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“Nede hath no law”: The State of Exception in Gower and Langland

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In his book *State of Exception*, the Italian philosopher Giorgio Agamben traces the idea of the exception of the law from Roman law to the modern state. In the process, he touches on the maxim *necessity has no law* (*necessitas legem non habet*), an adage that suggests that in exceptional circumstances the law is temporarily suspended. Agamben argues that in the Middle Ages this maxim was used only to “justify a single, specific case of transgression by means of an exception.”¹ Aquinas, for instance, suggests that the sovereign may grant dispensations from the law. Gratian discusses anomalies where the Mass is performed in an unconsecrated place, or where a person has been made a bishop but is subsequently discovered to be unsuitable. Such examples show that the argument from necessity was used only in exceptional circumstances:

Necessity is not a source of law, nor does it properly suspend the law; it merely releases a particular case from the literal application of the norm What is at issue here is clearly not a *status* or situation of the juridical order as such (the state of exception or necessity); rather, in each instance it is a question of a particular case in which the *vis* and *ratio* of the law find no application.²

1. Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005), 24.

2. *Ibid.*, 25. Agamben pays little attention to the most common use of *necessitas legem non habet*, which was to justify theft in dire need, nor does he take into account the fact that the

In the modern state, by contrast, emergency powers are seen as the norm, and democratic authority is paradoxically founded on the ability to act in cases of necessity. As Agamben writes elsewhere, “the entry of *zōē* [natural life] into the sphere of the *polis*—the politicization of bare life as such—constitutes the decisive event of modernity.”³ In other words, the break with medieval and classical thought occurs when the exception is included within the juridical order, or, more precisely, when the difference between law and exception becomes undecipherable. At the same time, a certain theoretical self-consciousness will allow us to go a step further and recognize that Agamben’s critical reflection on the exception is itself symptomatic of a postmodern fascination with the logic of the supplement. The exception structures the whole system and allows for the creation of seemingly pure concepts.

Indeed, Jacques Derrida realized that the relation between the law and the exception creates the very aporia of interpretation that we associate with deconstruction. He observes, with thinly veiled sarcasm: “[E]very time that we placidly apply a good rule to a particular case, to a correctly subsumed *example*, according to a determinant judgment, *law* . . . sometimes finds itself accounted for, but one can be sure that *justice* does not.”⁴ According to Derrida, the reality is that law clothes itself as justice and legitimates itself through force, but justice (like the divine, like the Other), is never accessible. Justice is an impossibility that we long for, that we try to

maxim became proverbial and so became normative in daily life. Still, neither of these two weaknesses detract from his argument about the political state of exception.

3. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998), 4.

4. Jacques Derrida, “Force of Law: The ‘Mystical Foundation of Authority,’” trans. Mary Quaintance, in *Acts of Religion*, ed. Gil Anidjar (New York: Routledge, 2002), 228–98, 244. Italics mine.

define through constative and performative language, but that always escapes us. Justice is haunted by undecidability and remains a mirage. And yet our very awareness of this indeterminacy brings us closer to justice. That is why Derrida concludes that “*Deconstruction is justice.*”⁵ In other words, Agamben’s history of how the exception has variously been “subsumed” by the law is bracketed by the historical moment of postmodernism.

Given these historical ruptures, it is worth considering how we can access the works of medieval authors, specifically when they employ the maxim *necessity has no law*. In particular, what is the status of the exception (or the example) in the premodern period? Is the exception to the law itself an exceptional circumstance for medieval authors? If the exception is not overtly political, how does it structure the logic of philosophy, faith, or narrative? These are the questions this essay seeks to address.

Two medieval writers who invoke the adage *necessity has no law* are William Langland and John Gower, both contemporaries of Geoffrey Chaucer. Their primary relevance (for my purposes) comes from the fact that both relate necessity to nature (and by extension natural law). Agamben, of course, sees the exception as primarily a political phenomenon, and the state of nature as a cultural construct. For that reason, these fourteenth-century authors, writing in the vernacular, not only challenge our basic assumptions, but also present us with popular conceptions of how the “natural” exception fits within a broader medieval cosmology.⁶

As we will see, for Langland, necessity, or “Nede,” is rooted in “kynde,” but functions primarily in opposition to positive law. Indeed, a postmodern reading of Langland clarifies how

5. Ibid., 243. Original emphasis.

6. There are of course other medieval authors who explore the relationship between the exception and the law. Of these, perhaps the most important is Dante. For an insightful reading of the centrality of the exception to the justice of the *Divine Comedy*, see Justin Steinberg, *Dante and the Limits of the Law* (Chicago: University of Chicago Press, 2013).

Piers Plowman fails to resolve the tension between law and nature. It also reveals that John Gower is much more eager to provide a solution. Gower more frequently allows such natural necessity (expressed as the compulsion to love) to override human legislation. Increasingly, necessity becomes a source of law and structures the juridical order. Because of these complex permutations, Gower's work will be most central to my argument. Indeed, while there is plenty of critical engagement with Langland's treatment of the state of exception, there is very little discussion of Gower's use of the maxim.⁷ At the same time, an increasing body of scholarship has recognized Gower's legal interests, his fascination with problems of exemplarity, and his focus on good government.⁸ These concerns make Gower's work an ideal testing ground for how we might reconcile our own theoretical interest in the notion of necessity with an appreciation of historical alterity. As we will see, the postmodern fascination with the state of exception is hardly unique. If we are to write a history of the exception, we will have to account for the centrality of the problem in medieval literature, even as we resist the urge to ascribe our own critical tendencies to the authors themselves.

1. Necessity, Need, and Nature

7. For a more general reading of Gower through the work of Agamben, see Andreea Boboc, "Se-duction and Sovereign Power in Gower's *Confessio Amantis* Book V," in *John Gower, Trilingual Poet: Language, Translation, and Tradition*, ed. Elisabeth Dutton, with John Hines and R. F. Yeager (Cambridge: Brewer, 2010), 126–38.

8. See, for instance, Emma Lipton, "Exemplary Cases: Marriage as Legal Principle in Gower's *Traitié pour essampler les amantz marietz*," *The Chaucer Review* 48.4 (2014): 480–51, Candace Barrington, "John Gower's Legal Advocacy and 'In Praise of Peace,'" in *John Gower, Trilingual Poet: Language, Translation, and Tradition*, ed. Elisabeth Dutton, with John Hines and R. F. Yeager (Cambridge: Brewer, 2010), 112–25, and Conrad van Dijk, *John Gower and the Limits of the Law* (Cambridge: D.S. Brewer, 2013).

In the final Passus of *Piers Plowman*, the narrator wakes up from his dream and is hungry and tired. He meets Need (Nede) who argues it is permissible to steal the basic necessities of life (food, water, and clothing), since “nede ne hath no lawe” (20. 10).⁹ Need’s speech presents “one of the most challenging interpretive acts in the poem.”¹⁰ Numerous critics have condemned Need’s argument as “a tissue of subtle temptation,”¹¹ yet in recent years there has been increasing support for the idea that Langland approved of Need.¹² My own feeling is that Need’s ideas about poverty and temperance are offered for exploration and are neither condemned nor approved in any wholesale manner.¹³ Since Need represents an aspect of Will’s psychology (his thought process), his arguments can shift without being necessarily shifty.¹⁴ Indeed, Need’s use

9. I have used the B text of William Langland’s *Piers Plowman*, ed. A.V.C. Schmidt, 2nd ed. (London: Dent, 1995). There is one other use of the maxim, in Passus 13 (line 44a) of the C text. Its speaker (Rechelesnesse) is even more suspect than Need, but many of my comments on the inherent morality of the maxim will apply across the board. Since the argument (about poverty) is quite similar, I have chosen to focus on Passus 20.

10. Kate Crassons, *The Claims of Poverty: Literature, Culture, and Ideology in Late Medieval England* (Notre Dame: University of Notre Dame Press, 2010), 69.

11. Stephen Barney, *The Penn Commentary on Piers Plowman, Volume 5: C Passūs 20–22; B Passūs 18–20* (Philadelphia: University of Pennsylvania Press, 2006), 189.

12. For this argument, see Jill Mann, “The Nature of Need Revisited,” *Yearbook of Langland Studies* 18 (2004): 3–29. The use of the maxim in the common law is discussed by Richard Firth Green, “‘Nede ne hath no lawe’: The Plea of Necessity in Medieval Literature and Law,” in *Living Dangerously: On the Margins in Medieval and Early Modern Europe*, ed. Barbara Hanawalt and Anna Grotans (Notre Dame, IN: University of Notre Dame Press, 2007): 9–30. For Franciscan use of the maxim, see Lawrence M. Clopper, “*Songs of Rechelesnesse*”: *Langland and the Franciscans* (Ann Arbor: University of Michigan Press, 1997), especially 93–102.

13. There is a natural tendency to read the poem in chunks, so that blocks of text necessarily juxtapose each other. For instance, Passus 20 is generally split into two parts (Will’s needs and the institutional needs of the church), and so Need’s emphasis on temperance is seen as perverse, whereas Conscience’s words about “mesure” (20. 254) are by contrast lauded.

14. Compare Penn R. Szittyá’s argument that Need’s maxim is undercut by the fact that “the meaning of need changes as the speech progresses.” Penn R. Szittyá, *The Antifraternal Tradition in Medieval Literature* (Princeton: Princeton University Press, 1986), 270. David Aers

of *necessitas legem non habet* is precisely an example of a moral argument partly vitiated by its context, and thus easily misunderstood.

Most importantly, it simply does not hold that necessity spells the absence of law. Such an assumption often leads to reductive arguments. For instance, Robert Frank once wrote, “Need puts man outside the laws of property and morality, outside the guidance of conscience and the cardinal virtues. It makes man lawless.”¹⁵ James Simpson similarly suggests that we “might also be wary about Need’s (proverbial) argument that ‘need has no law’. The central problematic of the entire poem has been the inescapability of the law Whereas Christ’s charity satisfied the law, Need would argue that the needy can simply ignore the law.”¹⁶ Likewise Stephen Barney, at the end of a lengthy and learned note on the topic, concludes: “It comes to seem that *nede hath no lawe* means that Nede is an outlaw.”¹⁷ And even when Need is said to be merely amoral,¹⁸ there is little consideration of the possibility that cases of necessity appeal to a higher law

similarly divides Need’s speech into three sections that move from orthodox views to more radical Franciscan ideology. Aers, *Sanctifying Signs: Making Christian Tradition in Late Medieval England* (Notre Dame: University of Notre Dame Press, 2004), 150–51.

15. Robert Worth Frank, Jr. *Piers Plowman and the Scheme of Salvation: An Interpretation of Dowel, Dobet, and Dobest* (New Haven: Yale University Press, 1957). Immediately after this quotation, Frank cites “Nede ne hath no lawe,” this despite writing earlier that this part of Need’s speech was “within the limits of orthodoxy” (113).

16. James Simpson, *Piers Plowman: An Introduction*, 2nd ed. (Exeter: University of Exeter Press, 2007), 205.

17. Barney, *Penn Commentary*, 200.

18. The complex connection between need and natural law makes it difficult for me to agree entirely with Kathleen M. Hewitt–Smith, who writes, “Discussions of the problem of necessity in the Middle Ages acknowledge the constitutive a–morality of need.” Hewitt–Smith, “‘Nede ne hath no lawe’: Poverty and the De–stabilization of Allegory in the Final Visions of *Piers Plowman*,” in *William Langland’s Piers Plowman: A Book of Essays*, ed. Kathleen M. Hewitt Smith (New York: Routledge, 2001), 233–53, 247. However, I do agree with Hewitt–Smith that the last Passus involves a radical destabilization of the allegorical mode, so that it becomes increasingly difficult for the narrator to make sense of figures like Need.

(especially natural law), or that the very fact that we are dealing with a *legal* maxim means that the absence of law has taken on a legal or ethical dimension.

Indeed, historically the rapid dissemination of the maxim in canon law should not surprise us, since it captured the equitable nature of canon law, which at its best left open an appeal to conscience and to extenuating circumstances. Although Gratian was not the first to use the maxim, his *Decretum* greatly popularized *necessitas legem non habet*. For instance, the first *causa*, as noted by Agamben, makes a distinction between sacraments that are necessary for salvation (where the maxim applies), and sacraments of lesser importance (*dignitatis*).¹⁹ By the time Raymond of Penafort added a number of rules of law to the end of the *Decretals* of Gregory IX (1234), the argument from necessity had become a hallmark of canon law. The phrasing is slightly different (“*Quod non est licitum in lege, necessitas facit licitum*”), and so are the examples (fighting on the Sabbath; breaking one’s fast when ill), but the principle is the same.²⁰

The more specific application to theft is the result of a different passage in Gratian.²¹ The *Decretum* opens with a series of definitions of the various types of law. Natural law is said to be common to all people, a definition that the *Glossa Ordinaria* unpacks as follows: “all things are called common, that is, to be shared in time of necessity” (“*dicuntur omnia communia, idest,*

19. C.1 q.1 c.39. The 36 *Causae* form the second part of Gratian’s treatise. For citations of the *Corpus Iuris Canonici*, I have used the 1582 edition digitized by the UCLA Digital Library Program, <http://digital.library.ucla.edu/canonlaw>. Where possible I have used translations from *The Treatise on Laws (Decretum DD. 1–20) with the Ordinary Gloss*, translated by Augustine Thompson, OP, and James Gordley, introduction by Katherine Christensen (Washington: Catholic University of America Press, 1993).

20. *Decretals* of Pope Gregory IX, X 5.41.4.

21. This connection is also made in the *Glossa Ordinaria* to the passage from the *Decretals*, cited above.

communicanda tempore necessitatis”).²² As Brian Tierney points out, this etymological argument was seen as natural and self-evident:

“Communis . . . id est communicanda.” “Common . . . that is to be shared.” The words were endlessly repeated in later discussions. In this way of thinking, private property was itself a social institution involving obligations to others. Property could and should be private and common at the same time; private in the sense that ownership and administration belonged to the individuals, common in the sense that worldly goods had to be shared with others in time of need.²³

It is important then, that necessity is both an effect of sin (which causes avarice, and so economic scarcity) and a positive reminder of the ideal, natural state where everything was held in common.²⁴ This tension would shape both canon law and the mendicant movement, and always the exception was simultaneously the goal of the system.

This also explains why *necessitas legem non habet* was hardly an amoral statement. When Thomas Aquinas deals with the topic he points out that the word *theft* is really a misnomer, “because that which he [the poor person] takes for the support of his life becomes his own property by reason of that need” (“Quia per talem necessitatem efficitur suum illud quod

22. Gloss to D.1. c.7.

23. Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law: 1150–1625* (Atlanta: Scholars Press, 1997), 72–73.

24. An extensive survey of scholastic opinions on this tension is provided by Odd Langholm, *Economics in the Medieval Schools: Wealth, Exchange, Value, Money and Usury according to the Paris Theological Tradition 1200–1350* (Leiden: Brill, 1992).

quis accipit ad sustentandam propriam vitam”).²⁵ It was only in the fifteenth century that some canonists began to argue that a person who stole out of extreme need should return or repay the goods should his fortunes improve.²⁶ The standard line, however, was that since the goods became the poor person’s property, no debt could be incurred. This explains why Langland’s *Need* says that “nede ne hath no lawe, ne nevere shal falle in dette” (20. 10).²⁷ As far as *Need* is concerned, there is no conflict between stealing for survival and that constant refrain of *Piers Plowman*: *redde quod debes*. *Need*’s moral maxim thus expresses “a truth so compelling to churchmen in the later middle ages that political and legal and philosophical systems of whatever nature somehow had to find ways of tucking it in and accommodating it.”²⁸

The challenge to accommodate was felt especially by the Franciscans. Langland scholars have pointed out that the maxim was included early on in the Franciscan Rule of 1221.²⁹ It was also confirmed in Nicholas III’s bull, *Exiit qui seminat* (1279).³⁰ What is not always remembered

25. *Summa Theologicae* II–II, Q. 66, Art. 7, online at <http://www.corpusthomicum.org/sth2094.html>. Translations of Aquinas are from St. Thomas Aquinas, *Summa Theologica*, 5 vols. (Westminster, MD: Christian Classics, 1981).

26. Scott G. Swanson, “The Medieval Foundations of John Locke’s Theory of Natural Rights: Rights of Subsistence and the Principle of Extreme Necessity,” *History of Political Thought* 18.3 (1997): 399–459, 408.

27. Aquinas also points out that the usual rules for penance do not apply. *Summa Theologicae* II–II, Q. 66, Art. 7. Compare, by contrast, Stephen Barney’s comments that “Excusing oneself implies prior misbehavior” (which is fallacious by any legal standard) or that “it does not follow that it [need] never falls into debt.” Barney, *Penn Commentary*, 191 (see also 200).

28. Swanson, “Medieval Foundations,” 413.

29. See Clopper, *Songs of Rechelesnesse*, 93n49. The reference is to chapter 9. See Michael W. Blastic, Jay M. Hammond, and J.A. Wayne Hellmann, ed., *The Writings of Francis of Assisi: Rules, Testament and Admonitions*, Studies in Early Franciscan Sources, vol. 2 (New York: Franciscan Institute Publications), 85.

30. Sext 5.12.3.

is the unease caused by its usage. Critics of the Franciscans loved to turn the adage against them. They pointed out that if extreme necessity creates a duty of self-preservation and bestows a right to subsistence then everyone has a basic dominion in the common goods of this world. It is thus impossible for the Franciscans to abdicate all property rights and to insist on a simple use of goods (*usus facti*). By the beginning of the fourteenth century, Franciscan theologians had therefore become increasingly “reticent about expounding the principle of extreme necessity in terms of natural rights, because their doctrine of poverty held that property rights were first instituted by civil governments.”³¹ It was left for William Ockham in his debate with Pope John XXII to resuscitate the principle as part of the defense for evangelical poverty.

If the history of the maxim is one of general approval and subsequent accommodation, it seems likely that we might find the same pattern in *Piers Plowman*. It is fascinating how the compelling power of necessity is felt well beyond Need’s speech. As Passus 20 develops, we find that need creates dependence on God for the necessities of life, and actively discourages the covetousness associated with superfluous possessions (which should be shared or made common to all). Whereas the Antichrist simply satisfies people’s “nedes” (20. 55), Conscience actively creates need. In fact, Old Age and Death are on the side of Conscience and create the need for an *ars moriendi*. Nature (*Kynde*) likewise sends forth plagues and diseases to make men repent (80-105). In this way, Nature makes the exception (the state of need) common to all. The theme of the entire Passus might be, “nede maketh nedé fele nedes lowe-herted” [Need by necessity makes needy people feel humble] (20. 37).

31. Virpi Mäkinen, “Rights and Duties in Late Scholastic Discussion on Extreme Necessity,” in *Transformations in Medieval and Early-Modern Rights Discourse*, ed. Virpi Mäkinen and Petter Korkman (Dordrecht, The Netherlands: Springer, 2006), 37–62, 49.

Yet, while need becomes synonymous with the laws of nature, its relationship with positive law remains vexed. The character Nede had started his speech by reminding Will that the king had also employed the maxim “nede ne hath no lawe” (20. 6). This association is troubling because the king had asserted, at the end of Passus 19, that being free from the law (*legibus solutus*) he could claim from the “comune” whatever his “kynde” demanded (19. 480). Conscience adds some conditions to the king’s brash arguments and so undermines the appeal of the argument from necessity.³² The result is that positive law will allow the exception to the rule, but not without concerns about justice and equity.

Passus 20 continues this kind of backtracking. Whereas Nede promises to provide bail for Will should he steal, Conscience uses similar language to vouch that those who follow their “reule” within the Holy Church will not suffer need: “And I wol be youre borugh [surety], ye shal have breed and clothes / And othere necessaries ynowe— yow shal no thyng lakke” (20. 248–49). Similarly, Kynde suggests that the “craft” of faithful love provides sufficient food and clothing. Thus the Passus turns from justifying theft in cases of necessity to defending the law of equitable exchange (20. 266–67), the principle *redde quod debes* (20. 309), and the notion that one should not desire *rem proximi tui* (20. 279).

In fact, it is Envy who comes up with complicated arguments that “alle thynges under hevene oughte to ben in comune” (20. 276). This is clearly meant to satirize the friars. As Penn Szittyta writes, “What they particularly wish to hold in common are the privileges and income of the secular clergy.”³³ More broadly, we can connect Envy’s arguments with the idea that in the

32. As I have argued elsewhere, Langland recognizes that the king is theoretically free from the law, yet nevertheless tries to tie him to a strict observance of the law. See Conrad van Dijk, “Giving Each His Due: Langland, Gower, and the Question of Equity,” *Journal of English and Germanic Philology* 108.3 (2009): 310–35.

33. Szittyta, *Antifraternal Tradition*, 282.

State of Nature everything was held in common.³⁴ Langland critiques the selfish motivation of those who invoke this lofty ideal. Indeed, Langland seems keen to emphasize that while necessity takes us back to natural law, property rights are enshrined in positive law.

Unfortunately, Passus 20 is unable to retain this delicate balance. While positive law is upheld, the institutions of law and church ultimately fall to corruption, and the Passus ends with Conscience being fed up with the friars—who flatter out of “nede”—and becoming a pilgrim in search of Piers Plowman (20. 384).

It is difficult to know what to make of all this. Over the course of the Passus, Need increasingly seems less enshrined in law than in nature. It is Kynde and the natural phenomena of death and old age that create a sense of need. This postlapsarian Nature is no cornucopia or Golden Age, but neither is “need” truly natural, for it is produced artificially to bring people to repentance. It is human greed and pride that destroy society, and if social harmony existed, there would be enough resources to go around.

This lack of a rigorous economic approach means that Need cannot be formulated precisely as a law of economics.³⁵ Even less does it enter the juridical order, for the affirmation of private property means that “nede hath no law” remains very much the exception to the rule. And yet, as Andrew Galloway has pointed out, medieval texts confront us with “the enormous power of necessity” that shapes everything from the course of history to the workings of divine

34. Lawrence Clopper reads this passage more narrowly, which leads him to conclude (erroneously I feel), “The thesis that *all* ought to be possessed in common is a perversion of natural law, which says that only necessities are available to all.” Clopper, *Songes of Rechelesnesse*, 101. If property rights came about after the fall, then natural law would consist of having all things in common (see Gratian’s definition above), even if this might be interpreted by the Franciscans as consisting only of basic necessities.

35. See especially Andrew Galloway, “The Economy of Need in Late Medieval English Literature,” *Viator* 40.1 (2009): 309–31, 330.

power.³⁶ Even when Need becomes an exception found in nature, its very naturalness always brings it back into the discourse of law and allows it, for example, to be invoked against the very friars who saw themselves as needy.

Langland's conception of need (especially as *indigentia*) thus implicitly questions our notions of both law (need has *no law*) and nature (which itself has no needs). It is in fact difficult to say whether the maxim is a law of nature (describing what nature is like) or a natural law (a law that seems natural or universal). From a postmodern perspective, this tension between law and nature is the result of the logic of the supplement, and even though Need is not primarily political (as Agamben would stress), it is nevertheless much more than a simple exception. Indeed, for Langland Need is a powerful theological concept, a call to humility and self-sufficiency, a call for social reform, and an ever-present reminder of sin. Need is not a solution (though it points to one) nor a form of closure. It directs us to moral considerations such as the spirit of temperance, but it is not itself a moral standard. It is precisely because *necessity has no law* is itself a law that Need is both contradictory and incapable of being dismissed.³⁷

2. From Common Property to Common Law

Langland was not the only English writer who had trouble determining the place and value of necessity. In a moment I will examine John Gower's understanding of *necessitas legem non habet*. Before turning to Gower, however, it may be useful to see briefly how a common lawyer dealt with the issue. For this it will be instructive to move forward in time to Christopher

36. *Ibid.*, 315.

37. For further discussion of some of these paradoxes, see especially Margaret Kim, "Hunger, Need, and the Politics of Poverty in *Piers Plowman*," *The Yearbook of Langland Studies* 16 (2002): 164–65.

St. German, whose *Doctor and Student*, first published in 1528, provided a popular introduction to the common law.³⁸ St. German's primary aim is to raise the prestige of the common law in relation to the principles of canon law. His arguments therefore bring us closer to what Agamben characterized as the crisis of modernity, the politicization of bare life that made the exception less and less a return to a pure, untrammelled state of nature.

When St. German broaches the topic of natural law, he returns to the question of what it meant to have common possessions in the state of nature. As the Doctor (trained in canon law) points out, if natural law is immutable, should we not still be striving for common possession? Canon law certainly assumed so, and provided the *denunciatio evangelica* as a means (though perhaps an unsatisfactory one) for rectifying economic injustice.³⁹ But since Christopher St. German aims to praise the virtues of the common law, he has the Student provide a somewhat equivocal response. In the following quotation, square brackets are used for passages added to the English editions, whereas italics indicate lines found only in the Latin:

And here it is to be understande / that after some men / that lawe whereby all thynges were in common was never of the lawe of reason /⁴⁰ [but onely in the tyme of extreme necessytie]. For they saye that the lawe of reason may not be chaunged / but they say it is evident that the lawe whereby all thynges shuld be in comen is chaunged / wherefore they conclude that was never the lawe of reason. *And they say furthermore that the words*

38. Christopher St. German, *Doctor and Student*, ed. T.F.T. Plucknett and J.L. Barton (London: Selden Society, 1974).

39. Tierney, *The Idea of Natural Rights*, 74. As the gloss to D.47 c.8 suggests, the poor ("pauperes") might denounce to the church the person who gave no alms ("denuntiari possunt ecclesiae illum qui non dat").

40. The law of nature.

*of Gratian to be found in Distinction I, namely, that the common possession of all things was by the law of reason as here defined, ought to be understood in the sense that all things are common by the law of reason in time of necessity, and not otherwise. For the law of property could have been instituted from the beginning, but because the population was yet small, the law that all things should be common was suitable and necessary. But when the population increased, it was necessary to have a law of property, lest the slothful and the wicked should oppress the good. (Dialogue 1, chapter 2)*⁴¹

We know from St. German's disputes with St. Thomas More that he loved to introduce his own opinions with "some men say," and this comment seems no exception. Yet he does not provide much more than a cursory explanation, and the English text is so cryptic that the argument is easily distorted. How, then, does he understand "necessity"?

First of all, the objection that natural law is immutable (and so cannot include both private and common property) is nothing new. In the *Summa Theologicae*, St. Thomas Aquinas provides an entire *quaestio* on the topic.⁴² Aquinas argues that property law is an addition to the law of nature, and not a change. In the same way that human nudity in nature did not prevent the

41. "Item notandum est quod lex illa unde habebatur quod esset inter omnes homines communis omnium possessio secundum quosdam numquam fuit de lege rationis/ quia dicunt quod lex rationis non recipit mutationem/ hoc vero lex scilicet quod esset omnium communis possessio mutari potest immo et mutatur ut evidenter patet/ igitur affirmant illi quod nunquam fuit de lege rationis. Et dicunt ulterius quod verba Gratiani que habentur distinctione prima *.scilicet.* quod communis omnium possessio sit de lege rationis ut lex rationis hic accipitur/ intelligi debent quod in tempore necessitatis omnia per legem rationis sunt communia aliter non. Potuis enim lex proprietatis a principio institui/ sed quia adhuc populi pauci erant numero satis conveniens et necessaria fuit lex illa scilicet ut omnia fierent communia. Sed cum multiplicatus est populus necessarium fuit habere legem proprietatis ne pigri et malis bonos graverent."

42. *Summa Theologicae* I–II, Q. 94, Art. 5.

art of clothing, so common possession did not exclude private property. Only when conflict occurs (in times of necessity) will natural law override positive law. This also explains the reference to Gratian in the Latin edition of *Doctor and Student*. St. German is clearly referring to the explanation in the *Glossa Ordinaria*, cited earlier, namely that “all things are called common, that is, to be shared in time of necessity” (“dicuntur omnia communia, idest, communicanda tempore necessitatis”). Such a situation returns us to a time when all property was held in common.

Yet, is there a shift in emphasis? It now seems that private property is the norm, and we discover that it could even have been instituted right from the beginning. As a result, allowance has to be made for having things in common. This is clear from the language of necessity. The Latin continuation uses the word “necessity” three times in quick succession. Things are held in common in times of necessity; in the state of nature, “the law that all things should be common was suitable and necessary”; and the institution of private property was “necessary.” None of these observations is radical in itself. Private property was long seen as a necessary evil. More broadly, the scholastics loved arguments from necessity. The real problem is that St. German does not do enough to make the state of nature seem better than positive law. Sharing is hardly an ideal: it is rather a historical occurrence that was once necessary but is no longer normative.⁴³ In fact, it is private property that seems more closely associated with Reason.

This is not to say that St. German makes private property inviolable. As J. L. Barton notes in the introduction to the Selden edition, because private property is a human institution, it can also be taken away, an argument that has serious implications for ecclesiastical privileges.⁴⁴

43. Similarly, in chapter 7 customs are said to be “good and necessarye for the common welth.”

44. St. German, *Doctor and Student*, xxv.

But neither does St. German make a strong case for the argument from necessity. St. German is too committed to the common law to develop the canon law's insistence on distributive justice or its jurisdiction over alms-giving. Although he does not clearly answer the question whether the law of nature is immutable, the implication is that private property is reasonable and could always have been in place. Anything else is an exception.

The implicit argument, therefore, runs as follows. Natural law is the law of reason. Private property is reasonable.⁴⁵ Since private property could have been instituted from the beginning, it is possible to see natural law as immutable. Historically, though, private property did not come about until after the Fall (St. German suggests in the time of Nimrod), and prior to that there was a time of sharing. While private property could theoretically have been part of the natural law, the reality was otherwise. The question remains, then, whether common possession is truly part of natural law (or the law of reason). If common property was only for a time, can it be truly immutable and thus reasonable?

St. German does not answer this question satisfactorily, but he does reveal a change in the understanding of necessity. No longer does necessity return us to a lost ideal, a Golden Age, nor can we be entirely sure what kind of property distribution is more natural. We thus see the first glimpses of that modern notion of necessity that is purely political. As the language implies, everything is "necessary." Yet the "extreme necessity" that returns us to nature is barely developed. On the surface, then, the arguments seem traditional, but as the pruned English

45. Later, in chapter 5, St. German will suggest that property law is derived indirectly from nature (or "reason" as the common law calls it). The more detailed the laws, however, the less immutable they seem, and the more property law becomes local law and custom. The same chapter also suggests that robbery might have been forbidden already in the state of nature, and, in fact, chapter 2 had already stated that according to natural law a trespasser should be punished and that a person might defend himself "and his goodes."

versions show, much of this is lip-service. The state of nature becomes less important for its own sake than as a source of authority for the common law.

3. The Love of Necessity and the Necessity of Love

Both Langland and St. German show that necessity plays a key part in medieval conceptions of natural law. They also reveal the difficulty of finding harmony between the different types of law (especially canon, common, and natural law). And finally, they allow us to add some qualifications to Giorgio Agamben's argument that the Middle Ages made sparing use of the maxim "necessity knows no law." While this is generally true for positive law, the cultural significance of necessity is much greater. For Gower, as we will see, the attempt to make sense of the exception in terms of law determines much of his poetic output.

Like Langland, John Gower also examines the place of necessity in arguments from natural law. Both see nature as fundamentally a state of need, though the nature of the need is different for each: Langland is concerned with economic deprivation, whereas Gower is more interested in the needs created by human sexuality. Gower also goes further in making necessity much more than an exception to the rule. Necessity is the rule, and in the *Confessio Amantis* it provides a quasi-legal solution to the problem of a Nature that seems distinctly amoral and lawless. As Hugh White has argued, many of Gower's references to nature point to "something intuitive, instinctive, pre-rational."⁴⁶ In other words, nature easily becomes a zone of *anomie*,

46. Hugh White, *Nature, Sex, and Goodness in a Medieval Literary Tradition* (Oxford: Oxford University Press, 2000), 181n21.

what Diane Watt has called an “amoral” realm.⁴⁷ The unruliness of the passions creates all sorts of problems for Gower, and some have read the end of the *Confessio* as an expression of exasperation, followed by resignation. Gower seems to be throwing up his hands and saying, “This lover is old anyway, and love is not reasonable after all.” Yet Gower tries to characterize the *anomie* of nature as paradoxically subject to the laws of necessity, and so not only legible, but also predictable.

Unlike Langland, Gower is not interested in justifiable theft.⁴⁸ When Gower deals with the topic in Book 5 of the *Confessio*, he finds that neither God’s creation ordinances nor the Law of Moses leaves room for an argument from necessity. Whereas elsewhere Gower has much to say about the Golden Age, in this context paradise is not a state of plenty where everything is held in common. Instead, Gower emphasizes the value of earnest work. God orders Adam “that he scholde swinke / To geten him his sustenance” (5. 6964-65). This principle leads to a prohibition of theft in the Law of Moses:

And ek he [God] sette an ordinance

Upon the lawe of Moises,

That though a man be haveles, [without possessions]

Yit schal he noght be thefte stele.

47. Diane Watt, *Amoral Gower: Language, Sex, and Politics* (Minneapolis: University of Minnesota Press, 2003). Watt argues about the *Confessio* that “insofar as it does not always give satisfactory answers to the moral questions it raises and at times obfuscates rather than clarifies, it can be seen to pursue a negative critique of ethical poetry” (xii). This moral vacuum forces readers to find and apply their own ethical and interpretive standard.

48. All references to the *Confessio* are from John Gower, *Confessio Amantis*, ed. Russell A. Peck, Latin translation by Andrew Galloway, 3 vols. (Kalamazoo: Medieval Institute Publications, 2001–2004). In some cases I have used the 2nd edition of vol. 1 (2006).

Bot nou adaiies ther ben fele
 That wol no labour undertake,
 Bot what thei mai be Stelthe take
 Thei holde it sikerliche wonne. (5. 6966-73)

These are stern words, but given that Gower's attitude toward the lower classes is often critical, it is not surprising that Gower does not follow Langland in condoning some forms of theft.⁴⁹

Instead, Gower uses the expression "nede hath no lawe" exclusively in relation to sexuality. A key occurrence is in relation to incest at the beginning of Book 8. We read that in the first age of man, incest is permissible because of the scarcity of partners. Gower's justification is our legal maxim: "Men sein that nede hath no lawe" (8. 75). The point is not that incest itself is some kind of natural impulse. Nature excites people to sexuality (8. 57, 94); it just so happens that the urge is directed, compelled, and constrained, by necessity. When the third age starts with Abraham, "The nede tho was overrunne" (8. 100). Incest in cases of necessity thus remains very much an exception to the law, the law in question being a combination of the natural and divine laws that command human beings to increase and multiply, yet avoid incest (8. 29).

However, what happens when "nede hath no lawe" is used not in relation to incest, but as justification for *fin amour*? In Book 4, Amans confesses that he is fully in the lady's service and so has overcome his idleness:

Thus hath sche fulliche overcome

49. A good place to discern Gower's attitude toward the lower classes is Book 1 of the *Vox Clamantis*, where Gower describes the Uprising of 1381.

Min ydelnesse til I sterve,
 So that I mot hire nedes serve,
 For as men sein, nede hath no lawe.
 Thus mot I nedly to hire drawe,
 I serve, I bowe, I loke, I loute,
 Min yhe folweth hire aboute,
 What so she wole so wol I. (4. 1164-71).⁵⁰

The casual way in which Amans uses the maxim suggests a broad application, and certainly a self-serving one. The need of which he speaks is simply the natural impulse to love. We would not call this an exception to the rule—it is in fact the rule. Everyone is driven by need, so paradoxically the law of love is that love has no law.

We see essentially the same argument in Arcite's speech in Book 1 of Chaucer's *Knight's Tale*:

Wostow nat wel the olde clerkes sawe,
 That 'who shal yeve a lovere any lawe?'
 Love is a gretter lawe, by my pan,
 Than may be yeve to any erthely man;
 And therefore positif lawe and swich decree
 Is broken al day for love in ech degree.

50. Compare also "The Tale of Theseus and Ariadne," where Ariadne ties her claim on love to the needful situation of her beloved: "I wende I hadde his love boght, / And so deserved ate nede, / Whan that he stod upon his drede" (5. 5448–50).

A man moot nedes love, maugree his heed. (I (A) 1163-69)⁵¹

Theseus will later turn Arcite's mercenary observation into a more palatable saying: we must "maken vertu of necessitee" (3042). Yet, as the first fragment of *The Canterbury Tales* descends into ribaldry, we soon return to the argument that the human need for "esement" (4186) justifies all sexual escapades.⁵² Everyone wants "his nedes sped" (4205).

Amans, by contrast, is not really saying anything different from Genius. The latter suggests that love creates a need even when a lover does not act on it. We see this especially in the first story of Book 4 of the *Confessio*, where Dido commits suicide and Aeneas is chastised for his sloth:

Riht evene unto hire herte rote
 A naked swerd anon sche threste,
 And thus sche gat hireselve reste
 In remembrance of alle slowe.
 Wherof, my sone, thou mihte knowe
 How tariinge upon the nede
 In loves cause is for to drede;
 And that hath Dido sore aboght. (4. 134-41; compare 4. 3391).

51. Geoffrey Chaucer, *The Riverside Chaucer*, Gen. ed. Larry D. Benson, 3rd ed. (Boston: Houghton Mifflin, 1987).

52. For this legal language in *The Reeve's Tale*, see Mary Flowers Braswell, *Chaucer's "Legal Fiction": Reading the Records* (Madison: Farleigh Dickinson University Press, 2001), 83.

The passage is doubly ironic. First of all, Aeneas' sloth causes Dido to seek the "reste" that only death can bring. Secondly, if love is such a powerful need, why did Aeneas tarry? Indeed, Book 4 explores the paradox that to avoid sloth (particularly negligence) one must choose to act, yet lovers are already driven to act by necessity. As Genius says about this kind of Ovidian love, "therfro mai no man swerve, / That he ne mot his lawe obeie" (4. 1216-17). Apparently even the example of Aeneas cannot undermine this rule.

In fact, Gower is extremely repetitive on this point. Again and again, the refrain is "ther is no wyht / That mai withstonde loves miht" (6. 317-18).⁵³ Again and again, this basic human need is said to be Cupid's law.⁵⁴ Yet almost every time we look more closely, we discover that this law is really an absence of law. As we read in Book 6, lovers are drunk "[w]ithoute lawe of governance" (6. 364). Or consider the following passage, which plays with the idea that love is different from law because people obey the law out of fear, but love takes away fear and gives a sense of false courage:

"Who dar do thing which love ne dar?
 To love is every lawe unwar,
 Bot to the lawes of his heste [Love's command]
 The fisch, the foul, the man, the beste
 Of al the worldes kinde louteth.
 For love is he which nothing douteth
 There is no God, there is no lawe,

53. Compare 6. 90-91 or 5. 3058-63.

54. For just a small sampling, see 4. 1471, 5. 5475, 5. 6134.

Of whom that he takth eny hiede

He stant so ferforth out of reule.

There is no wit that mai him reule.” (6. 1261-66, 1278-79, 1283-84)

Cupid is here the tyrannical ruler who stands above the law and whose law is whim.⁵⁵ Despite this, no one can resist love, and when Cupid’s subjects obey his law, they become reckless.

We further see Cupid’s arbitrary rule in the discussion of usury in Book 5. Amans tries to make the argument that his lady is guilty of usury, since she possesses his entire heart and gives nothing in return. Since usury goes beyond need (5. 4629), Amans calls for a fairer exchange. But Genius argues that basic economic justice does not apply to love: one of the lady’s looks may be worth more than the lover’s entire heart (5. 4542-3). Cupid has no duty to alleviate Amans’s poverty, his need (5. 4524):

Such is the statut of his [Cupid’s] lawe,

That thogh thi love more drawe

And peise in the balance more,

Thou miht noght axe agein therfore

Of dueté, bot al of grace.

For love is lord in every place,

Ther mai no lawe him justefie

Be reddour ne be compaignie,

55. Compare also the contradictory treatment of Venus at *CA* 5. 6715–23, where she both constrains Phoebus to love and is supposed to protect the treasure of love, the woman’s maidenhood.

That he ne wole after his wille

Whom that him liketh spede or spille. (5. 4551-60)

In short, Love itself is not constrained to act, but his subjects are.

Critics have been divided as to what to do with these paradoxes. Some have emphasized the contradictions, the “division” (to use Gower’s term) at the heart of the poem. Others have looked to resolve the tensions. Kurt Olsson, for instance, in a classic article on Gower and natural law, suggests that there are five uses of natural law in the *Confessio*:

1. The law of animal nature.
2. An instinct leading to charity.
3. A primitive (state of) nature.
4. The cosmic order.
5. Our natural reason.⁵⁶

As the poem progresses, Genius eventually creates harmony among these different perspectives, and Olsson concludes that in the end “Genius still judges the law of animal nature to be a good in the human species provided it is adapted to and ordered by higher laws [including reason].”⁵⁷ As other critics have added, it is “honeste” marriage that provides the proper solution to the tension between nature and reason (laws 1 and 5 above).

I generally agree with this assessment, but would add that Gower’s treatment of need and necessity is one more strand woven through the fabric of natural law. Need not only causes many

56. Kurt Olsson, “Natural Law and John Gower’s *Confessio Amantis*,” *Medievalia et Humanistica* ns 11 (1982): 229–61.

57. *Ibid.*, 249.

of the problems, but for Gower it is also a get out of jail free card. Why, for instance, does the instinct (the need) to procreate not necessarily lead to fornication? Because in marriage one's need is perfectly satisfied:

The madle is mad for the femele,
 Bot where as on desireth fele,
 That nedeth noight be weie of kinde:
 For whan a man mai redy finde
 His oghne wif, what scholde he seche
 In strange places to beseche
 To borwe another mannes plouh. (7. 4215-21)

Of course, one only needs to read Chaucer's *Miller's Tale* to know that the desire to borrow a plough (or a "kultour") does not go away. Yet for Gower, such desires are strictly unnatural.

On the other hand, even when lovers act on their instincts (and in ignorance of the law), Gower uses the argument from necessity to excuse them. We see this in Gower's frequent recourse to another proverb about need: "nede he mot, that nede schal."⁵⁸ Probably the most important instance comes after the notorious "Tale of Canace and Machaire." This is another case of incest, but the argument seems to apply to all lovers:

For it is seid thus overal,
 That nedes mot that nede schal

58. See 1. 1714 and 8. 1020. An alternate version is found in the Prologue: "So soffre thei that nedes mote" (698).

Of that a lif doth after kinde,
 Wherof he mai no bote finde
 What nature hath set in hir lawe
 Ther mai no mannes miht withdrawe. (3. 351-56)

Traditionally, this sort of passage has been seen as an exception to the rule, a moment of Gower at his best. Gower practices a compassionate, experiential ethics. As Winthrop Wetherbee has argued,

the inconsistencies among stated morals, Latin and English, or between a story's sympathetic tenor on the one hand and its ostensible moral on the other, are always referable to Genius' enlightened naturalism; they invite us to bring our own genial tendencies into play, and to respond as directly as we can to Genius' deeper, instinctual sense of what is natural or "kyndely" and what is not.⁵⁹

Other critics have tried to refine this argument, for instance by aligning certain aspects of "kynde" with a vernacular culture and others with a clerical discourse.⁶⁰ In the first instance,

59. Winthrop Wetherbee, "Latin Structure and Vernacular Space: Gower, Chaucer and the Boethian Tradition," in *Chaucer and Gower: Difference, Mutuality, Exchange*, ed. R. F. Yeager (Victoria: University of Victoria Press, 1991), 7–35, 30.

60. Two prominent examples are R. F. Yeager, "Learning to Read in Tongues: Writing Poetry for a Trilingual Culture," in *Chaucer and Gower: Difference, Mutuality, Exchange*, ed. R. F. Yeager (Victoria: University of Victoria Press, 1991), 115–29, and J. Allan Mitchell, *Ethics and Eventfulness in Middle English Literature* (New York: Palgrave Macmillan, 2009). To my mind, it is difficult to make any rigorous distinctions between words like "nature" and "kynde."

natural law is said to be concerned with practical reason and a contingent ethics, whereas from the latter perspective, nature is treated in a totalizing manner.

“The Tale of Canace and Machaire” shows the difficulty of drawing such distinctions. Here the language of exoneration (the apparent exception) is simultaneously generalizing. Genius does not describe just the need of one individual, but of every lover. The point is not simply that need provides a one-time excuse, but that every love creates a need. This is not to deny that Gower’s treatment of natural law in this tale is “incoherent,” as Matthew Irvin has recently argued.⁶¹ It is rather to affirm that Gower tries to reconcile the contradictions by giving legal weight to sexual needs. This is as much part of the *moralitas* of “The Tale of Canace and Machaire” as the lesson that Eolus suffers from melancholy. Gower accounts for the exception by turning it into a universal law.

Yet does Gower’s explanation not make the law of nature rather mechanistic? Is love really something from which we cannot “withdraw”? If Gower had read Aquinas, he would have known that the law of nature both is and is not something we follow by habit. Aquinas recognizes that Augustine defined a habit as “that whereby something is done when necessary” (“[habitus] est quo aliquid agitur cum opus est”).⁶² Yet natural law is appointed by reason, and so is not something we simply do habitually. On the other hand, once we consent to a reasonable course of action, our behavior might become habitual. For Gower, though, reason sometimes seems to play catch-up to nature. It is as if reason has little place in the state of nature, where

61. Matthew W. Irvin, *The Poetic Voices of John Gower: Politics and Personae in the Confessio Amantis* (Cambridge: Brewer, 2014), 150.

62. *ST* I–II, Q. 94, Art. 1.

necessity creates habits that are simply unavoidable.⁶³ Is this a sympathetic doctrine or a deterministic one? Perhaps it is both.

In the *Confessio*, the exceptional need that knows no law is thus enshrined in natural law. In fact, the exception is exemplary of the whole. Giorgio Agamben, by comparison, felt that the state of exception is entirely a human phenomenon, and that law does not have a court in nature.⁶⁴ Gower also goes further than Langland, not only in making the state of exception ubiquitous, but also in making it so central to his conception of natural law. Langland might agree that need is always present, but rarely does this provide a legal excuse.

4. The Need for an Ending

The importance of need likewise allows us to make sense of the ending of the *Confessio*.⁶⁵ As Amans presses for a final conclusion to his “cause,” Genius turns to yet another proverb: “The more that the nede is hyh, / The more it nedeth to be slyh / To him which hath the nede on honde” (8. 2063–65). The difficulty of the lines lies in determining who is meant by “him.” Gower’s other uses of this proverb suggest that it is the person in need who must act

63. This is a difference in emphasis, not in kind. Gower’s shares Aquinas’ basic view of natural law as an immanent order within creation in which man participates through his reason. For a good comparison between this traditional position and the developing Nominalist view that natural law is imposed from without by God (another shift, not a break), see Francis Oakley, *Natural Law, Laws of Nature, Natural Rights: Continuity and Discontinuity in the History of Ideas* (New York: Continuum, 2005).

64. Agamben, *State of Exception*, 88. Not only can we never return to a kind of pre-modern condition, but once we are trapped in the world of politics the idea of nature (a form of bare life) becomes itself a myth of origins.

65. The ending has been much discussed. One the most sensitive readings remains the chapter “Old Age and Conversion” in Kurt Olsson’s book *John Gower and the Structures of Conversion: A Reading of the *Confessio Amantis** (Cambridge: Brewer, 1992).

prudently (or slyly). In Book 1, for instance, the hypocrite uses “sleichte at thilke nede” [slyness in such a need] (1. 687).⁶⁶ However, this proverb (be sly in times of need) need not be pejorative. It is likely a version of “necessity is the mother of invention.” In Book 8, then, Genius makes the point that Amans is in great need of a solution to his problem, and Genius will therefore cut to the chase. As the subsequent lines bear out, the time has come to provide closure. Genius will suggest a “conclusioun final” (8. 2070), a remedy “upon thi nede” (8. 2071).

Yet Amans is not truly ready to heed Genius’s final advice, and he makes one last appeal to Venus. In his poetic supplication, he again emphasizes his need: “Whom nedeth help, he mot his helpe crave, / Or helpeles he schal his nede spille” (8. 2245–56). In some ways, Amans is merely following the advice of Genius, who all along had counseled him to pray “upon thi nede” (6. 442). Yet as it turns out, Amans’s need is illusionary, for as Venus points out (in that famous speech where she puts Amans out to pasture), old age has no real need for love:

“This have I for thin ese cast,
 That thou no more of love sieche.
 Bot my will is that thou besieche
 And preie hierafter for the pes,
 And that thou make a plein rele
 To love, which takth litel hiede
 Of olde men upon the nede
 What that the lustes ben aweie

66. Compare 4. 2082–83. There is also a reference to “sleighte” in the context of need in *Piers Plowman* 20. 14. The *Middle English Dictionary* defines “sleight” in the first place as “wisdom,” “prudence,” or “cleverness,” and only secondly as “cunning” or “guile.”

For in the lawe of my commune

We be nocht schape to comune” (8. 2910–17, 2935–36)

Gower’s solution, then, is to make need the defining feature of love (the exception becomes the rule), and so it is only natural that when need subsides, so does love.

This is an important point, because it might be argued that there is nothing inherently unnatural about old people loving. As Hugh White observes, “Gower’s use of nature terms, in fact, does not suggest that Amans’s aged love is unnatural.”⁶⁷ Certainly, Amans finds comfort in the fact that there are Elde lovers in the court of Venus (8. 2720-22). Gower stresses, however, that it is perfectly natural that the *need* for love diminishes with age. As we discover in the rest of Book 8, other needs also become more pressing: for instance, Gower must pray for the peace of the country and give counsel to the king.

Need and necessity are therefore not simply an aspect of love: they are also a matter of perspective. Here the end of the poem also reminds us of our mortality. In the face of death, human need dwindles, as Chaucer’s Troilus also learns. The point is made especially toward the end of Book 1 of the *Confessio Amantis*.⁶⁸ In “The Tale of the Trump of Death,” when the king is criticized by his brother for honoring some poor pilgrims, he decides to teach his brother a lesson. He lets the trumpet of death be blown outside his brother’s home, thus condemning him to death. When the brother begs for mercy, the king explains that his fears are unwarranted, for human law can be abrogated, whereas the “lawe of kynde” (1. 2231), which makes us mortal,

67. White, *Nature, Sex, and Goodness*, 216.

68. In addition to the story discussed below, the first riddle in “The Tale of the Three Questions” further suggests how nature itself (the earth) has no need but needs be obeyed (1. 3099–3102).

cannot be avoided. According to the king, such a perspective frees one from the constraints of need:

And thus, thogh I that lawe obeie [natural law]⁶⁹
 Of which the kinges ben put under,
 It oghte ben wel lasse wonder
 Than thou, which art withoute nede
 For lawe of londe in such a drede,
 Which for t'acompte is bot a jape,
 As thing which thou miht overscape. (1. 2236-42)

Once again, it is not that necessity knows no law, but that necessity is the (natural) law.⁷⁰ This is why in Book 8 Amans's need is twofold. Not only are his physical desires diminishing, but he is also facing his own end. Amans, according to Venus, is "sieke" (8. 2368), and so his needs have changed. It is the perspective of our mortality that allows us to overcome the blindness of love and return to reason. Gower might have agreed with that enigmatic line in Langland, that need is next to God (B. 20. 35).

This perspective might be called Boethian, or broadly philosophical, but it results from Gower's emphasis on the all-encompassing nature of law. What at first seems to escape the operation of law can always be explained as the result of need and necessity. Not only does this

69. Russell Peck's gloss in his edition of the *Confessio* (2nd ed.) makes this *human* law. However, the previous lines indicate that even the king is subject to "lawe of kynde."

70. Andrew Galloway, in "The Economy of Need," discusses how this tale teaches a lesson about need as "a key to a political economy" (320).

account for the frequent conflation of Venus (the erotic drive) with Fortune (the constraints of time), but it also ties in with the inexorable logic of exemplarity. There is no escaping the necessity of poetic justice. Gower's emphasis on need and necessity can seem forgiving when he excuses certain lovers, or callous when he sees wrongdoers punished, yet they are really two sides of the same coin.

For Gower, then, law is the tie that binds. When in "The Tale of Florent" the hero gets entangled in a contract or "covenant" to marry the old hag, he realizes that he is bound to honour it, for "nede he mot that nede schal" (1. 1714). Unlike in an ordinary legal case, he is not allowed to delay: "for strengthe of matrimoine / He myhte make non essoine" (1. 1777–78). Similarly, in "The Tale of the Three Questions" Peronelle is able to trap the king in his own words: "A kinges word it mot ben holde" (1. 3369). Gower transforms necessity from an exception to the law into the need to obey the law. Even the king is rarely *legibus solutus*, and should not see himself as a law unto himself. While the state of exception is included in the juridical order, it does not lead to autocratic government. It remains primarily a principle of natural (rather than positive) law.⁷¹

That there is something reductive to Gower's approach is undeniable, but then there is always a tendency in Gower to reduce the law to the *nuda iura* (the naked laws).⁷² A final example demonstrates how integral the law of necessity is to Gower's storytelling. In "The Tale of Constantine and Sylvester," at the end of Book 2, Constantine suffers from leprosy. His doctors tell him that this disease is not hereditary, but accidental. Because it is not "be weie of kinde [nature]" (2. 3211), it is supposedly treatable, and Constantine's doctors suggest that he

71. This distinction is not absolute and explains how critics have been able to read Gower both as a constitutionalist and as a supporter of royal power.

72. For a good overview of Gower's use of the Latin plural *iura* (derived from *ius*), see Robert Meindl, "Semper Venalis: Gower's Avaricious Lawyers," *Accessus* 1.2 (2013), Article 2, 17.

bathe in the blood of infants. Immediately, then, the emperor's condition becomes an exception that raises specific legal and ethical questions. The story starts with the appearance of free choice: Constantine is not bound by nature, but can choose how he responds to "accidence" (2. 3210).

Yet nature and law soon make their influence felt. Constantine takes his doctors' advice and sends out "lettres and ... seales" (2. 3217) to force his subjects to sacrifice their children. His subjects have no choice but to obey: "Bot were hem lieve or were hem lothe / The wommen and the children bothe / Into the paleis forth be broght" (2. 3229-31). Fortunately, the pathos of the situation reminds Constantine of his own mortality, "Which kinde hath in hire lawe set" (2. 3251). Constantine realizes that nature, by the providence of God, takes away the exception, and makes all alike: "O thou divine pourveance, / Which every man in the balance / Of kinde has formed to be liche" (2. 3243-45). There is no escaping the laws of nature, and Gower paradoxically describes the realization of one's lack of freedom as a waking up from sleep (2. 3242).

Jacques Derrida has identified this lack of freedom as the first aporia of the relationship between law and justice. He writes,

Our most common axiom is that to be just or unjust, to exercise justice or to transgress it
I must be free and responsible for my action, my behavior, my thought, my decision.
One will not say of a being without freedom, or at least of one who is not free in a given
act, that its decision is just or unjust. But this freedom or this decision of the just, if it is

to be and to be said such, to be recognized as such, must follow a law [*loi*] or a prescription, a rule.⁷³

The problem, in short, is that as soon as we make justice “calculable or programmable” by distilling it to a law, we take away the freedom and responsibility for unique interpretation and judgment.⁷⁴

Indeed, the more receptive Constantine becomes to the laws of nature, the more his behavior is scripted. The awareness of his mortality decreases his own need and leads to the Golden Rule:

And ek he tok a remembrance
 How He that made lawe of kinde
 Wolde every man to lawe binde,
 And bad a man, such as he wolde
 Toward himself, riht such he scholde
 Toward another don also. (2. 3274-79)

In describing how the law of nature “binds” men, Gower is invoking a well-known etymology. As Aquinas writes, “*lex* (law) is derived from *ligare* (to bind), because it binds one to act” (“*dicitur enim lex a ligando, quia obligat ad agendum*”).⁷⁵ No one is therefore entirely exempt

73. Derrida, “Force of Law,” 251.

74. *Ibid.*, 251.

75. *ST* I–II, Q. 90, Art. 1.

from the law of nature. Even our emotional responses (including pity) are less subjective experiences and more objectively determined by the natural order. Indeed, even God's justice is eminently predictable, for his equity consists of giving people precisely what they deserve. In this case, "To him that wroghte charité / He was ageinward charitous" (2. 3327-78). In addition, the final solution (to bathe Constantine in a vessel of water) is perfectly determined by the laws of poetic justice. Symbolically, baptism replaces bloodshed, even as the shedding of Christ's blood made baptism possible.

Finally, Sylvester's sermon on the New Testament (the "Newe Lawe" 2. 3432) concludes with the message that in the last judgment all legal process will be eliminated. There is no need to plead others' cases, nor is there much of a trial, for God will judge everyone directly:

For every man mot thanne entende
 To stonde upon his oghne dedes
 And leve all othre mennes nedes.
 That dai mai no consail availe,
 The pledour and the plee schal faile,
 The sentence of that ilke day
 Mai non appell sette in delay;
 Ther mai no gold the jugge plie. (2. 3412-19)

All that is left is the naked law, stripped of all its judicial clothing. There is no process—only judgment. Again, we see how Gower addresses Derrida's first aporia of law and justice: human beings have no freedom to defend themselves at the very moment that they are held entirely

responsible for their actions. Moreover, God's justice is swift and immediate, and so seeks to overcome the second and third aporias identified by Derrida: those of undecidability and urgency. For Derrida, justice must always remain undecidable: to subsume any example (any exception) under a general law is to submit it to a "calculable process" that takes away our freedom to decide, and so may be legal, but cannot be just.⁷⁶ Furthermore, the decision that constitutes judgment "is always required *immediately*, right away, as quickly as possible."⁷⁷ This rush to judgment is to make the decision seem timeless and unaffected by historical circumstances, delays, or long deliberation.

While for Derrida these aporias reveal the impossibility of justice, Gower finds a solution in the omniscience and goodness of God. All those specific instances that Derrida deconstructs (the performative statement, the example, the event) are for Gower no longer exceptions but are transformed into an immanent and immediate justice. In the story, this divine response provides a blueprint for Constantine. He once more sends out letters, commanding that everyone receive baptism "Up peine of deth" (2. 3469). Once again, needs must. As so often in Gower's work, the state of exception is ignored and only law remains.

This may seem like a dire conclusion, but it is perhaps not surprising. As postmodernism has reminded us, western metaphysics has traditionally worked with pure concepts (e.g., logos, law, *langue*, being) that are created through the exclusion of impurities. In politics and law, the defense of conceptual purity has meant that the state of exception has often been included within the juridical order. The exception must be made part of the rule. As Giorgio Agamben has pointed out, the law increasingly seeks to extend its power over bare life.

76. Derrida, "Force of Law," 252.

77. *Ibid.*, 255. Much of Derrida's interaction with Walter Benjamin in the same essay concerns this issue of divine immediacy.

In contrast to the tyranny of the law, writers like Agamben prefer the idea of a borderland, a place where pure concepts break down. The state of exception is precisely the liminal space between life and law, and, as we have seen, postmodernism is above all a critique of the authority of the law. From this perspective, a utopian solution would see us move beyond law, to a situational ethics that finds a balance between the specific and the general. This is not a return to a state of nature – since any original purity is always a myth – but to a new sense of law:

To a word that does not bind, that neither commands nor prohibits anything, but says only itself, would correspond an action as pure means, which shows only itself, without any relation to an end. And between the two, not a lost original state, but only the use and human praxis that the powers of law and myth had sought to capture in the state of exception.⁷⁸

No longer is law derived from *ligare* (to bind), but law has become synonymous with the event. If one might transpose a canon law maxim, *Omnis res per quascunque causas nascitur, per easdem dissolvitur* (“Every matter is dissolved through the same causes by which it is born”).⁷⁹

It is possible to read Gower this way as well. In fact, the self-conscious nature of literary rhetoric is often seen as a useful critique of the authority of law. As Peter Schneck writes, “A central strategy in the critical representation of law in literary fictions must be to reveal the law’s inherent rhetoricity, its performative and interpretive violence, the linguistic fabrication of its

78. Agamben, *State of Exception*, 88.

79. *Decretals* of Pope Gregory IX, X 5.41.1.

evidence, and the fictionality of its ‘truths.’”⁸⁰ Or, to put it in Marxist terms, “Law is a central aspect of all hegemonies,” but literature is “more likely than law to open the hegemony’s windows.”⁸¹ Either way, the literary text reveals the mythical nature of law.

It is, however, also possible to turn this around and notice what happens when literature actively seeks the authority of the law. For Gower this means believing that there is a law that can explain it all. This is the allure of the system that in Gower never goes away. As we read in the Prologue to the *Confessio*, Gower longs for a law that does not have a “double face” (Pr. 130). He uses imagery of constraint and confinement (a tun and a riverbank) to suggest that the people (the Commons) cannot live without “bondes” (Pr. 502), for “Wher lawe lacketh, errour groweth” (Pr. 511). There is a fluidity to error that the law seeks to contain.

If we can apply this to our reading of the *Confessio*, we might observe that our own philosophical predilections lead us to celebrate those moments where the narrative breaks the banks (the *moralitas*), and spills out. We long for the exception, for the event that is freed from the law. Yet ironically our joy at finding the exception blinds us to the ways in which the exception remains part of the system. The fact that Amans is old and incapable of loving closes the circle of courtly love and makes it complete.⁸² The very exempla that for many readers demonstrate the failure of morality only reinforce the logic of exemplarity. The task, as Gower sees it, is not to celebrate the failure of the law but to rebuild the dyke. If sometimes this means

80. Peter Schneck, “The Laws of Fiction: Legal Rhetoric and Literary Evidence,” *European Journal of English Studies* 11.1 (2007): 47–63, 58.

81. David Ray Papke, “Neo-Marxists, Nietzscheans, and New Critics: The Voices of the Contemporary Law and Literature Discourse,” *American Bar Foundation Research Journal* 10.4 (1985): 883–97, 890.

82. I thank the anonymous reviewers for pointing this out.

broadening the law (extending the dyke) to include the exception, then so be it.⁸³ It is thus paradoxically our postmodern awareness of the ways in which the exception is reabsorbed into the law that can help us make sense of the alterity (the exceptionality) of medieval texts. Indeed, we come to realize that the state of exception was a pervasive reality well before any crisis of modernity.

83. For further discussion of the frequency with which such metaphors as walls (like dykes) are used to describe the law, see Kieran Dolin, *A Critical Introduction to Law and Literature* (Cambridge: Cambridge University Press, 2007), 6.

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