different spatio-temporal and emotional perspectives."¹² Still and again, even in Spearing's formulation, perspective, even if it is not single or totalizing, creeps back in.

In short, neither the purely ironic nor the purely straightforward reading seems able to account for the full complexity of this tale. One might even speculate that the polarization of criticism between ironic and non-ironic readings has gotten in the way of a more complex and fully nuanced interpretation that might account for evidence on both sides of the issue. What is needed, instead of an either/or position on the relevance of the lawyer's role as narrator, is a treatment of the Man of Law's narrative presence as a local or secondary effect, one that is rhetorical rather than sentimental in its intention. In this article I will explore the possibility that this effect is linked to the lawyer's profession and to the questions of justice and jurisdiction tied to his profession. I will not be arguing that we are meant to understand the *Man of Law's Tale* as a consistent performance of its narrator's moral or psychological condition. I will, however, maintain that the Sergeant of Law's professional identity needs to be on our minds as we make our way through the tale assigned to him if we are to appreciate the intricacy of the questions about human and divine justice that it raises. To this end, I will focus on the lawyer's portrayal first in the *General Prologue* and later in the introduction and prologue to the tale itself. His professional notions of justice, we will see, differ sharply from those of the merchants he lauds in these latter prologues, and these differences call into question the effectiveness and universality of the common law he represents. Indeed, the fragmentation of human law in the *Man of Law's Tale* suggests the general futility of

11. See the selection from Nicholas Trevet's *Cronicles*, "De la noble femme Constance" ("Of the Noble Lady Constance," trans. Robert M. Correale), and from John Gower's *Confessio Amantis*, "Tale of Constance," in Robert M. Correale and Mary Hamel, eds., *Sources and Analogues of the Canterbury Tales*, 2 vols. (Cambridge, U.K., 2005), 2:296–329, 2:330–50, respectively.

12. Spearing, *Textual Subjectivity*, 128.

efforts to achieve justice through ordinary legal means, as a survey of legal proceedings in the tale demonstrates.¹³

Chaucer was preoccupied with the form of the prologue. It was a form he handled deftly to establish a layered set of relevant contexts for whatever poem he was about to introduce.¹⁴ The importance of material in the prologues, therefore, should not be underestimated. In the Man of Law's case, the relationship between the *General Prologue* and the introduction and prologue to his tale is a complicated one that foregrounds both the lawyer's own professional success and his admiration for a different though related profession: that of merchants. At first glance, the characterization of the narrator by his business is not surprising.¹⁵ The tales of Fragment I, directly preceding the *Man of Law's Tale* in the great majority of manuscripts, had proceeded similarly, according to social and professional rank and identity. But these identities—Knight, Miller, Reeve, Cook—had, broadly speaking, been set out as discrete and competitive. Not so in the case of the Man of Law. The lawyer's admiration of merchants suggests that the principle of professional rivalry is giving way to something new: professional overlapping or collaboration. The lawyer's enthusiasm for merchants, however, is doubly surprising, for, as I will note in greater detail later in this article, the kind of law that Chaucer's Man of Law practiced would have been inappropriate, even hostile to mercantile interests. Merchants, in fact, would have sought redress in legal venues where the Sergeant of Law's expertise would not have held the upper hand or even been permitted. Far from being conflated, the professions of lawyers and merchants were chiefly seen during Chaucer's time period as operating within two very distinct areas of the law, a fact of which Chaucer would have been well aware, given that he held many professional positions that would have brought him into contact with both merchants and lawyers.¹⁶

13. Limitations of space preclude consideration of other issues raised by the tale that fall outside of either the prologues or the tale's representation of law and justice.

14. W. A. Davenport, *Chaucer and His English Contemporaries: Prologue and Tale in The Canterbury Tales* (New York, 1998), 20.

15. Although some readers have found the lawyer's profession irrelevant to his literary performance (see Edwards, "Critical Approaches," 89), much commentary argues for its centrality; for example, Joseph E. Grennen, "Chaucer's Man of Law and the Constancy of Justice," *JEGP* 84 (1985): 498–514; Richard Firth Green, "Chaucer's Man of Law and Collusive Recovery," *Notes and Queries* 40 (1993): 303–5; Elizabeth Fowler, "The Empire and the Waif: Consent and Conflict of Laws in the Man of Law's Tale," in David Aers, ed., *Medieval Literature and Historical Inquiry: Essays in Honor of Derek Pearsall* (Cambridge, U. K., 2000), 55–67; and McCarthy, "Injustice and Chaucer's Man of Law." Scholars, however, generally treat the law in isolation from other related professions.

16. As, for example, Controller of the Wool Custom, Justice of the Peace and Member of Parliament for the County of Kent, and Clerk of the King's Works; see Martin M. Crow and Clair C. Olson, eds., *Chaucer Life-Records* (Oxford, 1966).

In order to appreciate the significance of this professional relationship, we must first look closely at the kind of law that Chaucer's Man of Law practices, at his specific area of expertise. The relatively brief, twenty-two-line description in the *General Prologue* offers quite a bit of information on this score.¹⁷ We learn that this lawyer is not simply a "man of law," but that he holds the esteemed rank of "Sergeant of the Lawe" (I 309), the most elevated status of lawyers who practiced in the king's courts;¹⁸ as befits his rank, his legal practice has been a lucrative one, earning him many fees and robes (I 317). He has served as a judge in the courts of assizes, which themselves were a branch of royal justice, and he is known to be particularly skillful in land law, which he can expertly manipulate in order to achieve a clear title to the real estate that he purchases, perhaps taking advantage of obscure legal loopholes.¹⁹ Establishing and conveying title to land demanded command over a chain of ownership that could become quite involved and require meticulous study of various kinds of written records (of rents, testaments, births and deaths), as well as personal knowledge of the individuals involved going back generations.²⁰ Nor would these have been the only histories or records over which the Man of Law would need mastery. As details in his portrait also suggest, the Sergeant of Law's area of the law is the common law, that is, English law based on case law and precedents, which we discover the Man of Law has impressively memorized, going back to the day of William the Conqueror (I 323–27).²¹ In addition to having committed his prodigious knowledge to memory, he also knows the importance of getting an agreement down in writing; his contracts are ironclad: "Ther koude no wight pynche at his writyng" (I 326). The use of a specialized and largely Anglo-French legal vocabulary to describe his occupation ("justice" [for judge], "assise," "patente," "commissioun," "purchasour," "fee symple," "termes," "caas and

17. See Joseph Hornsby, "A Sergeant of the Lawe, War and Wyse," in Laura C. Lambdin and Robert T. Lambdin, eds., *An Historical Guide to the Pilgrims in the Canterbury Tales* (Westport, Conn., 1996), 116–34.

18. See Isobel McKenna, "The Making of a Fourteenth-Century Sergeant of the Law," *Revue de l'Université d'Ottawa* 45 (1975): 244–62; McKenna speculates that Chaucer's sergeant (whom she sees as an ideal of his type) may have been a member of the elevated and tiny group (perhaps just two at any one time) of "King's Serjeants" who advocated not only before the king but on his behalf (253, 258, 261).

19. See Green, "Chaucer's Man of Law and Collusive Recovery."

20. An example is given by Hornsby, "A Sergeant of the Lawe," 124–25.

21. Even Jill Mann, who sees Chaucer's lawyer as representing features of a generic social stereotype rather than a specific class of lawyers, focuses chiefly on his land dealings and other legal activities that would have been appropriate to practice in one of the superior courts of the common law: *Chaucer and Medieval Estates Satire: The Literature of the Social Classes and the General Prologue to the Canterbury Tales* (Cambridge, U.K., 1973), 86–91.

doomes,” “endite” [I 314–15, 318–19, 323, 325]) similarly conveys his expertise as a function of language, especially written language: after 1362, oral argument in English courts was conducted in English, but French was still the language of written record.²² Finally, the verb “pynche” may connect him with an actual historical Sergeant of the Law from Chaucer’s time period (one with whom Chaucer himself had legal dealings), Thomas Pynchbek. If so, the portrait may remind us as it draws to a close, once again, of the lawyer’s specific rank and professional identity as an officer of the king’s court and a specialist in English common law.²³

When we move from the *General Prologue*, however, to the *Introduction* and *Prologue to the Man of Law’s Tale*, and to the opening lines of the tale itself, we find details that are strikingly at odds with the portrait of a successful advocate in the king’s courts, a person who would have been versed in the complexities of the common law as it had evolved through Year Books and other written records. The first hint we have of this surprising disjunction comes in the words that pass between the Man of Law and the Host, who reminds the lawyer that he owes him a tale by “forward” (II 34), referring to the oral agreement the pilgrims have made in the *General Prologue*. The lawyer quickly assents: “To breke forward is nat myn entente” (II 40). We learn here that he views his spoken promise as a solemn debt he is required to discharge. In a careful and detailed study of Chaucer’s representation of legal matters, Joseph Hornsby expresses puzzlement at the lawyer’s quick acquiescence to the Host:

Considering that one would turn to local courts rather than royal courts to have a breached oral agreement enforced, it is interesting that Chaucer’s Man of Law, ostensibly a sergeant of the king’s courts, should proclaim, “Biheste is dette,” when, according to the rules of the courts in which he would have practiced, that was not the case.²⁴

22. See W. Rothwell, “English and French in England after 1362,” *English Studies* 6 (2001): 539–59, esp. 539–44. While Rothwell concurs with the traditional reading of “terms” as Year Books (543), McCarthy demonstrates that it could also mean “technical terminology” (“Injustice and Chaucer’s Man of Law,” 3). Karl Wentersdorf argues that the word simply denotes the “terms” of a court session, when the lawyer would need his knowledge to be at his fingertips: “The ‘Termes’ of Chaucer’s Sergeant of the Law,” *Studia Neophilologica* 53 (1981): 269–74. In any case, the Man of Law’s knowledge is vast and comically hyperbolic.

23. First suggested by John Matthews Manly, *Some New Light on Chaucer* (New York, 1926), 131–57; see also W. F. Bolton, “Pinchbeck and the Chaucer Circle in the Law Reports and Records of 11–13 Richard II,” *Modern Philology* 84 (1987): 401–7.

24. Hornsby, *Chaucer and the Law* (Norman, Okla., 1988), 71.

The Sergeant of Law's submission to his oral promise grows even more perplexing as it leads into further unexpected repudiation of the written tradition in his turning away from the literary precedents poetically represented in the many tales already told by Chaucer (and Gower). He is comically confounded by the "large volume" (II 60) of Chaucer's tales as he would never have been before a large volume of law. Instead of looking to the written tradition, which we might have expected this rather clerical lawyer to do, he takes his tale from the spoken word of a traveling merchant:

"I were right now of tales desolaat,
Nere that a marchant, goon is many a yeere,
Me taughte a tale, which that ye shal heere."
(II 131–33)

But why a merchant, specifically? Coming from a lawyer, this combination of references would likely have put the medieval audience in mind of the courts and legal procedures claimed by merchants during Chaucer's time period, courts where oral rather than written testimony could prevail, and where justice was swifter than in the king's courts of the common law and was based on principles broader than the common law and more accommodating to foreign traders.

The precise scope of merchant law remains somewhat contested in modern scholarship and commentary, which is perhaps one reason it has not often been brought to bear in discussions of this Chaucerian tale.²⁵ Some legal and economic historians have enthusiastically promulgated the idea that a fully developed tradition of mercantile law was in existence in the later centuries of the Middle Ages,²⁶ while others have been more circumspect and even skeptical about whether or not merchant law was historically a separate jurisdictional area of the law.²⁷ The medieval legal system, however,

25. I have not found any criticism that claims that *MLT* is concerned with merchant law, except Elizabeth Fowler, "The Empire and the Waif," who situates the specific problem of consent in the arena of international, natural law. Fowler does not discuss merchant law as it evolved historically or explore its effect on our understanding of the tale's narrator.

26. For example, Wyndham Anstis Bewes, *The Romance of the Law Merchant* (London, 1923); Leon E. Trakman, *The Law Merchant: The Evolution of Commercial Law* (Littleton, Colo., 1983); and Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass., 1983), 333–56.

27. See Mary Elizabeth Basile, Jane Fair Bestor, Daniel R. Coquillette, and Charles Donahue, Jr., "Introduction," *Lex Mercatoria and Legal Pluralism: A Late Thirteenth-Century Treatise and Its Afterlife* (Cambridge, U.K., 1998), 13–188; and J. H. Baker, "The Law Merchant and the Common Law before 1700," *The Cambridge Law Journal* 38 (1979): 295–322. Basile et al. provide useful background on the subtle differences between common law and merchant law in establishing proof,

with separate courts, officers, and procedures for common and canon law had jurisdictional fragmentation built into it. Rather than a single legal system under overarching royal authority, different courts addressed the claims of different persons (Londoners, clerics, landowners, etc.) and of different civil, criminal, and ecclesiastical subject matters.²⁸ Moreover, in 1303, King Edward I had laid out specific rights and privileges to merchants in a “Carta mercatoria,” which demonstrates that there was a felt need for distinct mercantile courts and procedures at the beginning of the fourteenth century. Furthermore, in 1353, in the ordinance of the Staples, King Edward III had promised for all merchant strangers a separate legal venue (“la lei marchant”) outside the common law, a court from which common-law justices were excluded.²⁹ Not even the most skeptical of modern commentators thus denies that there were some defined venues and procedures arranged for merchants that differed sharply from the ordinary courts of the common law.

By general consensus, these offered a streamlined form of justice to merchants and traders, especially those who traveled from other precincts or countries and who, unlike Chaucer’s sergeant, lacked the local connections that were required to make effective use of witnesses and written contracts under the common law. Merchant law courts were designed to adjudicate claims about transactions of moveable goods and could not consider the claims about land³⁰ that were the Man of Law’s bread and butter; further, merchant law was designed to resolve cases more expeditiously than the normal common law courts, and to enforce commercial agreements swiftly. In these courts, oral agreements were admissible and routine. Mercantile justice was to be executed “from tide to tide,” or in the case of a merchant traveling on land, while his “feet were still dusty.”³¹ Perhaps such caveats lie behind the evil Donegild’s counterfeit injunction in the sergeant’s tale to execute the sentence of banishment upon Custance quickly, no longer than “Thre dayes and o quarter of a tyde” (II 798).³² While this is, of course, a negative example—one that further complicates the lawyer’s esteem for merchants—a modern admirer of

securing debt, and paying costs (summarized at 24); in addition, the authors include discussion of “the subsequent history of the concept of mercantile law” (123–88), which explains the historical circumstances that led to many writers overstating the case for a fully developed “law merchant.”

28. Basile et al., *Lex Mercatoria*, 47.

29. Basile et al., *Lex Mercatoria*, 114, 129, 136.

30. Basile et al., *Lex Mercatoria*, 23.

31. Berman, *Law and Revolution*, 347.

32. This line has confused editors and readers; e.g., Albert C. Baugh, ed., *Chaucer’s Major Poetry* (New York, 1963), claims the “[t]he meaning ‘hour’ rather than ‘tide’ seems more appropriate here” (327); most editors, however, gloss “tyde” here as “tide,” a choice my research affirms.

merchant law explains the advantages of such expedience succinctly: "strict law as applied by lawyers involved formalities which hindered commerce."³³

In fact, merchant law was not usually administered by lawyers or traditional justices at all, but by "merchant judges" familiar with the details and customs of business practice. Harold Berman explains: "Not only were professional lawyers generally excluded but also technical legal argumentation was frowned upon."³⁴ In short, various methods of hastening the claims process under merchant law provided rights and advantages in the court to just the kind of merchant that Chaucer describes as having provided the Man of Law with his tale, even though the Man of Law himself, despite his elevated status in the king's courts, would have been unlikely ever to have appeared as an attorney or judge in a case brought under merchant law. His particular abilities—his knowledge of statutes and precedents, his legalistic skill at composing and parsing a written agreement, his familiarity with local and institutional history—all these would have worked against the speed and informality that facilitated the settlement of disputes involving itinerant merchants, who were often from other lands and on shore for a limited time.

So, considering that Chaucer's lawyer would not have been welcome in merchant courts, one must wonder why he reaches out so pacifically to merchants. This development is quite unexpected in the context of the *Canterbury Tales* so far. As I have suggested, in Fragment I social and professional rivalries had not been resolved in such amicable fashion; rather, a pugnacious miller had "quite" (I 3127) a knight; a reeve had begun to "grucche" (I 3863) against a miller; a cook had challenged a reeve's "argument" (I 4329) while also promising personal revenge against an innkeeper (I 4360). But at the beginning of Fragment II, suddenly, even the word "quite" takes on a new meaning, when the Host asks the Sergeant to "acquite[n]" (II 37) him of his agreement, and the Sergeant calmly agrees.³⁵ A partial answer may perhaps be found in the unflattering correspondence between the lawyer's unseemly taste for riches and the reputation for double-dealing and acquisitiveness often attributed to merchants during the time period. Perhaps his identification with merchants is Chaucer's way of undermining the reader's trust in the Man of Law's values. Trade had long been, as John W. Baldwin puts it, "characteristically a sordid

33. Trakman, *The Law Merchant*, 15.

34. Berman, *Law and Revolution*, 347. See also E. E. Rich, "Introduction," *The Staple Court Books of Bristol* (Bristol, 1934), esp. 30–49: "Attornies sometimes appeared, but ordinarily the Law Merchant held that . . . parties had to plead their cases themselves" (33).

35. Compare *MED*, s.vv. *quite* v.(3), v.(5), and *aquiten*, both verbs from the French *quiter*.

business,” and on the whole was believed “more susceptible to harboring fraud and deceit in its activities than any other profession.”³⁶

In Chaucer’s fabliaux, merchants are often mocked either for their lack of perspicacity or their weak ethics,³⁷ while moral and estates satirists of Chaucer’s day were also fond of attacks on mercantile dealings.³⁸ The borrowing and lending required for sophisticated trade was available, according to satiric treatments, primarily to the wealthy and aristocratic: “Hastow pite on povere men that [purely] mote nedes borwe?” Langland’s Repentance inquires of Covetousness. The blunt reply comes, “I have as much pite of povere men as pedlere hath of cattles,/That wolde kille hem, if he cacche hem myghte, for coveitise of hir skynnes!”³⁹ This callousness is especially damnable, because in medieval economics, trade on credit could only be justified on the basis of its convenience and effectiveness in distributing goods to all men, rich and poor.⁴⁰ Yet, like Langland’s Covetousness, the Man of Law’s merchants, who cavalierly gamble and cavort in the same stanza where the unfortunate poor are abandoned by their friends and brethren, show no evidence of shouldering their social responsibility to improve conditions for those less well off than they. Their lack of regard for justice might be argued to tarnish a narrator whose profession ideally should be dedicated to the just application of law.

At the same time, there was also a significant body of commentary that defended the merchant’s role in the medieval economy, reaching back to Augustine, who rehearses the arguments for the merchant’s value in his commentary on Psalm 70.⁴¹ Even *Piers Plowman*, despite its invectives against merchants, returns repeatedly to economic metaphors for salvation; the category of “the economic,” as D. Vance Smith has noted, is “pervasive” in this poem: “Langland writes an account of mercantile activity that acknowledges its intractability without condemning it or rendering it ironic.”⁴² (Chaucer’s lawyer’s phrase “Biheste is dette” [II 41] operates in a similar way.) Clearly,

36. John W. Baldwin, *The Medieval Theories of the Just Price: Romanists, Canonists, and Theologians in the Twelfth and Thirteenth Centuries* (Philadelphia, 1959), 67.

37. Nancy M. Reale, “A Marchant Was Ther With a Forked Berd,” in Lambdin and Lambdin, eds., *A Historical Guide*, 93–107, at 96–97.

38. Mann, *Chaucer and Medieval Estates Satire*, 99–103.

39. William Langland, *The Vision of Piers Plowman: A Complete Edition of the B-Text*, ed. A. V. C. Schmidt (London, 1978), 50 (B.5.243–45, 5.253–55).

40. Eric Roll, *A History of Economic Thought*, 5th edn. (London, 1992), 32–34; see also Bernard W. Dempsey, *Interest and Usury* (Washington, D.C., 1943), 130–35.

41. See Baldwin, *The Medieval Theories of the Just Price*, 15, 39–41, 63–67.

42. D. Vance Smith, *Arts of Possession: The Middle English Household Imaginary* (Minneapolis, 2003), 119. The chapter from which this quotation is taken (“Merchants in the Margin: Writing and the National Domestic of *Piers Plowman*,” 108–53) provides an extended treatment of the liminal moral position of the merchant.

medieval commentators were quite aware that the well-being of their society depended on a merchant class with access to capital sufficient to enable trade across ever-widening geographical distances. Someone had to bear the risks, expenses, and opportunity costs of such commerce.⁴³ The lawyer's comparison of trade to a winning game of chance ("Youre bagges been nat fild with ambes as,/But with sys cynk, that renneth for youre chaunce" [II 124–25]) draws on one of the most common defenses of mercantile activity: that the merchant's profit was just compensation for the risks he took, especially in transportation, storage, or even lost use. It was a rationale to which Chaucer himself alludes in the *Shipman's Tale*, when the enterprising merchant in that tale, who trades in goods and currency, explains the perils of his profession: "For everemoore we moote stonde in drede/Of hap and fortune in oure chapmanhede" (VII 237–38). But rationales went well beyond the pains and hazards that mercantile activity involved, reaching to the social goods that it achieved. Albertus Magnus and Thomas Aquinas went so far as to argue that the profession of merchant had as its purpose the achievement of "commutative justice" and that "merchants performed a public service to the country in providing the necessary goods of life."⁴⁴

It is thus difficult to identify exactly how severely satiric Chaucer intends us to find the lawyer's enthusiasm for merchants. Chaucerians have never themselves been able to reach consensus about whether the poet's attitudes toward the mercantile class lean toward praise or blame.⁴⁵ In medieval eyes, merchants, like lawyers, are both good and bad. Both may be well compensated in worldly terms and so be subject to worldly temptation. At the same time, each of these vocations has a higher calling, and each performs activities that are considered necessary for the smooth and even for the just functioning of society. Medieval legal and economic theory thus included much equivocation. On the subject of the merchant, scholastic thinkers frequently differentiate between what human law permits him to do and what divine law might at the same time condemn.⁴⁶ On the subject of the law, traditions were

43. See Peter Spufford, *Power and Profit: The Merchant in Medieval Europe* (New York, 2002), 12–59.

44. Baldwin, *The Medieval Theories of the Just Price*, 65.

45. For a sharply critical treatment of Chaucer's merchants, see Roger A. Ladd, "The Mercantile (Mis)Reader in *The Canterbury Tales*," *Studies in Philology* 99 (2002): 17–32. In defense of the mercantile life, see Wight Martindale, Jr., "Chaucer's Merchants: A Trade-Based Speculation on Their Activities," *Chaucer Review* 26 (1992): 309–16. For a defense focusing specifically on *MLT*, see William F. Woods, "Custance as God's Merchant in the Man of Law's Tale," *Publications of the Medieval Association of the Midwest* 7 (2000): 84–107.

46. Joel Kaye presents Aquinas's thoughts on this matter in *Economy and Nature in the Fourteenth Century: Money, Market Exchange, and the Emergence of Scientific Thought* (Cambridge, U.K., 2000), 98–99.

in flux: what was proscribed at one period of time or by one group of writers might later or in a different context be permitted. But even as equivocation makes room for the new men of commerce, this degree of fluidity remains uncomfortable.

Indeed, some of the instability of Chaucer's representation of the Man of Law derives from the narrator's alternation between laxity and rectitude. Right in the middle of his casual accommodation of the demand by the Host (himself a merchant) that he honor his oral agreement and his delight in the merchant lifestyle and merchant tales, the Man of Law pulls himself up to denounce certain vicious stories that he certifies form no part of Chaucer's (and by extension his own) repertoire. The Man of Law's condemnation of "thilke wikke ensample of Canacee" (II 78) has a valid legal basis. He vigorously counters the legal maneuvering implicit in Gower's rendition of this narrative, which pits the "lawe positif" of the Church against natural law.⁴⁷ One can easily see why, for Chaucer's lawyer, Gower's distinction between imposed Church law and natural law would have seemed misleading, even pernicious. The Man of Law clearly believes that natural law is consonant with canon law, that natural law *is* God's divinely sanctioned dispensation, for he has just offered a forceful and unambiguous assertion of the ancient link between human and the divine law: "swich lawe as a man yeveth another wight,/He sholde hymselfen usen it, by right" (II 43-44). This statement represents a foundational and universal principle of law as articulated in the Code of Justinian, but also, of course, indistinguishable from the Christian Golden Rule that "whatsoever you would that men should do to you, do you also to them."⁴⁸

Despite his deficiencies elsewhere, the Sergeant of the Law in his introduction defends law in its ideal and elemental form. As Hornsby puts it, "The common lawyer's role was a sacred duty then, making the common lawyers a priesthood that preserved the sacred spirit of the common law."⁴⁹ It is hard to fault the Sergeant of Law for consistently defending a unified and integrative approach to the law. Yet we hardly know where to stand in relation to his founding principles. On the one hand, his idealism, openness, and flexibility are attractive and admirable qualities, born of a desire

47. John Gower, *Confessio Amantis*, ed. Russell A. Peck, 3 vols. (Kalamazoo, 2003-6), 2:155 (3.172).

48. Douay-Rheims Bible, Matt. 7:12; also Luke 6:31. See Eberle, note to *MLIntro*, II 43-45, *The Riverside Chaucer*, 855; and Sheila Delany, "'Loi' and 'Foi' in the Man of Law's Introduction, Prologue, and Tale," *Mediaevalia* 8 (1985, for 1982): 135-49.

49. Hornsby, "A Sergeant of the Law," 129.

for a law that could serve all men. For Chaucer, as Sheila Delany rightly notes in a discussion of these passages, “nature and reason are not opposed but mutually supportive.”⁵⁰ On the other hand, his approach seems unexpectedly naive. Despite his idealism, his comfortable virtues also lead him to easy rationalizations of the profit motive and move him to gloss over the real differences between competing parties and procedures. As these complications inherent in the role of the merchant suggest, competing jurisdictions cannot so easily be collapsed. But the paradoxical representation of the Man of Law here is of a piece with his portrayal in the *General Prologue*, where, for all his hints of censure, Chaucer pulls back from the brink of clear-cut disapproval. As Thomas Farrell points out in a brilliant rhetorical analysis of the *General Prologue* portrait, “the [narrative] agent is simultaneously impressed and unimpressed by the Sergeant, and the conflict between those two attitudes is expressed to a degree unmatched in any other portrait.”⁵¹

The complex hermeneutic impasse at which we have arrived, which makes secure judgment of the lawyer or the merchant impossible, has the important function of preparing the reader for the central problem of the tale, which I take to be a problem of jurisdiction or authority. Even as the common law differs from merchant law in ways to which Chaucer’s lawyer seems oblivious, so also is human law chiefly marked by its distance from universal or divine law, despite the lawyer’s good reasons for wishing to acknowledge their common origin in God’s plan. We live in a fallen world. The *Introduction* and *Prologue* to the *Man of Law’s Tale* sensitize us to the possibility of ambiguity and conflict between the demands of divine law and the uncertainties of earthly law, so that we will recognize the reappearance of this problem in the implementation of justice in the tale itself. Justice and commerce (and the lawyer and merchants who carry them out) are shown to be working at cross-purposes.

Revealingly, for example, the merchants who carry tidings, like freight, from Rome to Syria do *not* possess a code of conduct that will permit peaceful trade in their merchandise, in this case a Christian bride for the Syrian Sultan; there is no merchant law, we find, to facilitate the exchange of religious faith this marriage requires. On the merchants’ recommendation, Custance is married off to the Muslim potentate. But the Sultan’s mother immediately perceives the arrival of her daughter-in-law and the forced conversion of her

50. Delany, “Loi’ and ‘Foi,” 138.

51. Thomas J. Farrell, “Hybrid Discourse in the *General Prologue* Portraits,” *Studies in the Age of Chaucer* 30 (2008): 39–93, at 74; also, Mann’s treatment of the Man of Law’s portrait as unusually “victimless” (*Chaucer and Medieval Estates Satire*, 86–91).

people as an unforgivable transgression of law: "The lyf shal rather out of my body sterte/Or Makometes lawe out of myn herte" (II 335–36). She takes her own justice, a spectacular vengeance in blood, when she kills everyone in the marriage party (save Custance), including her own son. In short, when the laws of different cultures come into conflict in the *Man of Law's Tale*, no principle of man-made law stands ready to offer a solution, as would have been the ideal, but cultural difference leads instead to rupture and tragedy. The emphasis remains on what "diverse men" (II 211) have to say, on the "diversitee/Bitwene hir bothe lawes" (II 220–21). As much as it is a vindication of divine value, Custance's story is thus also a cautionary tale about the difficulties that human law encounters in translation and the absence of any space for accommodation between competing legal dispensations. The moral ambiguity of the merchant's professional identity, analyzed earlier in this article, was our first introduction to this difficulty.

The general failure of human law—and its distance from the natural God-given law that ought to inform it—is clear from the mess that mortals make whenever they attempt to take justice into their hands.⁵² Even beyond the opening scene of Syrian bloodshed, threatened injustice is never remedied by the regular workings of earthly law, regardless of where the action is set. The most obvious example of this dynamic occurs in Custance's trial for the murder of her dear friend Hermengyld. There is some suggestion, even in Chaucer's sources, that this trial is a quasi-legal proceeding. Trevet has the false accuser, a spurned and lecherous suitor seeking revenge, use the language of the law in his "appeal" against Constance, for "felony" and "treason": "[S]howing the instrument of the crime [*de la felonie*] before all with a loud cry he accused [*apela*] the maiden of treason [*de treson*]."⁵³ Chaucer, however, goes a step further. He slows the scene down and extends it in ways that both make it more fully similar to a legal proceeding while at the same time (paradoxically) highlighting its legal insufficiency. Only in Chaucer's version is there reference to trial by combat when Custance's need for a champion is raised (II 631);⁵⁴ only in Chaucer is the accused murderess led to trial as if to

52. See Patricia J. Eberle, "Crime and Justice in the Middle Ages: Cases from the *Canterbury Tales*," in M. L. Friedland, ed., *Rough Justice: Essays on Crime in Literature* (Toronto, 1991), 19–51, esp. 28–35; Helen Cooney, "Wonder and Immanent Justice in the *Man of Law's Tale*," *Chaucer Review* 33 (1999): 264–87; McCarthy, "Injustice and Chaucer's *Man of Law*"; and Yvette Kisor, "Moments of Silence, Acts of Speech: Uncovering the Incest Motif in the *Man of Law's Tale*," *Chaucer Review* 40 (2005): 141–62, where a comparison of Chaucer's tale to its sources demonstrates Custance's subtle resistance to shows of unjust patriarchal authority.

53. Trevet, *Cronicles*, in Correale and Hamel, eds., *Sources and Analogues*, 2:308–9. See also Hornsby, *Chaucer and the Law*, 145.

54. While instances of trial by combat (or judicial duels or wager by combat) continued throughout the Middle Ages, after the twelfth century these became increasingly obsolescent; see J. H. Baker, *An Introduction to English Legal History*, 4th edn. (Bath, 2002), 72–74.

an execution that a fourteenth-century audience is invited to recognize as something familiar and chilling from its own experience: "Have ye nat seyn somtyme a pale face,/Among a prees, of hym that hath be lad/Toward his deeth . . . /So stant Custance" (II 645–47, 651). This "widely remembered" scene is indeed placed at the tale's exact "mathematical centre."⁵⁵

There is no time and no need for such scene-setting in Trevet and Gower, where the scales of justice tilt so quickly in the heroine's direction that judgment never truly stands in abeyance; in both Trevet and Gower, Hermengyld's husband immediately doubts the suitor's prevarication that casts blame on Constance, and the figure of the king is not present at the decisive instant, which thus answers to no final earthly judge. The false suitor (and true murderer) swears upon the gospels only in desperation because otherwise nobody will believe his claim.⁵⁶ In contrast, Chaucer heightens the suspense and makes it seem that the outcome is uncertain and hinges upon the probative value of the false suitor's oath on the holy book. Even the king who presides over this court and who weeps in pity for the maiden (II 659–61) is without the power to protect her; she *must* stand trial, and this despite the fact that many onlookers are skeptical that she could have done the crime:

But nathelees, ther was greet moornyng
Among the peple, and seyn they kan nat gesse
That she had doon so greet a wikkednesse.
(II 621–23)

The biblical story of Susanna (Daniel 13), evoked by Custance who prays to the Lord "that savedest Susanne/Fro false blame" (II 639–40), provides an instructive contrast. In that narrative, the two false witnesses, though again motivated by lust, are (unlike the dubious accuser in Chaucer) both respected judges and elders in Susanna's community. They are instantly more believable due to their status and age, and so they make the case more of a contest. Still, the young Daniel is able to impugn them by taking their testimony in private and exposing their stories as contradictory (they disagree on the kind of tree under which they have purportedly "witnessed" Susanna committing adultery). Although God is certainly on Daniel's side here, Susanna is vindicated in a process that continues to make sense on the literal level and that does not require the *direct* intervention of the Lord's smiting hand. Indeed, the very point of the Susanna story is to establish earthly justice as reliable and

55. Spearing, *Textual Subjectivity*, 107.

56. Trevet, *Cronicles*, in Correale and Hamel, eds., *Sources and Analogues*, 2:308–11; Gower, *Confessio Amantis*, ed. Peck, 2:78 (2.850–89).

Daniel as a wise and perspicacious mediator. God must work *through* him, for as Susanna in the Middle English romance of her name acknowledges of the deity, “thou maight not be sene/With no fleschliche eyene.”⁵⁷

In the *Man of Law's Tale*, in stark contrast, the workings of God *can* be experienced directly by human senses, and heavenly justice does *not* require a process of earthly justice to assist it. Custance's salvation comes not from judicial proof but from a disembodied voice proclaiming her innocence and a hand that strikes the guilty accuser on his neck-bone, popping his eyes out of his head “In sighte of every body in that place” (II 672). This is a startling and exceptional moment. As R. James Goldstein notes, “this is the only instance in all of Chaucer in which the *vox dei* is heard to speak directly rather than through signs.”⁵⁸ While this scene takes the form of a court of law, the principles in operation are both primitive and implausible. Even the earliest medieval courts did not rely simply on the oath of an accuser, so the arbitrariness of this proceeding cannot be attributed to any design of historical accuracy on Chaucer's part. Moreover, after the Lateran Council in 1215, the Church explicitly forbade such ordeals, for the specific reason that men should not “expect God to answer human questions.”⁵⁹ Such trials are therefore most profoundly anti-legal, placing the judgment before the proof; only after their abandonment could a sophisticated juridical system develop.

Other examples of “justice” in the tale are similarly problematic in not flowing from a deliberative legal process. Such interventions prove the power of providence to guide human history, but Chaucer makes sure that, even as we see God taking over, we also become aware of mortal men who cannot—or will not—assist in the cause of justice. Mary and Christ, emissaries of the divine, take the situation in hand when a second lustful would-be molester accosts Custance outside a “hethen castel” (II 904), after she has been expelled from her husband's realm because of further false testimony. The punishment again is just, but (again) it does not derive from a reliable system of jurisprudence. In fact, Chaucer highlights the absence of a system of protection when he dramatizes the lack of interest that others have in assisting an innocent and

57. *The Pistel of Swete Susan*, in Russell A. Peck, ed., *Heroic Women from the Old Testament in Middle English Verse* (Kalamazoo, 1991), 73–108, at 90 (lines 270–71). Alfred Kellogg suggests that this poem may have been known to Chaucer (“Susannah and the Merchant's Tale,” *Speculum* 35 [1960]: 275–76).

58. R. James Goldstein, “Future Perfect: The Augustinian Theology of Perfection and the *Canterbury Tales*,” *Studies in the Age of Chaucer* 29 (2007): 87–140, at 109.

59. J. H. Baker, *An Introduction to English Legal History*, 5. Hornsby suggests that recognizable forms of English legal proof are present in this scene, but also acknowledges that they are unhistorical, belonging neither to Chaucer's time period nor to the Anglo-Saxon legal system that would be appropriate to the story's setting (*Chaucer and the Law*, 143–48).

defenseless Custance. Unlike in Gower, where only the would-be molester is aware of the young woman's presence, in Chaucer a crowd of onlookers gawks at her but does nothing to assure her safety: "Doun fro the castel comth ther many a wight/To gauren on this ship and on Custance" (II 911–12).⁶⁰ Given the presence of these witnesses, one might expect a representative of a just human society to step forward to protect the maiden, but nobody does.

Indeed, even when human justice intervenes on the right side, it is shown to be rash, abrupt, unadvised. Custance's spouse, King Alla of Northumbria, executes righteous punishment upon his mother, who has treasonously plotted against his wife; but this redress is taken in a moment of passion that later requires penance. Finally, the Roman war against the Syrians once their full treachery is known, well founded though it may be, is not marked by legal circumspection or restraint: "They brennen, sleen, and bynge hem to meschance/Ful many a day" (II 964–65).⁶¹ It is justice based on religious truth. When that truth is righteous, the justice serves God; when wicked, it is perverse and diabolic. But it is not justice that invokes the deliberative processes of the law to reach a truly fair outcome. Far from the parsings and bargainings of the law, justice in this tale is swift, even hasty, often meted out directly by the hand of God, or by others who believe themselves to be (or who are designated as) agents of the divine. As Custance's various oppressions and afflictions testify, it would be a mistake to depend on human law for rescue. This story can instead be seen as a cautionary tale about the defections of earthly law.

Finally, therefore, the *Man of Law's Tale* makes us aware of the inescapable involvement of human law with imperfect motives and of the perennial nature of the conflicts that human laws are designed to avoid. While divine law, the law of reason, may be immutable and singular, earthly laws are inevitably transient and plural, pitting different jurisdictions and pleading parties (like merchants and lawyers) against each other. The Middle Ages is not so much a period of Law, but of laws: a time when Roman law, royal law, feudal custom, canon law, and the statutes of municipal governments were evolving in an uneasy harmony, adorned by grace notes of discord. Conflicts over jurisdiction were an essential part of the medieval legal picture. The very title

60. Compare Gower, *Confessio Amantis*, ed. Peck, 2:84–85 (2.1091–1103). Gower's rapist conceals Constance's presence, whereas in Trevet the emir specifically charges him to protect her (*Cronicles*, ed. Correale and Hamel, *Sources and Analogues*, 2:316–17).

61. It might be said that this is a mirror image of such "justice" as can be discerned in the secret compact based in Islamic law and custom that condemns the Roman Christians at the tale's opening (II 323–57).

that the Host gives the lawyer as he invites him to speak, the “Man of Law,” begs this important question: Which law? Ecclesiastical law is different from merchant law, which is different from the common law of England, and the different legal principles upon which each was based could lead to widely differing results. The Man of Law’s pivoting toward merchants in the introduction and prologue to his tale is a sign that he does not recognize where he sits in this complicated system of laws. His vision of justice is incomplete, possibly implicated in the worldly motives he shares with merchants, certainly confused about the hierarchy of jurisdictions that divided the common law from merchant law, and both from God’s law.

But, if we stop there, we will have mistaken Chaucer’s meaning. His point is not to condemn the narrator, but to lure the reader, who shares with the Man of Law a desire for universal justice, into the conundrum that lurks at the heart of earthly law. We live under a law that, even as it seeks accommodation, can never achieve perfect harmony with the laws of the Creator. Still, we have reason to hope for something better. The limitations in human justice that Chaucer explores in the *Man of Law’s Tale* would lack full meaning if they were not also seen against the perfect, uncompromised justice that ultimately secures for the tale’s heroine her eternal, though elusive, “reward.”

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