

A Law unto Himself: Tristanian Jurisprudence in Gottfried's *Tristan*

Noah Dylan Goldblatt
Virginia Beach, Virginia

Bachelor of Arts, College of William and Mary, 2007
Master of Arts, University of Virginia, 2009

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Abstract

This dissertation analyzes literary jurisprudence in Gottfried's *Tristan* and explicates the poem as an exemplar of Grimm's theory of medieval law-poetry. This study examines how Gottfried dramatizes the institutions and practices of law, such as feudal tenure, judicial combat, and evidentiary debate. Chapter One traces the history of Gottfried's *Tristan* as an object of study for law-in-literature research. The chapter also analyzes the poet's relationship to and distinction from the Arthurian tradition. Chapter Two investigates legal discourse relating to the intersection of geography and authority in the poem. The chapter explicates scenes related to property transmission and contractual obligations. Chapter Three examines the juridical language and logical structures of judicial duels in the cases of Morgan and Morold. Chapter Four discusses the scrutiny of direct and indirect evidence in three scenes: The Seneschal and the Dragon Tongue, Isolde and the Sword Splinter, and the Flour on the Floor. The fourth chapter also elucidates the manner in which Tristan and Isolde rhetorically manipulate the presentation of evidence in order to deceive King Mark and his surrogates, Marjodoc and Melot. In sum, this dissertation argues that Gottfried's juridical language gives definition to a model of jurisprudence characterized by legal efficacy, rational thought, and individual judgement.

Dedication

For my grandfather, Abe Goldblatt (1915-1994).

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Introduction

In Gottfried's *Tristan*, the protagonist asserts his will and defends his rights with a rhetorical deftness that sets the romance apart from its German contemporaries.¹ Tristan's achievements are often the product of advanced forethought, careful analysis, and logical argumentation. His progress is the result of neither chance nor adventure. Unlike other fictional knights in the period, Tristan strategizes according to the legal scenario at hand, leaving nothing to chance.² Gottfried alludes to Tristan's scheming character early in the narrative, especially in his description of Tristan as a precocious youth who outwits his captors in games of chess. Tristan gains an advantage over his opponents insofar as he can maneuver within and manipulate the rules of adjudication.

In the setting of Gottfried's poetic universe, Tristan encounters laws, at Mark's court and beyond, that reflect elements of historical feudal systems. Tristan navigates these structures with precision, and when the opportunity presents itself, Tristan takes the law into his own hands. Tristan's confidence as a legal speaker and law enforcer invites

1. All verse line documentation refer to Ranke's edition. Gottfried von Straßburg, *Tristan und Isold*, trans. Friedrich Ranke (Ditzingen: Reclam, 1984). All English translations are Hatto's. Gottfried von Straßburg, *Tristan and Isolde*, trans. A. T. Hatto (New York, NY: Continuum, 1988).

2. Several critics have attended to the motif of coincidence in German medieval literature. This study, however, limits the scope of discussion to the concepts of contingency and proof. For an overview of criticism on coincidence in Arthurian Romance, see Cornelia Herberichs and Susanne Reichlin, eds. *Kein Zufall: Konzeptionen von Kontingenz in der mittelalterlichen Literatur*, vol 13 (Vandenhoeck & Ruprecht: 2009). For a detailed analysis of coincidence in Gottfried, see Franz Josef Worstbrock, "Der Zufall und das Ziel. Über die Handlungsstruktur in Gottfrieds 'Tristan'." *Fortuna vitrea* 15 (Tübingen 1995): 34-51.

critics to examine the contours of “Tristanian jurisprudence,” a label I attach to the system of law, both in its interpretation and practice, that Tristan constructs in order to justify his actions and achieve his missions. Tristan’s theory of justice sets standards for the prosecution and defense of legal cases, especially in terms of evidentiary analysis. The episodes discussed in the forthcoming chapters operate as case studies that educate Gottfried’s audience in jurisprudential thought. Tristanian jurisprudence, therefore, serves as an interpretative prism through which we may glimpse the legal-poetical underpinnings of Gottfried’s work and Tristan’s triumphs.

The style and vocabulary of legalistic argumentation distinguish Tristan’s rhetoric.³ In speeches that involve disputes, Tristan articulates himself with extraordinary cogency, even when he lacks the authority or evidence to corroborate his assertions. Tristan advances his claims through the application of logic and evidence and he appeals to reason when discussing matters with barons, dukes, and kings. For example, Tristan demonstrates his keen reasoning abilities when he defends his paternity against Morgan, and Isolde later reproduces this technique in the famously equivocal defense of her marital fidelity. The success of such carefully crafted arguments suggests that the lovers are uniquely suited as practitioners of Tristanian jurisprudence. On the other hand, the logical aptitude of the lovers contrasts sharply against the ineptitude of Mark, whose rhetorical approaches to negotiation (e.g. tribute) and interrogation (e.g. Isolde) are

3. His skillfulness reflects Gottfried’s own training in the classical Trivium (i.e. grammar, logic, and rhetoric). Will Hasty, *A Companion to Gottfried Von Strassburg’s “Tristan”* (Rochester, NY: Camden House, 2003), 3.

dangerously inadequate. In fact, it would be difficult to read any of King Mark's speeches as rigorous in their reasoning or positive in their outcome. Nevertheless, the substance and structure of such dialogues in the narrative contribute significantly to our understanding of dispute resolution and legal frameworks within Gottfried's poetic universe.

Legal historians, who have identified Gottfried's poem as the source for numerous legal concepts in the German lexicon,⁴ tend to include the work in historical investigations of medieval legal antiquities.⁵ Historians surmise that Gottfried's *Tristan* predates legal codification in German language by approximately 30 years.⁶ Since

4. Gottfried's *Tristan* includes episodes that employ concepts within the German legal frameworks of *Stand und Herrschaft*, *Lehnrecht*, *Familienrecht*, *Eherecht*, *Erbrecht*, *Schuldrecht*, *Gerichtsverfahren*, *Gottesurteile*, *Blutrache*, *Verbannung*, and *Kindesraub*. Pensel, Franzjosef. "Rechtsgeschichtliches und Rechtssprachliches im epischen Werk Hartmanns von Aue und im "Tristan" Gottfrieds von Strassburg." (PhD diss., Humboldt University of Berlin, 1961), 1-2, 19, 205-223.

5. Hans Fehr and Ruth Schmidt-Wiegand examine the intersection of literary and legal history with regards to Gottfried's *Tristan*: Hans Fehr, *Das Recht in der Dichtung* (Bern: A. Francke, 1931); Ruth Schmidt-Wiegand, "Dichtung und Recht im Blickfeld von Literaturwissenschaft und Rechtsgeschichte. Zu Gottfried von Straßburg, *Tristan* (V. 15.728f.)," *Literatur, Geschichte, Literaturgeschichte; Beiträge zur mediävistischen Literaturwissenschaft; Festschrift für Volker Honemann zum 60. Geburtstag*, Nine Miedema and Rudolf Suntrup, eds. (Frankfurt am Main: Lang, 2003), 167-174. Other works of central interest to this topic include several studies of ordeals and judicial duels. See Rosemary Norah Combridge, *Das Recht im "Tristan" Gottfrieds von Strassburg*. *Philologische Studien und Quellen*. Vol. 15 (Berlin: E. Schmidt, 1964), 27. Franzjosef Pensel, "Rechtsgeschichtliches"; Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford: Clarendon Press, 1986); Thomas Kerth, "Marke's Royal Decline," in *Gottfried von Strassburg and the Medieval Tristan Legend*, Adrian Stevens and Roy Wisbey, eds. (Cambridge: Boydell and Brewer, 1990); Vickie Ziegler, *Trial by Fire and Battle in Medieval German Literature* (Rochester, NY: Camden House, 2004).

6. Pensel, "Rechtsgeschichtliches," 6-15.

Germanic legal practice relied upon oral transmission until the mid-13th century,⁷ it is probable that Gottfried's work fills the gap between the late legal orators and the authors of early legal codes. Furthermore, Gottfried's own modifications to the Tristan subject matter demonstrate the prevalence of oral transmission for legal training.⁸ Some legal scenarios, such as the delegation of royal authority to Tristan during judicial combat with Morgan, appear for the first time in Gottfried's *Tristan*, granting further weight to the claim that Gottfried's poetry set new precedents at the threshold between the oral and written legal systems in the history of Germanic law.⁹ Besides its unique position in the chronology of legal development, Gottfried's *Tristan* offers critics essential context for the conceptualization of law in the German language at the turn of the 13th century.

As one of the earliest extant Middle High German texts to thematize the law, Gottfried's *Tristan* invites a legalistic critique. Yet two factors problematize the endeavor to compare Gottfried's fiction with historical fact. First, all laws in the German language postdate Gottfried's *Tristan*, such that conclusions drawn about legal practice at the turn

7. Ibid., 6-7.

8. For further discussion of Gottfried's version of the tribute chronology, in which emissaries are sent to Rome to receive legal training, see Chapter 3.

9. As opposed to Roman law, the codification of vernacular Germanic laws did not occur until the early 13th century. For information on Roman laws in Central Europe prior to the 13th century, see Wolfgang Sellert, "Aufzeichnung des Rechts und Gesetz," *Das Gesetz in Spätantike und frühem Mittelalter* 4 (1992): 67-102; Patrick Wormald, "Lex scripta and verbum regis: legislation and Germanic kingship, from Euric to Cnut," *Early medieval kingship* (1977): 105-38; For a detailed account of Barbarian legal history, see Przemyslaw Tyszka, *The Human Body in Barbarian Laws, c. 500 - c. 800. Corpus Hominis as a Cultural Category*, trans. Guy Russell Torr (Frankfurt am Main: Peter Lang, 2014).

of the 13th century can neither be verified nor falsified, except through comparison to other poetic works. Second, the number of works available for comparison is scant. Nevertheless, law in literature scholars have already developed a comparative theory of dispute institutions.¹⁰ And among the extant body of medieval literature, evidence from Old Norse,¹¹ Old French,¹² Old Irish,¹³ and Middle Dutch,¹⁴ suggests that Gottfried's *Tristan* belongs to a broader trend of jurisprudential thought intertwined with literary creativity. If this holds true, then it would finally corroborate Jacob Grimm's celebrated statement: "It is not difficult to believe that law and poetry arose together from the same bed."¹⁵ We shall therefore consider Gottfried's work as indicative of broader literary tendencies and not as an authoritative record of medieval legal practice.

10. Abel theorizes a framework for comparing dispute institutions across cultures. His work is especially useful for law in literature critics seeking to investigate historical legal institutions from sparse literary data. Richard Abel, "A Comparative Theory of Dispute Institutions in Society," *Law & Society Review* 8, no. 2 (Winter 1974): 217-347.

11. William Ian Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Medieval Iceland* (Chicago: University of Chicago Press, 1990).

12. R. Howard Bloch, *Medieval French Literature and Law* (Berkeley: University of California Press, 1977).

13. Robin Chapman Stacey, "Law and Literature in Medieval Ireland and Wales," in *Medieval Celtic Literature and Society*, ed. Helen Fulton (Dublin: Four Courts, 2005), 65-82.

14. Frans-Willem Korsten, "Facing it: sovereignty and how to live with theft and violence in the law – the case of *Karel ende Elegast*," *Journal of Dutch Literature* 2, no. 1 (October 2011): 59-79.

15. "Dasz recht und poesie miteinander aus einem bette aufgestanden waren, hält nicht schwer zu glauben." In Jacob Grimm, "Von der Poesie im Recht," *Zeitschrift für geschichtliche Rechtswissenschaft* 2 (1816): 25.

Nevertheless, the rich details of Gottfried's work populate its own unique and internally consistent legal framework. Tristanian jurisprudence, then, can be understood as both as the legal system at work in the plot and Tristan's own philosophy of law. Tristan's theory of law punctuates the episodes of his journey, which in turn serve as new precedents for the administration of justice in Gottfried's text.¹⁶ As I will demonstrate in the chapters to follow, Tristan achieves many victories through sophisticated legal arguments, including the improvement of his social status, the expansion of his personal wealth and arms, and the inheritance of lord-liege relationships. Whenever confronted by other knights, Tristan instigates a verbal debate so that he can initiate violence. Tristan aggressively prosecutes opponents on legal grounds, as demonstrated in the cases of Morgan and Morold. For Tristan, discursive victories are inextricably linked to physical conquests. Tristan's slaying of Morgan and Morold equate to legal concessions. Tristan's survival leads Gottfried's audience to conclude that his actions were righteous and just. Furthermore, Tristan regards the deaths of his opponents as tokens of God's sanction. Tristan, like God, metes out a justice that silences those whose interpretations of evidence and laws contradict his own. Thus, the act of misinterpretation poses both a physical and moral hazard.

16. Here the term precedent bears a legal connotation, in the sense of case law, but only to the extent that episodes in Gottfried's work serve a legal purpose within the work, or as a pedagogical device for the audience. I do not mean to imply that Gottfried's work prefigures a common law system—far from it—the legal scenarios in Gottfried's *Tristan* suggest the presence of a civil law system in which judicial precedents possess no authority over the codes of law.

Gottfried's narrative situates Tristan at all times under the specter of a judge, most frequently the Divine Arbiter. Tristan crafts appeals to God with some frequency, claiming both that his actions are in concert with God's will and that God serves as the ultimate arbiter over all disputes.¹⁷ Tristan's interpretation of God's role corresponds to Ecclesiastes 12:14, "For God will bring every deed into judgment, with every secret thing, whether good or evil." Tristan's rhetoric suggests that an ordeal will deliver Tristan a just outcome that suits God's will. For instance, Tristan defends the rights of the barons in Mark's court against the tribute demands of Morold through the ordeal system. In this particular instance, Tristan and Morold assent to judicial combat as a means of dispute resolution because they believe that it will allow God's justice (*Judicium Dei* or *Gottesurteil*) to prevail.¹⁸ Given the implicit risks associated with the ordeal, such means of adjudication were only available as a final measure.¹⁹ Each ordeal was torturous by design. In addition to judicial duels and the trial by hot iron found in Gottfried's work,

17. These arguments extend to Isolde's appeals to holy judgement. See Herberichs and Reichlin, *Kein Zufall*, 191; 202n3; Thomas Kerth, "Kingship in Gottfried's 'Tristan'," *Monatshefte* 80 (1988): 449.

18. As Planck informs us, judicial duels existed as part of Germanic customary laws and the outcomes of such duels were considered proxies for God's judgement of a legal case. Julius Planck, *Das deutsche Gerichtsverfahren im Mittelalter*, vol 2 (Hildesheim: Olms, 1973), 2:147.

19. In the decades after Gottfried, the first German code of law formally restrained the application of ordeals to circumstances in which other measures had been exhausted. In reference to the *Sachsenspiegel* (circa 1220) which stated that "It is not right to use the ordeal in any case, unless the truth may be known in no other way," Bartlett explains that "It is clear that the ordeal was a last, not a first, resort." Bartlett, *Trial by Fire and Water*, 18-19, 26.

many trials involving water, fire, and religious rituals existed.²⁰ In each ordeal, the outcomes of death or survival function as evidence for absolute guilt or innocence, respectively.

Scenes in the second half of Gottfried's *Tristan* heavily emphasize the role of evidence and its evaluation as key components to lawful procedure. Mark's suspicions of Isolde's adultery lead to the collection and analysis of evidence of an affair with Tristan.²¹ The testing of Mark's hypothesis, that Tristan and Isolde are lovers, can only serve Gottfried's audience members, who learn how to qualify evidence and critique Mark's conclusions. Episodes highlight for audiences how to sift through testimonial and physical evidence and sometimes focus on the manipulation of evidence and its dynamic value. In nearly every instance, the poem subtly invites the audience to play the role of judge²² when assessing King Mark's actions. Thus, Tristanian jurisprudence extends beyond the bounds of the romance to its audience, providing a model for critical thinking and assessment of society's key institutions. Like the Divine Arbiter, who witnesses and adjudicates disputes, Gottfried empowers his audience to judge.

This dissertation concerns itself primarily with the intrinsic relationship between law and medieval German literature. The first chapter of this dissertation, "The Courtier

20. For an exhaustive list of ordeals, see *Ibid.*, 178.

21. As noted above, Mark cannot request an ordeal (i.e. God's judgement) until normal means of allaying suspicion have been exhausted. Even if evidence is collected, said evidence is irrelevant to God's judgement. Bartlett, *Trial by Fire and Water*, 26.

22. For a detailed discussion on the historical role of judges in the High Middle Ages, see Planck, *Das deutsche Gerichtsverfahren im Mittelalter*, 1:87-91.

and the Court,” presents the genealogy of criticism in the field of law in literature and establishes Gottfried’s *Tristan* as a highly compelling target within the corpus of Middle High German literature for the study of legalistic features. In the subsequent chapters, I provide close readings of Gottfried’s juridical language in a selection of episodes. In Chapter 2, “Geographies of Law and Power,” I examine overlapping hierarchies of authority through discussions of kinship relations, property rights, the paradigm of lordship, and the theory of social identity. In Chapter 3, “The Judicial Duel and Dispute Resolution,” I examine trials by combat as a means of resolving petty and major disputes, including revenge and tribute. In Chapter 4, “Evidence and Reason: Proof of Infidelity,” I investigate Gottfried’s presentation of logic in episodes that feature rational critiques of evidence, which is collected for the purpose of proving a love affair between Tristan and Isolde. Generally speaking, each chapter provides the reader with a new perspective on how Tristan circumvents the laws of and deviates from the customs inherent to feudal society.²³ And each close reading adds a degree of explanatory power to the argument that the poet’s relationship to Arthurian Romance is a subversive one.

As a final point of departure, I would like to state that it is my sincere desire that readers of this dissertation will improve their understanding of the jurisprudential frameworks internal to the plot and structure of Gottfried’s *Tristan*, and that this knowledge will inform future criticism and reception of the work.

23. To this end, I extend the legal-historical investigations initiated by scholars like Combrige and PenseL, who outline the medieval legal frameworks that govern a plethora of scenes in the poems of Gottfried and Hartmann.

Chapter 1: The Courtier and the Court

In her study of Medieval Celtic literature, Robin Chapman Stacey explains that, “the boundaries that seem to us so obviously to separate literature from law are largely constructs of our own devising.”²⁴ Stacey’s insightful words recall a conceptualization of law-poetry first proposed by Jacob Grimm, who invites us to consider the relationship between medieval German literature and the law. This chapter begins with a review of Grimm’s central contributions to the study of law in literature, and then continues through the last two centuries of scholarship at the intersection of German medieval literary and legal history. The discussion traces the dynamic relationship between the two disciplines and concludes with a review of significant open questions relating to Gottfried’s literary jurisprudence. Next, the chapter outlines the relevant literary and sociohistorical context for understanding episodes in Gottfried’s *Tristan* as case studies in medieval law. First, I report major findings in support of the hypothesis that the poet’s work is a critique of the Arthurian tradition. Second, I elaborate upon the structural and thematic relationships between *Tristan*, the courtier-knight, and his fictional peers in the knighthood. Third, I review for modern audiences the major legal institutions with which Tristan and Isolde contend (e.g. marriage) in order to establish the premise that the work resembles a legal compendium. Finally, the chapter poses a series of research questions to which the subsequent chapters respond.

24. Stacey, “Law and Literature,” 82. One recalls the open debate regarding the Celtic origins of the Tristan subject matter. See W. J. McCann, “Tristan: The Celtic and Oriental Material Re-Examined,” in *Tristan and Isolde. A Casebook*, ed. Joan T. Grimbert (New York: Routledge, 2002), 3-35.

Grimm was the first literary critic to pose legal-historical questions about Gottfried's *Tristan*. Legal historians identify Grimm's 1816 treatise *Von der Poesie im Recht* as the first comprehensive theory of law and poetry.²⁵ In the work, Grimm employs a series of etymological arguments to demonstrate the intrinsic kinship of poetry and law. He identifies similarities between ancient Germanic and Roman laws and medieval poetry from the Germanic literary tradition.²⁶ Grimm considers repetitive rhetorical devices (e.g. alliteration)²⁷ to be the central structural elements of both law and poetry, because they exhibit contingency relationships. For example, he explains that no sound can achieve rhyme²⁸ without referencing another sound, just as legal frameworks depend upon repeated self-reference to previously defined terms and concepts. According to

25. For a comprehensive review of the historical relationship between Western law and literature, see Theodore Ziolkowski, *The Mirror of Justice: Literary Reflections of Legal Crises* (Princeton, N.J.: Princeton University Press, 1997).

26. For a comprehensive account of repetitive figurative language in Gottfried, see W. T. H. Jackson, "The Stylistic use of Word-Pairs and Word-Repetitions in Gottfried's 'Tristan'," *Euphorion* 59 (1965): 229–251.

27. "folgende sind aus dem Sachsenspiegel zur probe: eigen und erbe, gut oder gelt, haut und har, lesset und leihet, schuld und schaden, bus und besserung, hauset noch hofet, halten oder haben, hals und hant, mage und mann u. s. w." Grimm, "Von der Poesie im Recht," 42.

28. The most famous rhyming couplet of the Sachsenspiegel: "dies recht hab ich nicht erdacht, / es habens von alter uf uns bracht / unsere gute vordahren." *Ibid.*, 27.

Grimm, rhyme and alliteration make the repetition and contingency of laws legible.²⁹ He posits that legal codes exhibit other poetic tendencies as well, and rely upon metaphor³⁰ and antithesis³¹ in particular.

In addition to such structural considerations, Grimm supports his argument with examples of idiomatic expression common to Gottfried's *Tristan* and legal documents. Despite a paucity of examples, Grimm supplies compelling evidence in the form of rhetorical artifacts that strongly suggest the presence of a common ancestor between medieval law and literature. In the first instance, Grimm directs readers to the unique manner with which Gottfried describes distance and space, in terms of an archer's range.

Tristan den anker werfen bāt
wol also verre von der habe,
daz man mit einem bogen dar abe
niht möhte haben geslagen zuo z'in. (8680-83)

[Tristan gave orders to anchor just out of bowshot from the harbour.]

As Grimm informs us, medieval geographic description frequently adopts novel metaphors to communicate distance and to demarcate borders. Thus, Tristan's anchoring

29. "Zunächst bricht nun dieses poetische element der gesetze in ihrer äussersten form vor. nämlich der poesie ist es von grund aus natürlich und nothwendig, dasz sie sich mit dem einmal ausgesprochenen satz öfters nicht begnüge, sondern ihn nochmals wiederhole. so zu sagen, sie kann nicht auf einem fusze stehen, sondern bedarf dann, um in ihre ruhe und gemütlichkeit zu gelangen, einer zweiten stütze, eines anderen, dem ersten gleichen satzes. hierauf scheint mir das prinzip der alliteration und des reimes genau und wesentlich zu beruhen." Ibid., 37-38.

30. "was die fackel zehrt ist fahrnis," "blutige hand nimmt kein erbe" Ibid., 57.

31. "im alten Titurel 28. 'jung niht alt,' Eneidt 1701. 'enge und nit wit,' Parcifal 1870. 'diche und niht ze dünne,' 1272. 'der iunge niht der alte,' 2489. 'ein magt u. nit ein wip,'" Ibid., 40-42.

distance represents the medieval tendency to conceptualize space and distance in familiar, practical terms. Grimm explains that legal documents from Central and Northern Europe exhibit similar features.³² It was not uncommon after Gottfried for nobles to use edicts to facilitate the enforcement of special land regulations, as was the case when the *Dreieicher Weistum* of 1338 established imperial hunting grounds known as the Dreieich Royal Hunting Forest.³³ This judicial precedent demarcated the land through similarly poetic and practical language for space and distance. Next, Grimm refers us to a more subtle instance in which Gottfried's reveals his familiarity with the legal symbolism of certain body parts, namely, the left foot and the right hand.³⁴

32. For an explication of the various judicial precedents that emphasize spatial relationships, see Jacob Grimm, Richard Schroeder, and Georg Ludwig von Maurer, *Weistümer* (Göttingen: Dieterich, 1840-78).

33. "Poetische bestimmungen zeigen sich zuvörderst an den vorstellungen von raum und zeit, wann festzusetzen ist: wie weit etwas gehen? wie lange es wahren soll? die alten gesetze sagen: so weit als der hahn schreitet, fliegt, oder die katze springt; näher als ein hahnensporn oder ein katzensprung... auch: so weit ein stein mag geworfen werden." Grimm, "Von der Poesie im Recht," 59.

34. "Wenn in der poesie von riesen erzählt wird, die den wanderern hand und fusz abhauen lassen, so betrifft das stets die rechte hand und den linken fusz... jene strafe wird auch in unsern gesetzen namhaft gemacht... genaue beachtung des lebendigen und epischen gebrauchs beider glieder löst aber jeden zweifel: mit der rechten hand führt der ritter sein schwert, mit dem linken fusz schwingt er sich zu ros." Ibid., 71-72.

und den linken vuoz gestiez
 wol vaste in den stegereif
 und mit der hant den satel ergreif,
 nu haete in ouch Tristan erzogen.
 er sluoc im ûf dem satelbogen
 daz swert und ouch die zeswen hant,
 daz si beidiu vielen ûf den sant (7042-48)

[[Tristan] thrust his left foot home into the stirrup and grasp the saddle with his hand – Tristan had overtaken him. He struck Morold across the pommel so that his sword and his right hand, mail and all, fell upon the sand]

Grimm explains that metonyms of the body occur throughout medieval legal practices, providing a second type of thematic similarity between law and poetry.³⁵ In short, Grimm argues that law and poetry may have at one time coexisted, based upon both literary examples from medieval poets and the premise that literary and legal heredity may be demonstrated through structural and thematic similarity.

For legal historians, Grimm's legal dictionary (*Deutsche Rechtsaltertümer II*, 1899) serves as a point of departure for the modern law-in-literature and law-as-literature movements. Decades after Grimm, a resurgence of scholarly activity on the topic of law and poetry appears in the works of Julius von Ficker, Richard Schröder, and Richard Heinzel. In 1862, Julius von Ficker investigates the *Heerschildordnung* of the *Sachsenspiegel* (ca. 1220-35) and the *Schwabenspiegel* (ca. 1275).³⁶ He concludes that the scant legal documentation contained in the Mirrors of the Saxons and Swabians are

35. For a description of barbarian conceptions of the body as a legal entity, see Tyszka, *The Human Body in Barbarian Laws*, 17-38. For an expanded discussion of legal embodiment in Gottfried, see Chapter 2.

36. Julius Ficker, *Vom Heerschild, Deutschen Reichs- und Rechtsgeschichte* (Innsbruck: Verlag der Wagner'schen Buchhandlung, 1862).

reflective in nature, hence their namesake, and that these works describe the actual hierarchical relationships of feudal society in the 13th century.³⁷ Five years later, Richard Schröder expands this study of medieval law into the realm of Middle High German poetry.³⁸ Soon thereafter, Heinzel publishes an article for an Austrian journal which breaks ground as the first literary criticism to explain Gottfried's authorial persona and his literary tendencies as they related to his motivations as a writer-in-residence in Straßburg.³⁹ He describes in clear language the manner in which Gottfried mocks the kingship of Mark and the validity of the *Gottesurteil*. Heinzel is the first to acknowledge the presence of a "certain vein of juridical dialectic" in Gottfried's poetry.⁴⁰

The next critical wave occurred in the early 20th century (1914-1928), during which special critical attention was paid to Isolde's *Gottesurteil* and the ramifications of legal terminology related to wedding ceremony. Johann Meyer, Hans Fehr, and Friedrich

37. For a detailed comparative analysis of the relationship between the *Mirror of the Swabians* and its predecessor, the *Mirror of the Saxons*, see Carl Gustav Homeyer, *Die Stellung des Sachsenspiegels zum Schwabenspiegel* (Berlin: Dümmler, 1853).

38. Richard Schröder, "Beiträge zur Kunde des deutschen Rechts aus deutschen Dichtern," *Zeitschrift für deutsches Alterthum und deutsche Literatur* 13 (1867): 139-161.

39. Heinzel, Richard. "Über Gottfried von Straßburg." *Zeitschrift für die österreichischen Gymnasien* 19 (1868): 533-563. Reprint. *Kleine Schriften*. Published by Max Hermann Jellinek and Carl von Kraus. Heidelberg: C. Winter, 1907. 18-63. Generally, critics lament the lack of biographical data about Gottfried. Some literary historians, including Heinzel, speculated that the poet's surname may have been "Rodelarius," which would suggest that the poet worked as a scribe in Straßburg. Schmidt and others would later ridicule this conclusion and reveal that the manuscripts in question read "Zidelarius" instead. C. Schmidt, *Ist Gottfried von Straßburg (der Dichter) Straßburger Stadtschreiber gewesen? Eine historische Untersuchung* (Straßburg: C.F. Schmidt's Universitäts-Buchhandlung, 1876).

40. "gewisse Ader juristischer Dialektik." Heinzel, *Kleine Schriften*, 24.

Ranke all published on the topic of Isolde's false testimony at her religious inquest. Meyer interpreted Isolde's ordeal by focusing upon the legal consequences for an unchaste bride.⁴¹ Fehr, on the other hand, described how trials and the application of torture (i.e. *Eisenprobe*) were designed to demonize and defame Isolde, and Tristan and Mark by extension.⁴² Ranke, the author of the most widely accepted modern German translation of *Tristan*, cast his interpretive net much wider by examining inconsistencies between the variants of the Tristan subject matter.⁴³ Lastly, Otto Zallinger made a series of important contributions by providing a comprehensive account of marriage and its legal status in the *Nibelungenlied* and *Gudrun*.⁴⁴ His analysis of the *Mündigkeit* term attracted legal historians in subsequent decades to the study of literature and law in the High Middle Ages.

The period 1950-1960 is the most relevant chapter of Tristan scholarship to this dissertation. During this decade, law and literature scholars came together to study the nature of law as observed through the lens of Gottfried and his contemporaries. The first

41. Johann Jakob Meyer, "Isoldes Gottesurteil in seiner erotischen Bedeutung: ein Beitrag zur vergleichenden Literaturgeschichte," *Neue Studien zur Geschichte des menschlichen Geschlechtslebens*, vol 2 (Berlin: H. Barsdorf, 1914), 74-87.

42. Hans Fehr, "Gottesurteil und Folter. Eine Studie zur Dämonologie des Mittelalters und der neueren Zeit." In *Festgabe für Rudolf Stammeler*, ed. Edgar Tatarin-Tarnheyden (Berlin: de Gruyter, 1926), 231-254.

43. Friedrich Ranke, "Isoldes Gottesurteil," in *Medieval Studies in Memory of Gertrude Schoepperle Loomis* (Paris: Librairie Honore Champion, 1927), 87-94.

44. Otto Zallinger, "Die Eheschließung im Nibelungenlied und in der Gudrun," *Sitzungsberichte der Akademie der Wissenschaften in Wien* 199 (1923): 3-68; *Heirat ohne "Trauung" im Nibelungenlied und in der Gudrun* (Innsbruck: Wagner, 1928).

series of critical writings on this subject methodically examined the ethical judgements of Tristan in particular and of courtly society as a whole. Gottfried Weber published a book on the courtly world view at the turn of the 13th century.⁴⁵ Herbert Grundmann took up the theme of personal freedom and described its conflict with political and religious order in the High Middle Ages.⁴⁶ John Fisher continued the work of studying the discourses of courtly adultery in Gottfried and *Minnesang* poets.⁴⁷ The most striking argument from this period of ethical interpretations, however, must be Maria Bindschedler's theory of ethics, honor and artistry. In her 1955 article, she provides evidence for the claim that Gottfried considered honor to be the foundation of artwork.⁴⁸ These strictly literary histories complemented progress among legal-historians, who examined Middle High German poetry as an unwritten source for 20th century German law. Hans Fehr capped his

45. Gottfried Weber, "Gottfrieds Tristan in der Krise des hochmittelalterlichen Weltbildes um 1200," *Zeitschrift für deutsches Altertum und deutsche Literatur* (1950): 335-388.

46. Herbert Grundmann, "Freiheit als Religiöses, Politisches und Persönliches Postulat im Mittelalter," *Historische Zeitschrift* 132 (1957): 23-53.

47. John Fisher, "Tristan and courtly adultery," *Comparative literature* 9, no. 2 (1957): 150-164.

48. "ere ist also für Gottfried eine der Wurzeln der Kunst (list)." Bindschedler, Maria. "Gottfried von Strassburg und die höfische Ethik," *Beiträge zur Geschichte der deutschen Sprache und Literatur (PBB)*, no. 76 (1955): 1-38. Reprinted in Maria Bindschedler and André Schnyder, eds., *Mittelalter Und Moderne: Gesammelte Schriften Zur Literatur: Zur Feier Des 65. Geburtstages* (Bern: P. Haupt, 1985), 78. Page references are to the 1985 edition.

study of punishment and the law with a survey of medieval poetry as the source of law.⁴⁹ Several books were written which examined the role of law in the works of Hartmann, Wolfram and Gottfried. Two of these are of particular relevance to my dissertation. Rosemary Combridge's book is a literary historical account of the class hierarchy, and the legal context of Isolde's marriage and judgement before the religious council.⁵⁰ She identifies several instances in which Tristan and Isolde break the law but the interpretation of these events fall beyond the scope of her work. Two years later, Franzjosef Pensel published his study of legal history and terminology in Hartmann and Gottfried.⁵¹ His book is an invaluable resource for medieval legal studies because it catalogues the majority of legal questions in the poetry of both authors. Pensel provides an exhaustive list of the legal vocabulary Gottfried employs, and he dedicates chapters to laws relating to marriage, inheritance and even definitions of kidnapping.⁵²

In the following decades (1961-1978), several scholars undertook cultural historical investigations. Many responded to François-Louis Ganshof's seminal work, *Feudalism*, which was published in French in 1947 and translated into English in 1964.⁵³

49. Hans Fehr, "Die Dichtung des Mittelalters als Quelle des Rechts," in *Festschrift Karl Haff zum siebzigsten Geburtstag dargebracht*, Kurt Busmann and Nikolaus Grass, eds., 62-66 (Innsbruck: Routledge, 1950).

50. Combridge, *Das Recht im Tristan*, 85-100.

51. Pensel, "Rechtsgeschichtliches."

52. Ibid., 53-77, 78-90, 179-80.

53. François Louis Ganshof, *Qu'est-ce Que La Féodalité?*, 2nd ed. (Neuchâtel: Éditions de la Baconnière, 1947), reprint, *Feudalism*, trans. Philip Grierson, 3rd ed. (New York: Harper & Row, 1964).

Ganshof, a Belgian medievalist, defines feudalism narrowly as a legal and military social order. He delineates the various social roles during the so-called Classical Age of Feudalism, between the tenth and thirteenth centuries, and describes the functional relations of vassalage, fiefs and the state. Ganshof's contemporary, the French sociologist Marc Bloch and author of *Feudal Society* (1939/40), was translated into English in 1960.⁵⁴ In the first part of his research project, Bloch sets the scene for the development of feudal society as the necessary response to the atmosphere of invasions and harsh living conditions. Bloch offers a genealogy of interdependence in Europe, analyzing the ties between kin, masters and servants. The second volume of *Feudal Society* performs a methodic cultural anthropology of social classes, political organization, geopolitics and spheres of influence. Together, Ganshof and Bloch conceptualized feudalism and feudal society as we currently understand it. It should be noted, however, that their modern interdisciplinary approaches could not divorce themselves from a reliance upon the *Schwabenspiegel* and the *Sachsenspiegel*, which had informed previous centuries of medieval scholarship. Karl Bosl⁵⁵ and Walter Müller⁵⁶ were among the scholars who extended the research of Ganshof and Bloch. They examined the relationships between man and society, and freedom and serfdom, respectively. In addition, H.B. Willson

54. Marc Léopold Benjamin Bloch, *La Société Féodale: La Formation Des Liens De Dépendance* (Paris: A. Michel, 1939), reprint, *Feudal Society*, trans. L. A. Manyon, 2 vols. (Chicago: University of Chicago Press, 1961).

55. Karl Bosl, "Das Hochmittelalter in der Deutschen und Europäischen Geschichte," *Historische Zeitschrift* 132 (1962): 529-67.

56. Walter Müller, "Freiheit und Leibeigenschaft: Soziale Ziele des Deutschen Bauernkriegs?," *Historische Zeitschrift* 4 (1975): 264-72.

published several articles in this period which interpreted events in Arthurian Romance through the lens of religious doctrines, including a discussion of biblical influence in Tristan.⁵⁷ Advancements in cultural historical knowledge also inspired the work of Klaus Schmidt⁵⁸ and Bernd Thum,⁵⁹ two scholars who compared the presence of political turmoil in *Erec* and *Iwein* as corollaries to historical events.

In recent decades (1985-Present), Tristan scholars have revisited readings of Mark's incompetence and Tristan's idealism as Gottfried's critique of feudal society. Tomas Tomasek signaled the return of this school of thought with his book, which provides a comprehensive analysis of the Gottfried's criticisms of feudal society and the ideological and concrete utopias he identifies in *Tristan*.⁶⁰ Thomas Kerth wrote two articles on Gottfried's critique of feudal society; the first compared the kingship of Mark and Gormun the Gay (the Irish king) and the second followed Mark's decline in leadership after Tristan's ascension to knighthood.⁶¹ Additionally, the topic of power relations has caught the attention of many medievalists. Will Hasty has written at length

57. H. B. Willson, "The Old and the New Law in Gottfried's 'Tristan'," *The Modern Language Review* 60, no. 2 (1965): 212-24.

58. Klaus M. Schmidt, "Das Herrscherbild im Artusroman der Stauferzeit," in *Stauferzeit. Geschichte. Literatur. Kunst.*, ed. Rüdiger Krohn (Stuttgart: Klett-Cotta, 1978), 181-94.

59. Bernd Thum, "Politische Probleme der Stauferzeit im Werk Hartmanns von Aue: Landesherrschaft im 'Iwein' und 'Erec'," in *Stauferzeit*, ed. Rüdiger Krohn et al (1979): 47-70.

60. Tomas Tomasek, *Die Utopie Im "Tristan" Gotfrids Von Strassburg* (Tübingen: Max Niemeyer, 1985).

61. Kerth, "Kingship"; Kerth, "Royal Decline".

on the relations of love and power in Tristan,⁶² and W.T.H. Jackson has even compared the rhetorical power of Gottfried to the political power of kings like Mark and Arthur.⁶³ Lastly, some Tristan scholars have followed the humanist thread in Gottfried's poetry. Stephen Jaeger dedicated much of his career to the topic, and published several works on the development of courtly culture and the rise of humanism in the High Middle Ages.⁶⁴ And in 2003, Alois Wolf has resumed work on the topic of humanism in the medieval period with focus upon Gottfried's *Tristan*. She has remarked upon the surprising turn in Gottfried's poem, when *Tristan* hands the rule of Rivalin's land over to Rual's family. Wolf notes, "Given the status of political power in the literature and reality of the time, this is a act of considerable symbolic force. Instead of kingship of feudal authority, the issue for Tristan is a *küene crîch des herzen* (kingdom of the heart)."⁶⁵

Currently, critics have fallen short of producing a comprehensive analysis of law and power *Tristan* as a whole. Rosemary Combridge has begun the process of identifying the social classes of Tristan and his family, but critics still lack a clear picture of where the full cast of characters in *Tristan* should be situated according to the

62. Will Hasty, "Tristan and Isolde, the Consummate Insiders: Relations of Love and Power in Gottfried Von Straßburg's "Tristan"." *Monatshefte* 90 (1998): 137-47.

63. W. T. H. Jackson, "Tristan the Artist in Gottfried's Poem," *PMLA* 77 (1962): 365.

64. Stephen Jaeger, *Medieval Humanism in Gottfried von Strassburg's Tristan und Isolde* (Heidelberg: Winter, 1977).

65. Alois Wolf, "Humanism in the High Middle Ages: The Case of Gottfried's 'Tristan'," in *A Companion to Gottfried Von Strassburg's "Tristan,"* ed. Will Hasty (Rochester, NY: Camden House, 2003), 27.

Heerschildordnung of the *Schwabenspiegel*.⁶⁶ This is a meaningful gap because without knowledge of the societal statuses of Gottfried's characters, critics cannot fully understand the relative power dynamics at play within and between social ranks, nor can the impact of one's adherence to or disregard for Germanic customary law be fully determined. In this same vein, scholars have only briefly attended to the pervasive elements of master-servant relations in *Tristan* as they function within the legal paradigms of property, servitude, marriage and inheritance.⁶⁷ Moreover, critics have not yet synthesized the study of utopian features in Gottfried's *Tristan* with the ritual insubordination present in the story in order to produce a unified theory of Tristan's alternative social order. Finally, literary criticism has yet to account for Tristan's role-shifting and disregard for authority within the legal frameworks of feudal society.

Over the last three decades, literary critics started to consider Gottfried's *Tristan* as a masterpiece of Arthurian Romance based upon the poet's commonalities with Chrétien, Hartmann, and Wolfram. Although it may appear obvious to the modern reader,

66. Combridge, "Das Recht im Tristan," 13-28.

67. Based upon current knowledge, critics can accurately assess Tristan's right to his father Rivalin's land, but they can only speculate the degree to which Tristan's transfer of this property to the children of his foster father Rual may have been regarded under the law.

the absence of Arthur from the poem, save two occasions that insult him,⁶⁸ had previously relegated the poet to the sidelines of the genre. We may credit the modern view that Gottfried's *Tristan* belongs to the Arthurian tradition to a major proponent of this reading, William C. McDonald. He was the first to provide a rigorous defense for this argument in the article that launched it, *Gottfried von Strassburg: Tristan and the Arthurian Tradition* (1989). His critique of *Tristan* is highly significant due to its elegant resolution of Gottfried's simultaneous congruence and incompatibility with other romances.⁶⁹

It is in the light of identification with Mark and his court that we have to understand the courtly ideal and its institutions; each necessarily takes on a dark coloration. the poet and his narrator infect the story with the trappings of (Arthurian) knighthood and the courtly ideal in order to underscore the inadequacy of these in the face of sexual love. The combination of attitudes that Gottfried conveys therefore enables us to see chivalry and romance conventions for what they are: glad fictions which must be viewed with ironic detachment.

This dissertation extends the theory that Gottfried writes within and against the Arthurian tradition in order to critique it. Accordingly, the remainder of this chapter will discuss *Tristan* in terms of its contrasts and commonalities with other Arthurian Romances, such as Wolfram's *Parzival*, and Hartmann's *Gregorius*, *Erec*, and *Iwein*.

68. "daz der saelige Artûs / nie in dekeinem sînem hûs / sô grôze hôhgezît gewan, / dâ mêre ir lîbe lustes van / und wunne waere entstanden." [that good King Arthur never held a feast in any of his palaces that gave keener pleasure or delight], 16861-65; "diu brâhte in durch ir hulde / des tages ze tûsent stunden / Artûses tavelrunden / und alle ir massenîe dar." [she brought them King Arthur's Round Table as homage and all its company a thousand times a day!], 16898-901. For an explication of these lines, see William C. McDonald, "Gottfried von Straßburg, Tristan and the Arthurian Tradition," in *In hôhem prîse. A Festschrift in Honor of Ernst S. Dick, Presented on the Occasion of his Sixtieth Birthday, April 7, 1989*, ed. Winder McConnell (Göppingen: Kümmerle, 1989), 252-58.

69. McDonald, "Tristan and the Arthurian Tradition," 245.

The relationship between Gottfried's *Tristan* and the Arthurian tradition has drawn significant attention from scholars, who frequently cite the contrast between Tristan and prototypical Arthurian knights as evidence for the critical intent of Gottfried's literary excursus. This approach is persuasive because it leverages literary context, such as the juxtaposition of Tristan against his peers, including Tristan's deceased father Rivalin and his uncle, King Mark. To corroborate this argument, several scholars deploy narratological interpretations, emphasizing contrasts in narrative quality among Hartmann and Wolfram. As W.T.H. Jackson summarized the void between Gottfried and his contemporaries, he wrote that Gottfried's literary excursus is itself the expression of a wish "to discuss not knightliness but the literature of knighthood."⁷⁰ If Jackson is correct on this matter, and I believe he is, then it is important to understand that Gottfried's *Tristan* is not merely the subject of a rich corpus of literary criticism spanning several centuries. With his masterpiece, the poet joined the ranks of literary scholars and became a critic of the Arthurian literary tradition too.

Notably, Gottfried's *Tristan* drifts away from the expositional features which typify the genre. These deviations are subtle and progressive. At the outset, Gottfried follows the heritage framework set forth in Wolfram's *Parzival* and Hartmann's *Gregorius*. Like these works, Gottfried describes the central character's lineage and his ascension to knighthood. Likewise, the poet retells the lineal history of that figure's parents and the circumstances of his birth. *Parzival*, *Gregorius*, and *Tristan* only share a

70. Jackson, "Tristan the Artist," 365.

few characteristics. These include their estranged births and natural affinities for knightly acts (e.g. dueling and adventuring) despite a lack of proper training. But Tristan quickly distinguishes himself from the leading knights of Wolfram and Hartmann when he demonstrates his preternatural aptitude for acquiring *courtly* skills: speaking eloquently, performing with instruments, field dressing, administering a kingdom, and so on. Many of the points of departure from genre that occur in *Tristan* are consequences of these remarkable character traits.

Knighthood is not the motivating force driving Gottfried's narrative and the character of Tristan is distinctly courteous as a consequence. To contextualize this claim, it serves us to recall how reliance upon knightly ascension dictates much of the narrative in the stories of Parzival, Gregorius, Erec, and Iwein. In a typical knighthood-driven narrative, audiences ought to expect that the plot progress only when the central character is ascending to or within the knightly order. Wolfram's *Parzival* exhibits this pattern. Wolfram pairs his grail hero with an overprotective mother, who sequesters him in the forest—the polar opposite of the court. From this starting point, the trajectory of the plot follows Parzival's attempts to bridge his literal and figurative distance from Arthur's court in order to fulfill his destiny as the grail king. From a narrative point of view, knighthood-driven plots like *Parzival* tend to emphasize the insurmountability of obstacles that a character overcomes in order to become an outstanding knight.

For a more acute case of magnetism toward knighthood, we need look no further than Hartmann's *Gregorius*. Like Wolfram, Hartman completely removes his central

figure from the knightly order, as if to test the limits of an Arthurian knight's gravitation to the sword. Gregorius begins his story as a baby in a basket who is raised into the priesthood. Mysteriously, the young priest is dissatisfied with his life in the monastic order and he wishes urgently to serve his queen's court as a knight. Unlike Parzival, who must overcome opponents in battle, Gregorius' path to knighthood is beset by the transgressions of double incest. Shockingly, the incest side-plot functions as a narrative mechanism; it underscores the fact that Gregorius possesses zero knowledge of his knightly provenance but seeks the status of knighthood anyway. In this manner, Hartmann highlights the predetermined nature of his knightly occupation.

On the other hand, Hartman adopts a more muted approach in the narratives of *Erec* and *Iwein*. Each of these knights slowly climb the ladder of knightly fame and honor through a series of combative encounters. Their stories revolve entirely around knightly progression. In one key turn of events, Erec must reorient himself toward the knighthood and shift his efforts away from the distractions of love. In Hartmann's *Iwein*, the plot sequence is wholly oriented around knightly conquests of escalating importance and cyclical adventuring. As we shall soon discover, Gottfried's *Tristan* functions as a counterweight to these Arthurian knights. For Tristan, knighthood only satisfies his courtly curiosity, it does not determine his destiny.

Tristan's courtly demeanor derives from his foster childhood under Rual li Foitenant, who permitted him to practice and excel in art, music, and foreign languages. When Norwegian pirates abscond with Tristan, the scenes which follow test the degree to

which the skills of a courtier benefit the protagonist beyond the bounds of court. The event provides Gottfried the opportunity to reconnect Tristan with his uncle, King Mark, without reliance upon the topoi of knightly ascension. In this regard, the poet maneuvers around Arthurian genre norms in tandem with Tristan's own circumventions of authority. The kidnapped courtier outwits not only his captors but also the royal *Jägermeister*. Tristan confidently demonstrates his skills at field dressing, impressing members of the hunting party with his skills, even though the young Tristan is largely unfamiliar with hunting practices in the region. This invites the question, how is it possible that Tristan is an adept butcher but a mediocre hunter? Does he lack knightly prowess where he possesses courtly competence? In this scene, Gottfried's audience learns for the first time that Tristan is not an Arthurian knight in any traditional literary sense of the term, for his expertise lacks the prototypical uniformity and balance concomitant to the knights of other romances.

In sharp contrast to his literary relatives, Gottfried's protagonist does not partake in *aventure* in the traditional sense. Gottfried's contemporaries portray knight as semi-autonomous actors in courtly society. Knightly activities comprise primarily of *aventure* and rarely include deliberate quests, with an exception made for revenge-motivated duels (e.g. Erec's dwarf). These events are so constitutive to the genre that Hartmann included a dialogue to explain the purpose of *aventure* to an outsider. In the famous Waldmensch episode in *Iwein*, Kalogrenant describes his business as a knight to an uncourtly, unkempt figure in the woods who lives among beasts of burden. The Waldmensch asks the knight

to define and defend the task of *aventure*, the dangerous work of fighting off enemies while traversing the landscapes of the kingdom. In his book article, Walter Haug differentiates the *aventure* in Gottfried's narrative from the Arthurian tradition, in which *aventure* appear to be *chance* encounters.⁷¹ Tristan cannot be said to engage in *aventure* in this sense, because his actions demonstrate intentionality, the achievement of specific goals, and logic.⁷² Where Iwein fights because an opposition happens to exist, Tristan fights to achieve a set of premeditated goals, including the attainment of assets, as in the battles for his homeland Parmenie or an object of desire, such as Petitcrü (the anxiety-relieving dog). Medievalist D.H. Green concludes that "Gottfried makes his position clear by composing a romance in which the chivalric quest for adventure plays no part."⁷³ On the other hand, the chivalric quest for love is fundamental to Gottfried's *Tristan*. Yet Tristan's amour with Isolde brings questions about Tristan's allegiance to his king, a topos central to Arthurian Romance, to the fore.

Typically, Arthurian knights grapple with their relationships to women, challenged by the dual task of fostering love with their partners and channeling that energy, lest it compete with other knightly duties. The discourse of love in the Arthurian tradition is

71. Walter Haug, "Aventure in Gottfrieds von Strassburg Tristan," in *Festschrift für Hans Eggers zum 65. Geburtstag*, ed. Hans Eggers and Herbert Backes (Tübingen: Max Niemeyer, 1972), 88-9.

72. "Das Geschehen *von aventure* ... im 'Tristan' ... bezeichnet einen Handlungsansatz ... der durch ein besonderes Zusammentreffen von Umständen zustandekommt. Das bedeutet nichts anderes, als das *von aventure* letztlich die Ursache eines Geschehens ersetzt" Ibid., 102.

73. D. H. Green, *Irony in the Medieval Romance* (Cambridge: Cambridge University Press, 1979), 72-77.

framed by the cautionary tale of infatuation in *Erec*, a tale shared by Chrétien and Hartmann, which dramatizes the motif of excess *minne*. The struggle of Erec of Lac involves the balance his three fluctuating duties: the achievement of honor, quests and combat, and finally the love-service (*Minnedienst*) for his wife Enide. After Erec consummates his relationship with Enide, he becomes paralyzed by love and neglects his knightly duties, to the detriment of his fame and honor.⁷⁴ To counter his own uxoriousness, Erec endeavors to spill blood to reclaim his knightly honor and intentionally shortchange Enide the doting to which she has become accustomed.⁷⁵

Gottfried's *Tristan* draws an implicit analogy to *Erec*, but with significant differences. First of all, the poet establishes Tristan as a master of all disciplines with the key exception of the female domains of herbalism and alchemy (i.e. potion-making), an inadequacy which renders him helpless when wounded and makes him highly susceptible to the intoxicating effects of the *Minnetrank*. These two weaknesses become the attachment sites for Isolde's character, whose relationship to Tristan is predicated upon providing the antidote to the poison sword and the consumption of the love potion.

74. The plot trajectory described here characterizes Hartmann's work. "A central theme in Hartmann's stories is the knight who, fabulously successful and apparently lacking nothing, plunges into societal disrepute, and then regains, indeed surpasses, his former condition and status." William C. McDonald, "Nû bewegte der vrouwen smerze/ Êrecke sô gar sîn herze (*Erec*, 8334-5) Apropos Hartmann's Compassionate Knights" *Mediaevistik* 16 (2003): 106.

75. Nevertheless, the nature of Erec's quests reveal him to be a compassionate figure. *Ibid.*, 109-14; See also William C. McDonald, "Êrec Der Wunderære: On Epithet as Exegesis in Hartmann's 'Erec'," *The Journal of English and Germanic Philology* 105 (2006): 273-4;

Gottfried's *Minnetrank* forces Tristan into subservience to Isolde, causing Tristan to feel an unwavering love for the blonde Isolde and an utter disregard for all competing interests, causing him to shirk his loyalty to Mark. As a servant to the kingdom, Tristan slays a serpent to facilitate the marriage of Mark and the blonde Isolde. Overnight, however, the love-potion transforms Tristan into an insolent subject who cuckolds his own lord. With these distinctions in mind, it would be difficult to imagine a figure with more suited to the purpose of critiquing Arthurian Romance than Gottfried's Tristan, who seeks neither knighthood nor adventure nor love yet enjoys the spoils of all three. As we shall soon discover, Tristan's capacity to fulfill his desires derives from his keen ability to navigate his legal circumstances with great success.

The breadth of legal situations in which Tristan finds himself merit deliberate analysis and careful contextualization. Heretofore, the majority of scholarly effort of this sort has focused upon the explication of the *Gottesurteil* episode and the drawing of intertextual connections to similar scenes in other works. Gottfried's *Tristan*, however, supplies literary and legal scholars with rich detail on a variety of legal quandaries apart from the prosecution of adultery during the High Middle Ages. Accordingly, Tristan must be understood first and foremost as a legal entity. In order to address Tristan in this manner, it is important to understand the relationship between individuals and society at the turn of the twelfth century.

Feudal societies organized themselves according to a strict caste system with a transparent hierarchy of economic and political power. Approximately one decade after

Gottfried's poem, the *Schwabenspiegel* emerged as a codification of this class system, not as it should exist but as it actually existed, according to Julius Ficker's analysis.⁷⁶ This historical document reflects the fixed identities born out of feudalism and denies the modern notion of social mobility, that is to say that serfs could not elevate their status and kings could not lower themselves in the order.

While the former may seem obvious the case for the latter is demonstrated in Hartmann's *Armen Heinrich*. In this poem, the titular king exiles himself to one of his servant's farms because he is afflicted with leprosy. Despite his rapidly diminishing health and social stigmatization, he is nonetheless a king who can make demands on his wealth of property or servants. The reverse move, from serf to knight or even lord, occurs frequently in Arthurian Romance, but these instances of social elevation are always only revelations. In the case of Tristan, he first demonstrates his talents which indicate his potential for knighthood, only later does the poem reveal him as the king's nephew, who ought to have belonged to the knighthood in the first place. Whenever a character alters their identity, be it their name, profession, or family structure, this change runs counter to the *Schwabenspiegel* and the ethos of feudal society. Tristan's willful social maneuvering demonstrates his independence from feudal society's legal paradigms.

It is useful to consider for a moment that many of Tristan's actions reflect legal remedies. Notably, Tristan only exercises force against the mighty on behalf of the meek. For instance, Tristan fights those who demand tributes and levy taxes with utter disregard

76. See Ficker, *Vom Heerschilde*, 124.

for the sociological pyramid of the period. He is a biased mediator akin to Robin Hood, for he always sides with servants against their masters. Tristan's interventions can be read as indictments of feudal society on the whole, because Tristan empowers his allies with freedom. When Tristan defeats Morgan and thereby reclaims his lost inheritance, the Kingdom of Parmentie, Gottfried's notion of social justice unfolds. Immediately, and surprisingly, Tristan hands over his lordship to the children of his foster father Rual, diluting the wealth of his house, a significant abrogation of feudal norms. Does Tristan's concession of his lordship imply the undesirability of kingship? In Chapters 2 and 3, I analyze instances of legal debate to support such an anti-authoritarian reading.

If Tristan wishes to overcome the feudal power hierarchy, however, he must contend with the institution of marriage, due to its essential role in the organization of feudal society. Love and marriage carry enough authority to compete with political power and even neutralize it. For this very reason, Mark and Isolde marry, because their bond guarantees a peace between their respective kingdoms, Cornwall and Ireland.⁷⁷ With Tristan and Brangaene's help, Isolde engages in advanced deceit so that she may circumvent the law. First, she evades the consummation of her wedding to Mark. Second, she conspires with Tristan to conceal their amour. With Tristan's subtle guidance, she equivocates in two episodes in order to conceal their affair.⁷⁸ In Chapter 4, I will

77. Lest marriage be understood as an equal affair in the High Middle Ages, it is important to note that marriage and kingship were male-dominated institutions in feudal society. Bloch, *Feudal Society*, 134-42.

78. Isolde equivocates in the garden scene near the tree (*Baumgartenszene*) and in the ordeal (*Gottesurteil*) episodes.

investigate the pivotal role of evidence in the reconnoiter and reconciliation of Isolde's love affair.

On the question of Gottfried's *Tristan* as an appropriate target for a detailed investigation of law in medieval German literature, let it suffice to say that there exists growing agreement, across several fronts, that the poem is a strong candidate in support of Grimm's theory, that law and poetry are equiprimordial. Legal history strongly suggests that the poet composed *Tristan* on the threshold of vernacular codification of laws in the High Middle Ages. And literary critics increasingly urge readers to consider that the poem represents an ironic critique of courtly society rather than its celebration. Taken in tandem, it should not surprise us to learn that Gottfried subverts his genre by undermining its legal resilience, which the poet achieves by blessing Tristan with the twin gifts of eloquence and jurisprudence.

Chapter 2: Geographies of Law and Power

In *Return and Revenge*,⁷⁹ Tristan travels to his homeland of Parmenie to reclaim it as his lost legacy. To be successful, he must win the support of his mentors, Rual and Mark, and navigate the delicate terrain of geopolitical realities on the continent. In these passages, the poet engages heavily with the mechanics of feudal tenure, a central tenet of the culture of the High Middle Ages. As Tristan travels, he solicits the support of lords and barons in Parmenie, relying heavily upon Rual's renown and Mark's portable wealth. Gottfried supplies the audience with rich legal details of Tristan's alliance to his foster father, Rual, and contrasts it with the courtier-knight's contractual relationship to his sovereign, Mark. This chapter analyzes the *Return and Revenge* episode according to a tripartite structure. First, it explores the fundamental relationship between space and authority through the relationships between Tristan and his counselors. Second, it explicates the legal antiquities relating to property transmission that appear in the episode. Third, it offers an exegesis of Gottfried's metaphorical conception of the courtly individual, who is bound equally by courtly ideals of honor and feudal norms for property. In short, this chapter seeks to unfurl multiple layers of legalistic concepts relating to Tristan's return to Parmenie.

Geography modulates Tristan's pursuit of his feudal property rights. The farther that Tristan wanders from Mark's court in Cornwall, the more autonomously he behaves. In the realm of Cornwall, Tristan adheres to suggestions from his counsel strictly. Tristan

79. *Heimfahrt und Rache* (5069-5866).

is most responsive to the wishes of his two father figures, Rual and Mark, when he finds himself under their direct supervision. Tristan only engages in behaviors that undermine the desires of his counselors when he moves beyond their spheres of influence. Tristan behaves less dutifully when he occupies the middle ground of Parmenie, where he is accompanied by only a single chaperone. On the return voyage, he violates feudal norms when he transfers his kingdom to Rual's family. The most striking example of Tristan's keen awareness for geography occurs during a visit to Morgan's forest campsite in Bretagne. The wilderness there serves as the geographic opposite to Mark's court, ergo it serves as the ideal space for Tristan to oppose Mark's wishes. Beyond the scope of Mark and Rual's supervision, Tristan pursues a vendetta against Morgan in direct contradiction to the wishes of his king and counsel. Thus, Tristan's power is greatest when he escapes the spaces in which Mark and Rual exercise hegemony.

The Return and Revenge episode is exemplary for its exhibition of contemporary power paradigms. Notions of power in the High Middle Ages do not completely correspond to modern definitions of power, which employ economic, political, and military paradigms to describe the hegemony of some (state) actors over others.⁸⁰ Political geographer Rhys Jones explains the development of the feudal state as a transition from kinship systems of power to territorial ones.⁸¹

80. In fact, state-building underwent a historical shift in medieval Europe. Rhys Jones, "Mann and Men in a Medieval State: The Geographies of Power in the Middle Ages" in *Transactions of the Institute of British Geographers*, New Series, vol. 24 no. 1 (1999): 67.

81. *Ibid.*, 65.

European societies in the Middle Ages witnessed a major institutional change when they moved from being primarily organized around concepts of kinship to being ordered around the power exercised by a king over a defined area of territorial jurisdiction. This shift – from a political landscape in which territory was identified through *society* to one in which society was ordered through *territory* – lies at the heart of the state-making process.

The relationship between power and geography in Gottfried's *Tristan* shares properties with both the society model and the territorial paradigm which had overtaken Europe by the Late Middle Ages. In the society model made explicit in the *Sachsenspiegel* and *Schwabenspiegel*, one's social status determines one's legal power. Gottfried's *Tristan* is noteworthy because it demonstrates how the scope of lawful behavior, first set by status, could expand or contract in response to geography. For this reason, it is vital to understand the Morgan episode as it correlates to three spheres of influence. Gottfried divides the passages into three geographic zones: Cornwall (5069-5176), Parmenie⁸² (5177-5308) and Bretagne⁸³ (5309-5866). Tristan travels to these locations in this sequence for the purpose of establishing his reputation and status, which Tristan enhances considerably by recovering the fiefdom that his father, Rivalin Kanelengres, lost after his death.

82. Parmenie and Lohnois are both located within the boundaries of Brittany (i.e. Bretagne). Thus, Parmenie is home to Canoel Castle but the territory itself is part of larger Bretagne. Molly Robinson Kelly, *The Hero's Place. Medieval Literary Traditions of Space and Belonging* (Washington, D.C.: The Catholic University of America Press, 2009), 260.

83. Bretagne is the intended place name. Gottfried von Straßburg, *Tristan und Isold*, Walter Haug and Manfred Günter Scholz, eds., (Berlin: Deutscher Klassiker, 2011), 405.

The majority of legal debate in this episode gravitates toward the intersection of social and territorial power, where the concept of fiefdom resides. Fiefdoms functioned as both the structure and currency of feudal society, which was dominated by the system of feudal tenure (*Lehnswesen*). Feudal lords possessed access to assets (e.g. land) as well as the rights to lease access thereto. Land assets equated to one's fief. Under feudal law, a lord (*Lehnsherr*) granted a vassal (*Lehnsmann*) access to his fiefdom. Vassals could also, however, be considered lords, assuming that their social status permitted the leasing of their fiefs to other vassals in a multi-tiered hierarchy.⁸⁴ On the other hand, feudal tenure also describes the transaction that occurs between lord and vassal.

Ein Lehnsverhältnis wurde dadurch begründet, dass der Vasall dem Herrn Mannschaft... leistete, in dem er seine gefalteten Hände in die des Lehnsherren legte und anschließend einen Treueid ablegte, worauf der Lehnsherr den neu gewonnenen Lehnsmann unter Verwendung eines Symbols in ein Lehen investierte.

Vassals placed their folded hands into the hands of their lord to swear an oath of allegiance (*Handgang*).⁸⁵ During the oath ceremony, a lord offers a parcel of his fiefdom to a vassal, who in turn receives his fief from his lord. The vassal swears his allegiance to his lord in what was known as the oath of fealty (*Lehnseid*). An oath of fealty included its own authorization ceremony and was therefore comparable to a modern contractual

84. Georg, Droege, *Landrecht und Lehnrecht im hohen Mittelalter*, (Bonn: Ludwig Röhrscheid Verlag, 1969).

85. Kaiser Friedrich II, *Gründung des Herzogtums Braunschweig-Lüneburg*. Mainz, August 21, 1235. Quoted in Karl-Heinz Spieß, *Das Lehnswesen in Deutschland im hohen und späten Mittelalter*, 2nd ed. (Stuttgart: Franz Steiner, 2009), 25.

agreement.⁸⁶ In short, the framework of exchange and loyalty known as feudal tenure was an organizing principle of feudal society. If we consider feudal tenure the economic structure of Europe during the High Middle Ages, then loyalty was its most valuable currency.

Tristan owes a debt of gratitude to Rual li Foitenant for his unwavering loyalty and crucial assistance in reclaiming his family's homeland in Parmenie. It is noteworthy, however, that the degree of benefit Tristan receives from Rual fluctuates according to his proximity to him, and Rual's relative status in each geographic zone. For instance, Rual's high regard benefits Tristan in their mutual homeland of Parmenie, however, the same cannot be said for Rual's status in Mark's court in Cornwall or hostile territories such as the forests of Bretagne. For this reason, it is necessary to discuss Rual's role in its situational context, which I will now address in chronological order.

The death of Rivalin motivates both Rual and Tristan to request permission from King Mark in Cornwall for a voyage to Parmenie. The pair must ask permission to leave Cornwall because both knights are themselves vassals of the king and consequently servants at his behest. Given the fact that Rual and Tristan cannot leave freely, it is a surprise to discover that Rual prepares the pair for a sea voyage before they receive formal consent from the king (5110-5117). Rual, loyal servant to Tristan who in turn serves King Mark, performs his subservient role with silent deference (5139-5140). Although he accompanies the young knight to the King, he allows Tristan to verbally

86. For a discussion of the various categories of oaths that could be sworn in the High Middle Ages, see Planck, *Das deutsche Gerichtsverfahren im Mittelalter*, 2:102-29.

advocate for their plan, so that the son of Rivalin may plead a case for both of them to reclaim the lost property of the Kanelengres family, an action that stands to benefit both men (5109-5119). Rual's presence and tacit support of Tristan's mission contributes to Mark's willingness to endorse such a journey. Mark trusts Rual's loyalty, suggesting that Tristan model his behavior after his late father Rivalin or Rual (5141-5154). The implication here is that if Rual were not available to supervise Tristan's exploits, then the sojourn to Parmenie would be too great of a risk to take. According to the plot of *Return and Revenge*, it is clear that Mark's risk calculation was accurate; if given the opportunity, an unsupervised Tristan would unsettle the peace in his homeland.

Rual leads Tristan to Parmenie, a region with which he has high familiarity due to his role as King Rivalin's companion. After disembarkation, Rual guides the knightly retinue ashore and begins to familiarize Tristan with its landscape (5181-5183). Rual welcomes Tristan home with the gesture of a kiss (5187), declares Tristan the king of Parmenie, and invokes God's name (5187-5189). Hence, Rual resumes his former function: loyal servant to the king of Parmenie. He establishes the geographic limits of Tristan's rule at the horizon, inviting him to bear witness to the beaches, land and fortifications that were once the domain of Rivalin Kanelengres. Moreover, Rual guarantees that Parmenie cannot be lost, cementing Tristan's control of the fiefdom for the foreseeable future (5198-5199). The scene recalls the figurative language common to medieval law-poetry.⁸⁷

87. Grimm, "Von der Poesie im Recht," 59.

Before continuing our discussion of Rual's geographically determined power, it is important to note a deficiency in both the modern German and English translations of the above scene, because both Ranke and Hatto fall short of conveying an important legal subtext of Gottfried's lyric. The complication occurs in the final line: "an iuch geerbet unde brâht" (5195). Hatto's English translation conflates this meaning into a singular notion of general inheritance,⁸⁸ whereas the Ranke translation maintains the duality and proposes two terms: "bequeathed to family members" ("vererbt") and "bequeathed to unrelated persons" ("vermacht").⁸⁹ Although the latter term does not achieve currency until two centuries after Gottfried, this alone should not discount its utility.⁹⁰ The primary reason that "vermachen" is a poor fit concerns an incompatibility between modern legal terminology and the source material. For clarity's sake, it is important to note that "brâht" does not typically convey the meaning of a legal will, instead it most often meant "delivered" or "brought" as is the case where it appears in the *Kaiserchronik* (ca. 1135-55).⁹¹ Ranke's translation creates a legal ambiguity with regards to Tristan's

88. "left it to you"

89. Ranke, *Tristan und Isold*, 319.

90. Friedrich Kluge, *Etymologisches Wörterbuch der deutschen Sprache*, 22nd ed., ed. Elmar Seebold, s.v. "Lehen" (Berlin: Walter de Gruyter, 1989).

91. Common uses include: "er brâht im grôz êre." *Kaiserchronik*, 796; and "er brâht in ze sînem maister." *Kaiserchronik*, 1950.

relationship to Rivalin, namely, whether or not he is a blood relative. Lest this focus on textual minutiae appear of minuscule import, I refer my readers to the following.⁹²

[Marke:] Tristan, gâ her und küsse mich!
und zwâre, soltu leben und ich,
ich wil dîn *erbevater* sîn. (4299-301)

[Tristan, come here and kiss me! I swear that, as long as you and I live, I will be as a father to you.]

In his affectionate address to Tristan, Mark articulates his love through the careful language of patrilineal inheritance (“erbevater”). Gottfried’s word choice suggests that the transmission of property through the vector of kinship was distinct from the devolution of property through one’s last will and testament. Moreover, this example lends weight to the argument that Gottfried’s usage of legal terminology was intentional. With that, I conclude this brief but necessary detour and return to the role of Rual.

Rual’s primary function was to supervise and protect the wealth and health of his former lord, Rivalin Kanelengres. As his former vassal, Rual serves as proxy for the will of King Rivalin (5208-5210) and administers his properties accordingly by transferring them to the sole heir to the Kanelengres lineage: Tristan (5212). The fact that Rual transfers his own personal property to his king is a function of the feudal tenure system and customary (5214-5216). The selfless transfer of property and reallocation of respect turns out to be a worthwhile investment of trust and wealth based upon Tristan’s eventual empowerment of Rual’s family in his stead.

92. This excerpt is quoted in Joshua M. H. Davis, “Tricksters in Gottfried’s *Tristan*: Literature as Deception” (PhD diss., University of Virginia, 2007), vi; italics added.

The shifting of Rual's riches and fame (5218) is essential to Tristan's ascent to power, because it grants the young knight the foundation he requires to build a reputation and expand his physical wealth (5219-5221). The marshal Floraete bolsters her husband's effort to install Tristan as *de facto* leader of Parmenie. She observes the events and thereby glorifies the ceremony, conferring honor and license to his new authority (5251-5266).⁹³ The manner in which the ceremony operates is notable because of its close resemblance to Geoffrey of Monmouth's chronicle, "Thus was the valour of the men an encouragement for the women's chastity, and the love of the women a spur to the soldiers' bravery."⁹⁴ In this mutual exchange of credit and honor, women offer attention and love to men, who in turn demonstrate valor and bravery to enhance the esteem of women. Rual inaugurates Tristan's return as legitimate heir to Rivalin with Floraete's blessing. Unfortunately, Tristan feels unsettled by the incomplete collection of fealty oaths from his vassals and sets off to enhance his new political and economic power with military might.

93. Laufenberg explains that women bestow honor upon men in medieval society through attention: "Honor constituted a complex and key organizing principle of many medieval societies. . . . Honor was inextricably linked to reputation (Latin, *fama*). Talk and gossip—often considered special purview of women—formed a powerful medium for conferring or diminishing status and enforcing social norms. Reputation also possessed a legal dimension." Lynn Marie Laufenberg, *Women and Gender in Medieval Europe: An Encyclopedia*, ed. Margaret Schaus, s.v. "Honor and Reputation" (New York, NY: Routledge, 2006), 375.

94. "Efficiebantur ergo castae mulieres, et milites amore illarum meliores." Geoffrey of Monmouth, *History of the Ancient Britons from the Earliest Period to the Invasion of the Saxons*, ed. and trans. by J.A. Giles, D.C.L. (London: G. Bell, 1847), Book 9, Chapter 13.

Tristan's adventure into the woods of Bretagne represents a departure from the walls of Canoel Castle, the bounds of Parmenie, and the scope of Rual's counsel. Tristan departs with a entourage of knights to seek revenge for his father's death under the guise of securing fealty from a disrespectful vassal, Morgan, who is unaware of Tristan's return and the young knight's allegations towards him. When informed of the new circumstances, Morgan expresses doubt that Tristan is a legitimate heir to the throne. When Morgan suggests that Tristan cannot collect oaths of fealty, he is simply asserting that Tristan is not a lord; his allegation does not invalidate Tristan's right to property so much as his right *of* property. Since the value of fealty is so great, it is no surprise that Tristan cedes his property to Rual but preserves his fealty oaths.

Rual's absence among the scouting party is notable, because Tristan brings his knights with him after announcing the plan to his friends and vassals (5295).⁹⁵ Rual only reappears in the episode after Tristan has single-handedly managed to declare war against the Bretons by assassinating their leader in a brutal and public display of force. Gottfried only reveals Rual's advice regarding the confrontation afterwards. Rual, who abstained from the mission to find and force obedience from Morgan, counseled Tristan to avoid a physical encounter altogether (5555-5556). Since Rual reappears only after Tristan's declaration of war with the Bretons, he must serve his liege as a supporter of his military campaign, assembling one hundred knights to rescue Tristan, who found himself outnumbered and surrounded by the Breton army (5557-5559). Rual's speech features a

95. "sîn cumpanîe"

chiasmus and a repeated battle cry to emphasize the brotherhood-like quality of Parmenie's knights, while Gottfried credits these knights with Tristan's rescue (5576-7; 5598).⁹⁶ Here anaphora and chiasmus lend further support for Grimm's theory that verbal and legal actions rely upon contingency and cohesion.⁹⁷ Rual proves his loyalty to Tristan by joining him on the battlefield despite his own reticence to commit to military action against Morgan.

On the other hand, before King Mark endorses the voyage to Parmenie, he requires that Tristan prove his loyalty to Cornwall through a verbal contract. Hence, Mark is a far more reluctant partner in Tristan's expedition than Rual. Captivated by Tristan's myriad abilities, Mark subsidizes the courtier-knight with resources like troops and portable wealth in order to facilitate his effort to reclaim Parmenie—a down payment on Tristan's obedience. If Tristan wishes to gain purchase over his former homeland, he may do so, but if and only if he swears allegiance to Mark and agrees to return after he accomplishes his mission.⁹⁸ In contrast to Rual, whose status as liege limited his influence over Tristan, Mark offers Tristan a verbal contract, which binds and secures his loyalty to Cornwall and his king. In further contrast to Rual, Mark's proximity bears an

96. “«schevelier Parmenîe! / Parmenîe schevelier!» [’Chevelier Parmenie! Parmenie Chevelier!’]

97. Grimm, “Von der Poesie im Recht,” 37-38.

98. Absolute contingencies such as this one (“If and only if”) are considered “logical biconditional[s].” Charles K. Cobb Jr., “Legal Statements as Conditional Directives,” *Mind* New Series, vol. 76, no. 304 (Oct., 1967): 497.

inverse relationship to his hold over Tristan's actions; the farther Tristan ventures from Mark the more he feels a pressing need to return to serve him.

At the outset of the Morgan episode, King Mark wields limited authority over his knights in Cornwall. Arguably the most valuable members of his court, Tristan and Rual, do not discuss the Parmentier issue with their king, nor are they given orders, instead they ask permission (Erlaubnis) to carry out their own endeavor with the king's blessing ("please give me leave").⁹⁹ Tristan claims that such a voyage originated from Mark's own counsel ("in accordance with your advice"),¹⁰⁰ however, a lack of textual support in Gottfried's version casts a shadow of doubt over this allegation. When asked whether he would permit his nephew's departure to a foreign land where he hoped to develop his own kingdom, Mark is surprisingly permissive. The regent neither negotiates the request nor does he handicap the effort ("it shall be done").¹⁰¹ As a bonus, he offers Tristan such massive supplies of horses, gold and silver (5131-5135).

Mark foresees that Tristan and Rual will encounter military resistance on their journey. The fact that Mark supplies his vassals with knights supports this claim. Mark anticipates Tristan's vengeful war effort against Morgan. Critics who find Mark's kingship deficient should attend to this passage, where the same actions which appear to depreciate the king's own worth (i.e. diminishing military readiness) prove essential to

99. "ez sol mit iuvern hulden sîn" 5120

100. "nâch iuwer m râte" 5122

101. "diz sol sîn" 5126

maintaining Tristan's loyalty. That is to say, every instance of allocating resources and power to Tristan is part of Mark's strategic effort to bind him with a long but sturdy leash.

As Mark is about to underwrite this mission, he expands the scope of his offer to Tristan in exchange for long-term loyalty from his own knight. The king lends resources to his knight on the condition that he will return to Cornwall after he reclaims Parmenie. Mark's stipulation adds circularity to the notion of the Return, since Tristan must promise to return home to Cornwall after voyaging to Parmenie, his homeland. The fact that Mark would offer support of Tristan's conquest without permitting the courtier to enjoy the fruits of said labor suggests that the two share an unspoken ulterior motive concerning the journey.¹⁰² At this point, I will postpone a detailed discussion of the verbal contract between the king and his vassal. For the time being, let it suffice to say that Mark exercises generosity and passivity while in Tristan's company in order to leverage greater hegemony than he would otherwise possess while Tristan traverses the far-flung forests of the continent. The discussion in Cornwall reveals that the series of offers to Tristan are a bait and hook, allowing the king to reel his courtier-knight back home from afar.

Since Mark is absent at Canoeel Castle in Parmenie and lacks influence over the courts of Bretagne, his sole power in foreign lands derives from Tristan's obedience. Mark mentors Tristan before his departure, instilling a desire to uphold the virtues of knighthood as modeled by Rual and himself (5136-5145). In Parmenie, Tristan mimics

102. In Chapter 3 I revisit this clause as evidence that Tristan's departure is solely motivated by revenge on Morgan (5146-5151) and corroborate the argument that the Return quest is simply vengeance disguised as a treasure hunt.

the type of chivalry practiced by his father figures. In turn, his knights and new vassals swear fealty to Tristan in order to reinforce his position of authority. Insofar as Tristan must address the typical duties of a lord, he is successful in modeling his own rule after Rivalin and his proxies. Tristan's reverence for knightly and courtly ideals wavers, however, when he reminisces on his desire to seek vengeance for his father's murder.

In the woods of Bretagne, Tristan and a group of knights dispense with the standards of knightly behavior and seek out Morgan. Tristan discovers said lord at a forest campsite, where his hunting has left him oblivious to Tristan's recent political takeover. Tristan's vengeful motives become apparent when the young knight instructs his group to disguise their armor with articles of clothing, cloaking their combative intentions in a manner unbecoming of knightly custom. Hartmann's *Erec* offers a precedent for such furtive activity.¹⁰³

dô wâpente er sich verholne
unde truoc ver stolne
under der wât sîn îsengewant. (3064-66)

[He armed himself secretly and wore his armor under his clothes.]

According to Hartmann, a clever knight may prepare for a duel by donning attire incongruent with his intent.¹⁰⁴ When Tristan confronts and suddenly slays the leader of

103. Hartmann von Aue, *Erec*, 6th ed., Albert Leitzmann and Ludwig Wolff, eds. (Tübingen: Max Niemeyer, 1985).

104. For a complete explanation of how a knight in armor would be able to achieve the feat of disguising himself with a layer of clothing, see Hartmann von Aue, *The Complete Works of Hartmann von Aue*, trans. and commented by Frank Tobin, Kim Vivian, and Richard H. Larson (University Park, PA: The Pennsylvania State University Press, 2001), 100n.

the Bretons without warning, he bypasses the rules inherent to the dueling process¹⁰⁵ and disobeys his king's explicit desire for him to conduct himself as an esteemed knight during the resolution of the disputed territory (5146-5150). The war with the Bretons, however inadvisable, brings closure for Tristan and the mission to secure Parmenie.

In the aftermath of the war, Tristan holds court once more to announce his decision to return to Cornwall and fulfill his contractual obligations to King Mark. The hard-won victory against the Bretons marks the conclusion of the expedition and reminds the young knight of the corollary debt of his presence in Mark's court. The realization that he must depart his newly acquired kingdom forces Tristan to sacrifice property ownership, economic power and abandon his most loyal friend, Rual. Tristan hopes to improve his renown under his uncle's tutelage. Therefore, Tristan's expedient return to Cornwall demonstrates the high degree of influence Mark exercises despite competing interests and long distance.

Both Rual and Mark operate as father figures for Tristan and facilitate the process by which he reclaims his lost inheritance and ascends in knightly status. Rual plays an instrumental role in the achievement of dominion over Parmenie and the rapid collection of oaths of fealty. Without popular support for Rual, whose reputation with the Kanelengres family was well known, it is unlikely that the knights and vassals of Parmenie would have so easily submitted to new leadership under Tristan. Rual's strength in this regard should not, however, overshadow Mark, who singlehandedly assembled the

105. As Planck notes, judicial duels award opponents the right to be heard before combat. Planck, *Das deutsche Gerichtsverfahren im Mittelalter*, 1:249-50.

military and financial resources necessary for the expedition and acquisition of the kingdom of Parmerie. Simply put, Mark provided the means for Tristan to become king and Rual modeled the manner in which to do it.

At this point, the present chapter shifts its approach and analyze the intricate legal paradigms at play. In terms of feudal and Germanic customary law, the Return and Revenge episode reveals a rich amount of detail concerning the mechanisms of property transfer at Tristan's disposal. First, I will address physical property rights and analyze property transfers according to (1) conquest, (2) lineal or marital inheritance (Erbe), and (3) shared rule (Mitregentschaft). In the second part, I will extend the discussion of feudal tenure and cite specific examples in which Gottfried distinguishes between merely owning property and exercising political and economic hegemony over lands and residents. To this end, I will examine instances in which fiefdom transfers occur in the form of an (voluntary or involuntary) oath.

The most self-evident type of property transfer occurs via military conquest (Kriegsbeute). In order for Tristan to recover and maintain his homeland, he must defend it against neighboring regions. Besides the fact that revenge motivates Tristan, the young knight suggests that Morgan is an existential threat, due to his failure to recognize his new status by swearing an oath of fealty. Tristan announces a preemptive visit to Duke Morgan of the Bretons in order to improve his rights to his father's kingdom ("so that he could hold his father's territories with better title").¹⁰⁶ The negotiation of property rights

106. "durch daz er sînes vater lant / mit reht haete deste baz" 5300-5301

between feuding parties triggers a declaration of war. The victor's spoils include Morgan's fiefdom and oaths of fealty from his former vassals. Although unambiguous, property transmission by conquest is actually an intervention which disrupts the more commonplace system of property inheritance through kinship.

Although Gottfried's *Tristan* showcases patrilineal property distribution, it is important to note that kinship inheritance practices served both men and women. Instead of gender, class distinctions formed insurmountable barriers to the acquisition of property. Until the middle of the thirteenth century, the framework of inheritance was reserved for "Freie, Adel und Ministerialadel... die ihr Eigen, Grundbesitz und Rechte, und zunehmend auch Lehen an ihre Nachkommen vererbten."¹⁰⁷ Morgan and Tristan, given their stations, could pass on property and fiefdoms to their male or female successors, since gender did not restrict the transmission of property as class did.¹⁰⁸ In fact, the "bilateral inheritance" of property prevailed in Western Europe during the twelfth century.¹⁰⁹ Men and women inherited property and wealth, often in the form of land and dower (Morgengabe), respectively. In many cases, married women shared

107. *Historisches Lexikon der Schweiz*, s.v. "Historisches Erbrecht," Anne-Marie Dubler, published October 23, 2006, <http://www.hls-dhs-dss.ch/textes/d/D9609.php>

108. This stands in contrast to Irish property law in the twelfth century, which restricted inheritance along the female line, instead allowing men and women to keep possession of the products of their own labor. Leslie W. Rabine, "Love and the New Patriarchy: Tristan and Isolde," in *Tristan and Isolde. A Casebook*, ed. Joan T. Grimbert, 37-74 (New York: Routledge, 2002), 53.

109. Jack Goody, *The Development of the Family and Marriage in Europe* (Cambridge: Cambridge University Press, 1983), 238-9.

possession of their husband's property under local ordinances, often enjoying greater benefits in this regard if they resided in urban centers instead of the countryside.¹¹⁰

In the majority of families, marriage and childbirth facilitated the secure transmission of property to kin.¹¹¹ Kinship inheritance followed the order of succession (Erbfolge).¹¹² Typically, one's surviving immediate family formed the list of immediate successors and inheritors. Commonly, only children born in wedlock could rightfully inherit their parent's property. Otherwise, it could fall to nephews or other blood relatives in the sequence of succession of that region.¹¹³ Absent an heir, local ordinances would dissolve the estate and determine the proportional distribution of the deceased's property to the community, often prioritizing the church.¹¹⁴ Increasingly, secular courts overtook the qualification of marital status from ecclesiastical courts, since perverse incentives existed for the latter institution. In his seminal work on the topic, Goody argues that

110. During this period, the paradigms for property ownership among married couples varied among municipalities throughout the Rheinland. One survey of *Ehegüterrecht* (Matrimonial Property Law) in the Rhineland area suggests that Dortmund and Münster were models of mutual property rights among married couples. There the law stated that married men and women possessed equal access to each other's property from the first day of matrimony. Edith Ennen, *Frauen im Mittelalter* (München: Beck, 1999) 102-3.

¹¹¹ In Soest, on the other hand, the widow's access was contingent upon the survival of at least one of their children. Once such requirements were met, *Gütergemeinschaft* (Joint Property) was achieved, permitted either the widow or the widower to receive full inheritance of the other's property upon death. *Ibid.*, 102-3.

112. *Historisches Erbrecht*, 1.1

113. *Ibid.*

114. *Ibid.*

churches in the twelfth century acquired much of their material wealth through the regulation of marriage.¹¹⁵ The disqualification of marriages meant the annulment of kinship-based inheritance, resulting in the dissolution of familial wealth and its irreversible¹¹⁶ redistribution to the Church.¹¹⁷

Similarly, Gottfried's *Tristan* presents numerous examples of protecting familial wealth from outside parties. Rivalin entrusts his vassal Rual with the protection of his only heir before his death. Tristan, who has no heirs, bequeaths his fiefdom to Rual and Floraete, who are to remit it to their sons upon their death. Tristan maps out this order of succession in no uncertain terms. The transfer of property to Rual's sons is lawful

115. Goody poses the following question about the role of the church in medieval Europe, "If the Church intended and encouraged procedures for acquiring land and other property for itself, did it also discourage... those practices that might provide a family heir for the property of a dead man or woman?" *Family and Marriage*, 46.

116. Grimm notes that the inextricability of property belonging to the Church gave rise to the poetic idiom: "Kirchengut hat eisernen Zahn." In Jacob Grimm, "Von der Poesie im Recht," *Zeitschrift für geschichtliche Rechtswissenschaft* 2 (1816): 51. This phrase introduces the rhyming proverb, "Kirchengut hat eiserne Zähne, frisst eines mit dem andern hin und bringt den dritten Erben keinen Gewinn." Friedrich Kluge, *Deutsches Sprichwörter-lexikon*, ed. Karl Wander, s.v. "Kirchengut" (Leipzig: F. A. Brockhaus, 1867).

117. "The suggestion that the Church's rules on marriage and the family were connected not only with ethical and doctrinal considerations, but also with strategies of heirship, may strike some readers as fanciful, objectionable, or both... in positing a connection between rules of marriage... and the transfer of property, it may seem that I have allocated the Church a rather calculating role" *Ibid.*, 214-5. "The reduction in the range of prohibited degrees of marriage... has to be seen as linked to the weakening of the Church's power to accumulate property, and a concomitant weakening in its wealth, position and influence" *Ibid.*, 220-1.

because they share his station in feudal society.¹¹⁸ As Morgan alludes to in his debate with Tristan, property could only be transferred among lords. Therefore, Tristan guarantees the heirship rights of Rual's sons through an investiture ceremony before his departure.

Kinship inheritance is problematic for Mark and Tristan. Since Mark lacked children, it would not have been uncommon in this period for him to transmit his property to a nephew (Schwestersohn) to safeguard wealth. In this case, the birth of an heir would undermine the nephew's right to an inheritance. In Mark's unusual offer to Tristan, he suggests that he will avoid marriage to ensure that Tristan inherits his wealth upon death. Then, there is the exceptional case of Tristan. Since it is uncertain whether Tristan's parents married in secret before his birth, or if Rivalin is even his father, a shadow of doubt is cast over his right to inherit the Kanelengres kingdom. The fact that Morgan conquered Rivalin further jeopardizes Tristan's rights to Parmenie, since Rivalin ostensibly lost ownership and authority over his fiefdom when Morgan killed him. Having defeated Rivalin in battle, Morgan ought to have acquired all property rights to the kingdom of Parmenie for his own lineage. If Morgan had sought to eliminate any heir to Rivalin, then this should be read as a cautious measure to avoid a vendetta, not as a preemptive maneuver to slay competing heirs, since there would not have been any. For these reasons, Tristan faces significant obstacles to any claims to his father's throne. He

118. Both Rual and Floraete serve as vassals to the Kanelengres family. Their two sons inherit this social status. Had one of the parents held a lower station, the children would have inherited the lower status of the two. Georg Droege, *Landrecht und Lehnrecht im hohen Mittelalter* (Bonn: Ludwig Röhrscheid, 1969), 40n.

must prove that his relationship to Rivalin was legitimate and he can only acquire said inheritance by slaying Morgan.

Property may also be shared arbitrarily between male parties in a cooperative agreement known as coregency. In the first example, Tristan is the beneficiary of such a contract, and in the second instance he is the benefactor. In this episode, both Mark and Tristan contract to share their power and resources with other parties. King Mark generously offers Tristan an equal share of the his own property, and upon his death, Tristan would receive the full share (and vice versa). In a second contract, Tristan offers his loyal friend Rual and his family full ownership and stewardship of his kingdom but not the economic benefits from fealty collected in the kingdom. A study of the overlap between these two contracts yields a comprehensive account for how coregency, the seldom employed but legally valid practice of cooperative rule, operates in Gottfried's text.¹¹⁹

According to Mark's offer to Tristan, such a contractual agreement operates according to equally shared powers and property ownership, transferred in full to the other party upon death (5156-5158). Mark promises to Tristan that they will become equal partners and share his property and land ("always share my land and my wealth with you equally") after his return to Cornwall,¹²⁰ a binding contingency that incentivizes Tristan's expedient return. The verbal promise becomes contractual by means of a legally

119. Kerth, "Marke's Royal Decline," 108.

120. "daz ich dir mîn guot und mîn lant / iemer gelîche teile" 5154-5155

authoritative gesture, which gives credence to the contract (“here is my hand on it”).¹²¹

As Gruentner notes, Tristan takes the regent’s hand.¹²²

To guarantee the validity of the offer, Mark introduces a stipulation upon himself: he swears to remain unmarried on account of Tristan (“since I intend for your sake to stay unmarried all my life”).¹²³ Kerth regards any king’s relinquishment of marriage (Eheverzicht) as highly abnormal for the period.¹²⁴ Although not explicitly stated, the relinquishment of marriage clause implies that Tristan would be able to receive a partial or full share of the kingdom upon Mark’s death, but that marriage and potential male heirs could compromise his inheritance. Mark’s explanation suggests the existence of not only a hierarchy of legalistic values but also that marriage itself was viewed as an irrevocable contract for inheritance, superseding non-marriage contracts. Finally, the hazard of diminished inheritance rights through marriage poses an equal threat to Mark; if Tristan were to marry, his early death could trigger a transfer of property to his close kin rather than to his uncle Mark.

The language of the contract suggests that Mark felt a partnership with Tristan would be a superior substitute for marriage. Mark’s offer treats marriage and a coregency partnership as mutually exclusive options. Even if this is a false choice, it is still a

121. “sê mîne triuwe in dîne hant” 5153

122. Rainer Gruentner, “Der Favorit. Das Motiv der höfischen Intrige in Gotfrids »Tristan und Isold«.” *Euphorion* 55 (1964), 117.

123. “wan ich wil durch den willen dîn / êliches wîbes âne sîn, / die wîle ich iemer leben sol.” 5159-5161

124. Kerth, “Royal Decline,” 114.

decision that Mark makes in Tristan's favor. His explicit preference to share his kingdom with Tristan demonstrates that Mark found the arrangement more desirable than marriage. The emphasis on reciprocal love, loyalty, and happiness in Mark's proposal is evidence for this.

Mark's offer takes on a tone strongly reminiscent of the *Minnesang*. He uses the term "*holt*" to describe the quality of relationship he seeks from Tristan.¹²⁵

bistû mir holt, als ich dir bin,
treistû mir herze, als ich dir trage,
weiz got sô sul wir unser tage
vrôliche mit ein ander leben. (5164-7)

[If you love me as I love you, if you bear me equal affection, let Heaven be witness, we shall spend our days happily together.]

This term prevails in the women's songs of Reinmar von Hagenau we find the following usage of *holt*.¹²⁶

nie genam ich vrowen war,
ich was in holt die mir ze masse waren. (151,15-16)

[I never (yet) looked upon women in such a way that I would not be nice to the ones who are suitable for me.]

125. Lexer defines *holt* as "gewogen, günstig, freundlich, liebend." Matthias Lexer, *Mittelhochdeutsches Handwörterbuch*, 3 vols (Leipzig: S. Hirzel, 1872-1878), s.v. "holt."

126. All excerpts from the poems of Reinmar derive from the following edition, *Des Minnesangs Frühling*, Hugo Moser and Helmut Tervooren, eds., based on the work of Carl von Kraus, Karl Lachmann, and Friedrich Vogt, 37th ed. (Stuttgart: S. Hirzel, 1982). All English translations belong to William E. Jackson, *Reinmar's Women: A Study of the Woman's Song ('Frauenlied' and 'Frauenstrophe') of Reinmar der Alte*, German Language and Literature Monographs (Amsterdam: John Benjamins, 1981).

ich bin im von herzen holt
 und sehe in gerner denne den liechten tac:
 daz aber du verswigen solt. (178, 12-14)

[I am deeply fond of him and would like to see him more than a sunny day—but that you must keep to yourself.]

According to William E. Jackson, “holt” connotes equal status between the speaker and his lover. Jackson explains that, “Reinmar praises his lady in similar courtly terms. His lady also is the sole possessor of all that can delight him. Walther had followed up this claim by emphasizing the lady’s courtly characteristics. . . . Reinmar the knight is always “holt” toward women who are suitable for him on his level, ‘mir zu masse.’”¹²⁷ Der von Kürenberg, on the other hand, uses “holt” in his songs to describe exclusive love.¹²⁸ It is possible that Mark extends an overgenerous offer as motivation for Tristan to survive and return from his endeavor. Perhaps Mark sweetened his offer to compensate for the potentially lucrative conquest Tristan sought to undertake. Either interpretation would suggest that Mark anticipated the outbreak of a dangerous war with the Bretons before he sanctioned the voyage.

Mark’s offer gives rise to several questions. If the offer reveals a desire to prevent Tristan’s untimely death while abroad, then why would he grant him permission to leave in the first place? Perhaps Mark exploited the occasion of the request to fulfill his personal wishes regarding coregency or abstinence from marriage. Even more curious,

127. Jackson, *Reinmar’s Women*, 160.

128. “bite in, daz er mir holt sî” [Bid him to love me dearly] *Old German Love Songs Translated from the Minnesingers of the 12th to 14th Centuries*, trans. Frank C. Nicholson (Chicago: University of Chicago Press, 1907), II.I.1.

however, is the fact that Mark's offer presents perverse incentives for Tristan, who can improve his own rights to inherit Mark's wealth and power if he obstructs the king's marital prospects (e.g. Isolde). Finally, there is the matter of Tristan's peculiar response. Immediately following the conclusion of Mark's offer, Tristan departs. Although he is given permission to leave (5162-5176), he departs Cornwall without agreeing to (or negotiating) Mark's terms. His acceptance of supplies for the expedition indicates at least a tacit acceptance of the contract, but even this reading lacks overwhelming textual support.

The second example of coregency, when Tristan transfers mutual ownership rights over Parmenie to Rual and his family, parallels Mark's offer. The promise between Tristan and King Mark obliges the young knight to relinquish his newly recovered homeland hastily. Unlike Mark, who desired shared and simultaneous ownership, Tristan proposes that his co-ruler Rual shall inherit his property but not his fealty, until his death. The transfer of property to Rual and the withholding of concomitant fealty rights allows Tristan not only to profit from his endeavor without committing to lordship but also immunizes him from his recent provocation of war.

Tristan holds a massive victory celebration, during which he informs his successors and vassals of his intention to reorganize his property but withhold his power (5720-23). The publicity of this affair ensures the legal validity of this verbal contract. Tristan begins the ceremony with the investiture of Rual's sons as knights, gifting them his sword (5728-5731). Then, he describes a transaction in which Rual and Floraete, as

well as their sons, acquire all of the land, wealth and political power in Parmenie, and therewith lead the court of Canoel Castle. Tristan maintains his position in name only, thus retaining the oaths of fealty that he had collected from his vassals. The departing lord transfers the responsibility for collecting fealty payments to Rual, who becomes the *de facto* tax collector of Parmenie. Under this agreement, Tristan maintains rights to the fealty, as well as the allegiance of vassals and servants beneath him (5808-5811). Simply put, Rual's family manages the property in Parmenie on Tristan's behalf, but without his political or economic clout. Lastly, Tristan stipulates that in case of his own death, both the property and wealth of Parmenie, as well as rights to fealty from her vassals, will be bequeathed permanently to Rual, who has the right to pass these along to his sons. With measured irony, the episode ends with the realization that Rual must resume his role as proxy for the future inheritors of Parmenie, his sons. The departure scene underscores the capacity of fealty to become valuable currency on its own.

The Return and Revenge episode focuses upon the negotiation of property ownership and individual loyalties as they pivot around Tristan, who enters verbal contracts to receive fealty from the vassals of three regions: Cornwall, Parmenie, and Bretagne. Paradoxically, the young knight receives fiefs from his superiors and his subordinates. Gottfried's narrative obscures Tristan's rank on the ladder of lords, who typically received fealty from those beneath them and promised allegiance to those above them along the vertical hierarchy of lords and vassals. As a lord, Tristan may rightfully own and lend property, including land, wealth and human capital. In order to secure the

fealty of vassals in his kingdom, a lord must summon his vassals and commit to a mutually beneficial agreement, the fealty oath. In a fealty agreement, the lord offers protection and the right to cultivate his property in exchange for lifetime allegiance and support. As the lord who owns Parmenie, Tristan follows exactly this pattern once in power. He summons those vassals able to swear oaths of fealty to his court (“all the lords and magnates who ruled the cities and castles”),¹²⁹ so that he may incorporate their fealty into his kingdom.

sî empfiengen al besunder
 ir lêhen, ir liut unde ir lant
 von ir hêrren Tristandes hant.
 si swuoren hulde und wurden man. (5284-7)

[One by one they received their fiefs from the hand of their lord Tristan, with their vassals and their lands. They took the oath of fealty and became liege men.]

In Gottfried’s account, Tristan’s vassals swear allegiance, promising to assist their lord in exchange for access to resources and protection from outside threats. Tristan is not only “handing over” these assets, he is engaging in a legally-binding gesture which confers legitimacy to the agreement. Tristan’s status as a propertied knight of noble lineage permits him to establish such fealty relationships with his vassals.

The sequence of fealty oaths is important. The first oath is sworn between Tristan and his most loyal servant, Rual, who swears allegiance to Tristan to build his reputation and install him as leader in Parmenie. The second wave of oaths includes those from most of the vassals of Parmenie, who voluntarily swear fealty to Tristan at Canoeel Castle. The

129. “die hêrren und diu hêrschaft / die dâ haeten die craft” 5269-5270

third group, the reluctant Bretons, only swear fealty to Tristan after he assassinates their leader, Duke Morgan. These vassals share a common trait: once they ally themselves with Tristan they serve his interests in exchange for protection. Thus, the notion of fealty carries with it a high degree of responsibility, which Tristan effectively shirks (or at least displaces) when he departs Parmenie. The separation of fief from fealty enables Tristan to exercise a great deal of political and economic hegemony without binding himself to the responsibilities typically associated with lordship.

Duke Morgan probably bore these responsibilities for Parmenie and Bretagne after Rivalin's demise. Upon arrival in Parmenie, Tristan is greeted by numerous vassals who pledge allegiance to him in exchange for tenancy rights on their land. Gottfried does not explicitly state the allegiance of these lords prior to Tristan's arrival. If Morgan is responsible for killing Rivalin, as Tristan alleges, then it follows that Parmenie became the rightful property of Duke Morgan. The deduction that the fiefdom of Rivalin was transferred to Morgan explains how Canoe persisted during Tristan's lifetime and clarifies Morgan's disavowal of Tristan's inheritance of the kingdom, for if the property did not currently belong to Morgan, there would be little reason for him to debate the issue so adamantly. Likewise, Morgan's control over Bretagne and Parmenie would justify the haste with which his former vassals honored Tristan with oaths of fealty. Moreover, such an explanation informs Morgan's reluctance to swear an oath of fealty to the young knight, because the offer would diminish his own elevated feudal status as duke. Lastly, Morgan's rightful possession of Parmenie serves as the only logical

justification for Tristan's assertion that he must improve upon his fiefdom by resolving Morgan's insubordination. In sum, Tristan's unsubstantiated allegation that Morgan murdered his father is highly plausible, based upon evidence surrounding the management and negotiation of feudal tenure rights after Rivalin's death.

At this juncture, it is necessary to return our focus once more to the conclusion of *Return and Revenge*, when Tristan must symbolically cleave himself in twain, just as one would separate an egg, in order to satisfy the wishes of his elders, Rual and Mark. The extended metaphor of the egg offers rich insight into Gottfried's notion of individualism.

sich selben teilet er inzwei
 geliche und ebende also ein ei
 und gab ir ietwederem daz,
 daz er wirste, daz im baz
 an allen sînen dingen kam. (5687-91)

[He divided himself as neatly and equally as one divides an egg and gave to either man what he knew would go best with his circumstances.]

The egg metaphor deployed here describes a Tristan in crisis, for he sacrifices parts of himself in an attempt to satisfy both of his figurative fathers, Rual and Mark. Both mentors depend on a different aspect of Tristan's character. In order to satisfy both Rual and Mark, Tristan must disassemble himself carefully, as one would separate a yolk from albumen.¹³⁰ This scene tests the limits of the concept of identity in courtly romance, because it describes the process by which one could distinguish and dissect elements of

130. Friedrich II writes specifically about the discrete components of the egg, "Sed in rumpendo ovum remouent summitatem teste ovi et albumen et vitellum postea ponunt in cacia et implent lacte eandem testam et micunt vum ovo in cacia." Friedrich II von Hohenstaufen, *De arte venandi cum avibus*, ed. Carl Arnold Willemsen (Lipsiae: In aedibus Insulae, 1942), 1:142.

one's self: property and reputation, status and power. According to Gottfried's metaphoric language, two elements constitute a courtly individual: one's body and one's property.¹³¹

zwô sache enmachen einen man,
ich meine lîp, ich meine guot. (5696-7)

[two things go to make a man—his wealth and his person.]

Unfortunately, Gottfried does not elucidate which components of the egg correspond to wealth and personhood. The literary record offers a few instances of the egg metaphor, though these examples offer little insight into the ambiguity of Gottfried's figurative language. The mere presence of the egg as a metaphor is rare in the corpus of Middle High German texts, and never in this form.¹³² The only poetic examples of its use in Middle High German occur after Gottfried, as in the writings of Berthold von Regensburg (d. 1272), the theological and preacher who compared the egg to the physical world we inhabit. His metaphor draws a comparison between the features of an egg and that of the planet Earth. For Berthold, the egg's yolk is reminiscent of the Earth's soil, the

131. Ranke and Haug translate the words of this passage differently. Both translate *guot* as "Besitz," but Ranke translates *lîp* as "Persönlichkeit," and Haug translates it as "Person." Both translations obfuscate the connotations of immobility and corporeality in Gottfried's lyric. Lexer defines *guot* as "Vermögen, Besitz, ... Landgut, Landbesitz," and *lîp* as "Leben...Körper." Lexer, *Mittelhochdeutsches Handwörterbuch*, s.vv. "guot," "lîp."

132. Two metaphorical uses of the egg were evident in my study of the corpus of Middle High German texts. Besides Berthold, the egg metaphor appears in "Der Freudenleere: Der Wiener Meerfahrt" (1280), wherein a fortress is described as an egg. Johann Mailáth and Johann Köffinger, eds., *Koloczaer Codex altdeutscher Gedichte* (Vienna: Anton Strauß, 1817), lines 1-2, 77.

albumen the air, and the shell the atmosphere (or firmament).¹³³ But even before the egg became a microcosm for Berthold, it bore spiritual significance for Christianity.

As a Christian burial rite, eggs symbolized life, death, and above all rebirth.

Dating as far back as the 4th century, Christian ceremonial burial practices involved placing chicken and goose eggs alongside corpses in graves.¹³⁴ According to Metford, eggs were “one of the foods forbidden during Lent and brought to church to be blessed on Easter Sunday...” as well as “a symbol of rebirth and resurrection.”¹³⁵ Metford goes on to cite Job 39:13-4, in which an ostrich leaves its eggs to hatch alone, as symbolic for the virgin birth of Jesus.¹³⁶ While these examples demonstrate that the egg metaphor had some prevalence as an object of metaphorical comparison among Gottfried’s contemporaries, they reveal little about Gottfried’s commentary on individualism. Furthermore, I contend that there is little to gain from interpreting Gottfried’s language as

133. Berthold von Regensburg uses the egg metaphor in 1275 to describe the layered relationship between heaven, the atmosphere, and the soil. Berthold attributes meaning to the discrete elements of the egg (“daz ist geschaffen als ein ei. Diu ûzer schale daz ist der / himel den wir dâ sehen. Daz wîze al umbe den tottern daz / sint die lûfte. Sô ist der totter enmitten drinne, daz ist diu / erde.”). Franz Pfeiffer, ed., *Berthold von Regensburg: Vollständige Ausgabe seiner Predigten*, Vol 1 (Vienna: Wilhelm Braumüller, 1862), lines 25-28, 392. See also *Reallexikon der germanischen Altertumskunde*, comp. Johannes Hoops (Strassburg: Karl J. Trübner, 1911-13), s.v. “Ei.”

134. *Archiv Für Anthropologie*, eds. Johannes Ranke and Georg Thilenius (Braunschweig: Friedrich Vieweg und Sohn, 1907), s.v. “Eier.”

135. J. C. J. Metford, *Dictionary of Christian Lore and Legend* (London: Thames and Hudson, 1983), s.v. “Egg.”

136. *Ibid.*

literal, culinary humor, as Lewis suggests.¹³⁷ I argue that the metaphor of delicate self-division¹³⁸ is novel to Gottfried's work.

Gottfried's poetry predates Berthold and shares some commonality with it. Gottfried's original metaphor attributes meaning to both parts of the inside of an egg. In my determination, the egg yolk, home to the embryo, is a suitable analogue to the body (*lîp*). Accordingly, the egg's albumen, which surrounds and supports the embryo, symbolizes one's property (*guot*). To follow Gottfried's metaphor, the nutritional resources of the albumen act as the substantive inheritance and the newborn chick's birthright.

The above reading gives rise to two important questions. First, would Gottfried's audience have understood eggs in these terms, and second, why would the egg have been

137. Lewis suggests that the egg is cooked, and explains that the humor of this scene is tempered with the gravity of Tristan's circumstances, "Andererseits aber gebührt der Eimetapher in Tristan größeres Gewicht, denn es wird hier mit überzeugender Einfachheit gezeigt, wie Tristan etwas auseinanderschneidet, was im wesentlichen zusammengehört. Das durch die Häugung der Verben betonte schneidende Zertrennen deutet erstmalig symbolisch auf das Themas des innerlich gespaltenen Tristan hin, das noch mehrfach zur Sprache kommen wird." Gertrud Jaron Lewis, "Die Metapher als Motiv in Gottfrieds Tristan," in *Kommunikative Metaphorik. Die Funktion des literarischen Bildes in der dt. Literatur von ihren Anfängen bis zur Gegenwart*, ed. Holger A. Pausch (Bonn: Bouvier, 1976), 38. Lewis draws support from Curtius, who identifies *Küchenhumor* as a broad motif, "der im weiteren Sinne alles umfaßt, was mit dem Essen zu tun hat." Curtius uses culinary professions (e.g. cooking and baking) in classical and medieval literature as examples of kitchen humor. Since kitchen laborers do not appear in Gottfried's *Tristan*, it is unlikely that Curtius's line of argument would support the claim that Gottfried's egg metaphor is an instance of kitchen humor. Ernst Robert Curtius, *Europäische Literatur und lateinisches Mittelalter* (Bern: A. Francke, 1967), 432-35.

138. In modern biological terms, a mitosis at risk of becoming an apoptosis.

an apt poetic choice to convey the notion of property and wealth? In response to the first inquiry, I posit that strong evidence exists that Gottfried's audiences understood fertilization, incubation, and the component parts of an egg. The sciences of ornithology and embryology were in their infancy during the period. This is evidenced in part by the scope of experimentation undertaken by Friedrich II and published in his groundbreaking study of birds, *De arte venandi cum avibus* (1250). The first book of this monograph explains thirteenth century knowledge regarding embryology and incubation with specific language. "The extreme heat of the sun, warming the sand in which the eggs are deposited,¹³⁹ is sufficient to hatch them...Sterile eggs, of course, bring forth no young, since they lack the activating male spermatozoa. A discussion of the manner in which the embryonic chick develops within the egg, the order of appearance, and the formation of its various organs and members, the most suitable season and the length of time required for incubation...have been adequately discussed in the *Liber Animalium*."¹⁴⁰ On the second point, I argue that eggs were not only naturally suited for a division metaphor but that eggs were also generally conceived of as essential property in the period. According

139. Gottfried's imagery of an egg in sand draws analogy to Job 39:14.

140. *The Art of Falconry by Frederick II of Hohenstaufen*, trans. and ed. Casey A. Wood and F. Marjorie Fyfe (Stanford, CA: Stanford University Press, 1943), 53. The aforementioned *Liber Animalium* is an Arabic compilation that includes Aristotle's *Historia Animalium*. "Eggs are hatched by the incubation of the mother-bird. In some cases, as in Egypt, they are hatched spontaneously in the ground, by being buried in dung heaps...Instances have occurred of eggs being deposited in warm vessels and getting hatched spontaneously...Eggs are hatched under brooding hens more rapidly in summer than in winter;...eighteen days in summer, ...in winter...twenty-five...The yolk and the white are separated by a membrane from one another." Aristotle, *Historia Animalium*, 6.2.

to the archaeological record, eggs were treated as currency during the period, in part due to their role as vital nourishment in the High Middle Ages, which suggests that the egg would have been a highly suitable metaphor for *guot*. The domestication of nesting birds for meat and egg production prevailed in the Germanic territories during the High Middle Ages. On the one hand, poultry farming was necessary for the production of protein-rich foods. On the other hand, eggs bore a currency function, since they were fungible units of value (e.g. *Eierzehnt*) and were therefore useful in small transactions and for taxation (e.g. *Martinsgans*).¹⁴¹ These practical considerations, however, are dwarfed by the larger philosophical inquiries into the period which have been launched by numerous literary critics.

Typically, literary criticism regarding the medieval notion of individuality either describes an individual's relation to society¹⁴² or examines the dynamics internal to an individual. At this point I shall focus upon the latter sense of the term "individual" and discuss how Gottfried may have conceived of discrete characters as constellations of body and property. Although several scholars have attended to the notion of the dualistic

141. For the culinary role of eggs, see Anne Schulz, *Essen und Trinken im Mittelalter (1000-1300): literarische, kunsthistorische, und archäologische Quellen* (Berlin: De Gruyter, 2011), 320-21. For the currency function of eggs, see Theodor Huperz and G. Kuhse, *Die Geflügelzucht* (Neudamm: J. Neumann, 1907), 290.

142. For an overview of the critical debates regarding individuality and society in the long twelfth century, see Annette Gerok-Reiter, *Individualität: Studien zu einem umstrittenen Phänomen mittelhochdeutscher Epik* (Tübingen and Basel: Francke, 2006), 148-53.

individual and the egg metaphor, a unifying theory of the courtly individual remains elusive.¹⁴³

In his study of Tristan's characterization, Horst Wenzel reads the tone of Gottfried's commentary in the self-division passage as derisive. Wenzel interprets Gottfried's egg metaphor as the "Zerstörung der person, als Aufspaltung einer organischen Einheit."¹⁴⁴ And to some degree Gottfried's poem is in concert with Wenzel's reading. Wenzel's interpretation, however, seems to fit more with Gottfried's depiction of Morgan's death (e.g. Tristan rives his skull) than with Tristan's self-management. Put another way, does Tristan actually disrupt the "organic whole" of the egg when he divides himself from his wealth? Does the division of oneself actually result in net harm to a character like Tristan? Lanz-Hubmann carefully notes that Tristan hardly suffers from this split, because he maintains feudal tenure rights and therefore maintains his property despite losing his physical proximity to it.¹⁴⁵ This approach coordinates thoroughly with Gottfried's own elaboration on the nature of the body-property duality, in which he argues that *guot* and *lîp* are mutual prerequisites for the establishment of social status

143. The discussion of contributions from Wenzel and Lanz-Hubmann originates in Haug and Scholz, eds., *Tristan und Isold*, 2:405.

144. Horst Wenzel, "Negation und Doppelung. Poetische Experimentalformen von Individualgeschichte im 'Tristan' Gottfrieds von Straßburg," ed. Thomas Cramer, *Wege in die Neuzeit* (1988): 239.

145. Irene Lanz-Hubmann, "'Nein unde jâ,' Mehrdeutigkeit im Tristan Gottfrieds von Straßburg: ein Rezipientenproblem," *Deutsche Literatur von den Anfängen bis 1700*, vol 5 (Frankfurt am Main: Lang, 1989), 117.

(*name*).¹⁴⁶ Importantly, this determination of one's identity applies to both men and women.

es sî man oder wîp,
 sô muoz ie guot unde lîp
 mit gemeinlîchen sachen
 einen ganzen namen machen. (5707-10)

[Man or woman, it is the way of the world that their persons and possessions, making common cause, should create their whole personality.]

Gottfried describes the courtly individual as an integrated duality; every man and woman is composed of an equal combination of one's physical self, the body, and that which one owns, namely property.

Stephen Jaeger suggests that Gottfried metaphorical characterization of Tristan is symbolic of the knight's mentors. According to Jaeger, King Mark's wealth embodies *guot* and Rual's sympathetic personality embodies the *lîp*.¹⁴⁷ Gottfried explains that noble disposition and worldly honor derive from the combination of *guot* and *lîp*. The union of these components enhance Tristan's esteem. It is for this reason that Tristan's decision to halve himself is all the more provocative. The segregation of property and personality have the potential to impoverish one's character ("wealth turns to poverty")¹⁴⁸. Jaeger interprets this as Gottfried's conclusion "that *guot* and *lîp* cannot be separated."¹⁴⁹

146. Lexer defines *name* as "Rang, Würde, Stand." Lexer, *Mittelhochdeutsches Handwörterbuch*, s.v. "name."

147. Jaeger, *Medieval Humanism*, 48.

148. "sô wirt daz guot ein armuot" 5701.

149. Jaeger, *Medieval Humanism*, 48.

Although my reading does not find Gottfried's warning to be as conclusive or unambiguous as Jaeger does, I still find the admonition surprising in light of Tristan's relinquishment of his fiefdom in Parmenie. After winning esteem and wealth through a trial against Morgan in his homeland, and in light of Gottfried's metaphor for identity, it is highly unexpected that Tristan, the exemplar of courtliness, would decide to dissolve his identity through the division of his personality and assets in such haste. That this manner so closely resembles the penalty, death by bisection, with which the young knight dispatched his predecessor, Morgan, suggests that Gottfried equated division with death and dishonor.

Tristan places himself at tremendous risk by divorcing his person from his property. Storp describes the inextricable relationship between the person and his property.¹⁵⁰

Tristan ohne Haus ist ein Ritter ohne Rechte, Tristan ohne Land ist ein Ritter ohne Rechtsbeistand, ohne Gefolgsleute, die seine Interessen bei Hofe vertreten.

Tristan's loss of fief and physical absence in Parmenie ultimately endanger his rights as a knight in general, diminish his ability to exercise hegemony over his vassals. Taking on such a risk to his legal status would effectually inhibit his ability to build his reputation.

This anomaly in the Arthurian tradition gives rise to the question, would Tristan have exposed his reputation to greater risk as an "organic whole" or as a "halved egg"? I propose that the former circumstance carries more inherent risk; significant legal

¹⁵⁰. Ursula Storp, *Väter und Söhne: Tradition und Traditionsbruch in der volkssprachlichen Literatur des Mittelalters* (Essen: Item-Verlag, 1994), 194.

constraints exist that will hinder Tristan's ascent to kingship and an internal cleavage appears to circumvent said obstacles. In order to improve his positive reputation in both Cornwall and Parmenie, Tristan must honor his contractual obligations to Mark and his responsibilities as a lord to his followers in Parmenie. Unfortunately, these legal agreements represents competing choices. Hence, the case of Tristan's return to Cornwall represents the first scenario in German literature in which a character obligates himself to mutually exclusive contracts; the result is that he figuratively splits himself in order to meet both promises. Surely any failure to fulfill his promise to return to Mark's kingdom upon completion of his quest or unwillingness to administer his new duties in his newly won homeland would likely indict Tristan as dishonorable and inadequate. Either choice would diminish his honor, therefore the cleverest knight to grace the realm refuses the choice and halves himself to satisfy both mentors and dodge both pitfalls. Abiding by the terms of Mark's offer to cooperatively rule Cornwall is one which will enhance Tristan's fame and status. The offer is simply too compelling to refuse.

In sum, Tristan's return to Parmenie represents an opportunity for the poet to illustrate the multitude of legal structures that constitute the feudal society of Gottfried's universe. In the episode, the poet problematizes the legal concepts of feudal tenure, property, inheritance, and identity. The episode presents five mechanisms of property transfer: contractual agreement for shared rule of a kingdom, or coregency (*Mitregentschaft*); the genealogical transfer of property through marriage and birth (*Erbe*); the allocation of wealth through association and hierarchy (*Lehnseid*); and the

practice of military conquest to capture new properties and wealth. Altogether, the poetic operation of Return and Revenge entails the braiding of threads of the Tristan subject matter with the lattice of legalistic paradigms and norms. It is true that such legal scaffolding governs the transmission of the plot, a fact most easily observed through the lens of Tristan's ever-expanding set of legal obligations. Indeed, such contracts provide critics with exactly the type of contingency frameworks that Grimm anticipates in his treatise. Furthermore, this chapter contributes several examples of figurative language, such as the egg metaphor, that indicate the poet's desire to impart a juridical worldview to his public. If it is true that the Gottfried's *Tristan* is law-poetry, then it is incumbent that further readings survey the full landscape of jurisprudential artifacts within Gottfried. To this end, the next chapter investigates the manner in which parties resolve disputes over reputation and status, especially when these contests overlap with the devolution and disbursement of fiefs.

Chapter 3: The Judicial Duel and Dispute Resolution

Judicial duels symbolize juridical debates and make tangible the delivery of justice. Despite the fact that bellicosity is a clear prerequisite for renown in the courtly romance, it can hardly be said that “might makes right” in the works of Gottfried, Hartmann, or Wolfram.¹⁵¹ Courtly knights like Tristan, despite their lack of dueling experience, have the capacity to disrupt unjust and dishonorable actors even when they are physically outclassed. As a close critique of two judicial duels in *Tristan* reveals, the legitimacy of one’s plaint is simultaneously the impetus for the duel and a criterion of one’s success. Although one could argue that judicial duels share common features, it is worthwhile to understand each duel as a unique manifestation of the legal contention that motivates it. The regulations of a duel can be implicit or explicit, and a high degree of variance exists for them even within Gottfried’s *Tristan*. Moreover, each fight exhibits a certain degree of legal symbolism, such that deaths signify certainty, spectacles signify significance, and tactical fairness signifies justice.

It can be said that a judicial duel is a physical confrontation that occurs when two knights agree to resolve a legal dispute through physical conflict. Although various factors may complicate the concept of the duel, it is generally true that the victor benefits from an extrinsic award or through legal advantage. Tristan’s duel against Morgan is

151. Lanz-Hubmann aptly describes Tristan’s strategy as “might makes right” in the sense that Tristan’s attacks lack evidentiary support. Nevertheless, I contend that the nominal sense of seeking justice underpins dueling as a practice. Knights do not merely win because of their strength, but physical conflict often proves legal authority and validity by extension. Lanz-Hubmann, “*Nein unde jâ*,” 119.

exemplary of the former whereas his duel with Morold an example of the latter. The consequences of a judicial duel can be more subtle or fatal, depending on the circumstances. Victors often enjoy the intrinsic benefit of improved reputation, which bolsters their fame as a worthy combatant. Losers, on the other hand, often perish in their attempt to preserve their honor and defend their positions.

The judicial (and prejudicial) duel with Morgan warrants a detailed legal explication. Now that the legal paradigms and ramifications associated with property have been clarified,¹⁵² it is possible to examine the underlying motivation for property acquisition, the degree to which Morgan's opposition to Tristan threatens said goal, and, most importantly, the legal controversy that warrants the duel in the first place. To this end, I raise the counterclaim that Tristan's confrontation with Morgan is merely a guise for vengeance murder, in other words, revenge couched in the language of judicial combat. Since the judicial duel with Morgan arises out of a disagreement over Tristan's reputation, an investigation into Tristan's (contended) status in Parmenie is a worthwhile point of departure.

At its core, Tristan's trip home is beset by threats to his reclamation of power, namely, defamatory statements that undermine the legal pretense to his inheritance of the Kanelengres fiefdom. Tristan faces what might best be understood as a defamation dilemma; he is eager to improve his reputation as a knight and lord in Parmenie, but he can only achieve this by silencing his opposition in a dishonorable way. Notwithstanding

152. For a general discussion of property transfer mechanisms in feudal society, see Chapter 2.

Tristan's paradoxical negotiation of his circumstances, the young knight engages in three debates of legal consequence: (1) Tristan asserts his feudal tenure rights, (2) Tristan asserts that his birth was legitimate, and (3) Tristan asserts that Morgan murdered his father, Rivalin. If Tristan wishes to resuscitate his status in Parmenie then he must complete a threefold strategy that corresponds to these three points of contention. Tristan must achieve hegemony in his homeland through the assertion of his noble lineage and defend his claim through the demonstration of military prowess against threats to his leadership.

In the first line of argument, Tristan's return convinces all of the vassals of Parmenie to swear fealty to him with the notable exception of Morgan and his retinue. The leveraging of feudal tenure contracts enables Tristan to exercise hegemony in Rivalin's former kingdom. For this reason it proves essential that Tristan cement his legal status through the attainment of fealty oaths. Once in Parmenie, Tristan and Rual take ownership of all assets, ranging from the geographic to the architectural features of the region (5218-5266). With these means, Tristan establishes fealty relationships with the vassals in the kingdom, which simultaneously expand his military and economic responsibility and strength. Having established political dominance, Tristan assures respect for his new-founded kingdom with a mission to quell dissent. But Morgan, and by implication his vassals, contest the validity of Tristan's lordship in Parmenie. The young knight attempts to gag Morgan and his followers in order to stabilize a monopoly on leadership on the continent. Morgan's refusal to swear an oath of fealty to Tristan gives

rise to questions of economic, social and military legitimacy. The series of events which unfold in the Morgan episode complicate and inform Tristan's decision to divorce himself from his assets later. Until now, the explication of Tristan's activity has primarily focused upon the preservation and enhancement of property ownerships and its concomitant feudal tenure rights. But as the political and military opponent Morgan will soon profess, property and the right the lease it do not alone a knight make.

The second line of argument, the assertion of Tristan's legitimate birth, serves as a case study for two new, intertwined concepts in Gottfried's legal theory: defamation and revenge. As may already be self-evident, the legal conflict over each knight's reputation prefaces the physical altercation to occur. On the one hand, Morgan insults Tristan in order to undermine his usurpation of Parmenie, on the other hand, Tristan seeks to defame Morgan in order to avenge his father and secure his stronghold over Parmenie. The violent confrontation with Morgan is designed to settle doubts with regard to Tristan's noble birth and the legitimacy of his inheritance as well as his proficiency in combat.

Morgan calls into question the legitimacy of Tristan's kingship by casting doubt on the legitimacy of his parents' marriage, thus undermining the very basis for his noble inheritance of Parmenie. To sow seeds of doubt among his retinue, Morgan distances himself from and belittles Tristan, actions which denigrate the young knight's reputation and threaten his political hegemony in the region as the valid successor of Rivalin. This process begins during Tristan's surprise arrival to Morgan's forest campsite. Gottfried

describes the scene as if Morgan himself is holding court in the wilderness, receiving his unexpected guests as a regal host ought to.

Morgân enpfie die geste,
 der willen er niht weste
 vil gestlîchen unde wol,
 als man die geste enpfâhen sol (5363-66)

[Morgan received the foreigners, whose purpose was unknown to him, with the courtesy due to strangers.]

Morgan models this hospitable behavior for his men, who in turn warmly welcome Tristan's soldiers, their malevolent intentions not yet known. This final act of courtesy unsettles Tristan, who would have certainly preferred the inverse of this encounter, in which he might offer such a courtly reception to his vassals. Displaced into the subservient position of guest in a foreign court, Tristan begins his argument without self-introduction, instead, a set of demands. He announces that he has arrived in Bretagne in order to secure the fiefdom that he *rightfully* deserves.

»hêrre, ich bin kômen dâ her
 nâch mînem lêhen unde ger,
 daz ir mir daz hie lîhet
 und mir des niht verzîhet,
 des ich ze rehte haben sol.
 sô tuot ir hîfslîch unde wol. (5373-78)

[‘Sir, I have come for my fief and ask you to invest me with it here and not deny me what I have title to! That would be just and courteous.’]

These two passages, about the reception of each opponent's retinue, reveal stark contrasts between leadership styles and effectiveness of Tristan and Duke Morgan. Rather uncouthly, Tristan ignorantly presupposes that his renown has extended into neighboring

territories. The lack of self-introduction reveals the deficiency of his reputation in the status quo. Morgan notices this unforced error and pointedly attempts to clarify the geographic and hereditary origin of the stranger (“Sir...where do you come from and who are you?”).¹⁵³ Whilst Morgan acts as a host should, Tristan hardly behaves as a guest ought. Tristan, whose unannounced visit could already be interpreted as discourteous, describes himself as a collector of debts instead of as a royal heir. He presumes that he will encounter resistance in his demand for the fiefdom, so he anticipates any counterarguments by suggesting that his legal rights to collect debts and the paradigm of courtly behavior supersede their right to refuse to swear an oath of fealty. The contrast between each speech is crystallized in the word “*sol*,” which expresses polite custom in Morgan’s court, but registers as the rude demand. In actuality, the question which comes to the fore is: *should* Tristan be considered the rightful heir to Rivalin’s throne?

What follows is an argument concerning the (dis)honorable circumstances surrounding Tristan’s birth; the kingship of Parmenie hinges upon the outcome of this legal debate. Tristan begins the verbal skirmish with a description of his own provenance: native of Parmenie, son of Rivalin, heir to the throne (5382-5384). In a rhetorically masterful maneuver, Morgan indicts only the final assertion, attacking the central legal tenet of Tristan’s inheritance, namely, that his parents were legally married at the time of his birth. If out of wedlock, Tristan would not only lose his fiefdom but also his feudal tenure rights (“my fief and my claim”)¹⁵⁴. The duke introduces hearsay evidence (“the

153. “»hërre, saget mir, / von wannen oder wer sît ir?«“ 5379-80

154. “mîn lêhen und mîn lêhenrechte” 5411

country is full of the tale”)¹⁵⁵ in order to establish an alternative fact pattern concerning his conception. Morgan retells the “*maere*” for their mutual audience: Blanscheflur and Rivalin maintained an affair outside of the territory, which caused her name to fall into poor repute, and called into question the legality of their marriage, which the duke downgrades to a “love-affair”¹⁵⁶. Tristan, clearly enraged, claims that the remark defames his parents (“you speak slanderously”)¹⁵⁷. To add weight to this claim, the young knight implies that his opponent has increased his suffering through this secondary act.

ich wânde doch, ez waere
gevellec unde gebaere,
swer dem man leide taete,
daz er mit rede doch haete
sin unde vuoge wider in. (5415-19)

[I thought that when one man wronged another it was seemly and proper for him to observe sense and decency towards him, at least in his choice of language.]

The lack of an evidence response to the indictment of his birthright would be a glaring failure in Tristan’s legal defense, were he not so adamant about prosecuting Morgan for a series of new and old offenses.

At this point in the confrontation with Morgan, Tristan launches a third line of argumentation: Morgan unjustly slew his father. Tristan introduces this claim during his protest over the use of hearsay evidence for defaming his character. He exploits the

155. “die lant sint dirre maere vol” 5398

156. “vriuntschaft” 5402

157. “ir redet übel” 5414

opportunity to launch his own invectives against Morgan, though his accusations appear similarly unfounded.

haetet ir nu vuoge unde sin,
 sô leide als ir mir habet getân,
 ir möhtet mich doch rede erlân,
 die niuwe swaere wecket
 und alte schulde recket.
 ir sluoget mir den vater doch. (5420-25)

[Had you any sense or decency, in view of the wrong that you have done me, you would have spared me your remarks, which rouse fresh grief and resurrect old scores. After all, you killed my father!]

From this the audience gathers that Morgan's slander has increased his suffering and thereby only expanded the scope of the duke's guilt. Tristan accuses his opponent of assassinating his father Rivalin. The latter claim ought to be categorized as slander, because it provided is without warrant.¹⁵⁸ Several scholars have elaborated on the fact that Rual never reveals Rivalin's murderer (4198).¹⁵⁹ Only then, after shifting the focus away from himself to establish the necessary motive for the legal paradigm of revenge, does Tristan respond to the slanderous commentary that his mother was unchaste.

The higher level argumentation at play here reveals that Tristan may have met his intellectual match in Morgan. In response to the duke's aspersions regarding the honor of his birth, Tristan presents circumstantial evidence. He launches a logically-flawed

158. For a discussion of the legal aspects of accusation in the High Middle Ages, see Planck, *Das deutsche Gerichtsverfahren im Mittelalter*, 1:359-60.

159. See Ruth Goldschmidt Kunzer, *The »Tristan« of Gottfried von Strassburg—An Ironic Perspective*, (Berkeley: University of California Press, 1973), 53; Hugo Bekker, *Gottfried von Strassburg's »Tristan«: Journey through the realm of Eros* (Columbia, SC: Camden House, 1987), 98.

argument, claiming that any defect in his honor would have been detected by the men who hand-swore oaths of fealty to him. Still, this counterargument fails to directly contradict Morgan's statement about his mother. Nevertheless, Tristan uses the honor of his father's vassals to lend himself honor *post hoc*. Owing to the fact that this statement lacks compelling internal logic, Tristan rebuffs Morgan with the sort of riposte that any audience would have expected as the primary defense. Finally, the knight alleges to possess irrefutable evidence regarding the validity of his parent's marriage! Oddly, Tristan will only reveal said proof should he need to corroborate his claim ("If I must prove and attest this on your person, I swear I shall attest it to the full!")¹⁶⁰. Even now, after his reputation swings in the balance, Tristan expects his opponents to trust his integrity and take him at his word. When Morgan penetrates Tristan's circular rhetoric and demands proof ("What good is your attestation?")¹⁶¹, the young knight is forced to end the argument, lest his reputation become irreparably tarnished. Tristan immediately slays his opponent, slashing vertically through his skull, quelling dissent by ending Morgan's life. Such a reaction suggests that Tristan did not in fact possess compelling evidence to demonstrate that Rivalin managed to secretly marry Blanscheflur on her deathbed.

Her death is essential to understanding Tristan's exigent circumstances. Had his mother not died soon after giving birth to Tristan, the legal stakes of the situation would

160. "ist daz ich daz ûf iuwern lîp / bewaren unde bereden sol, entriuwn daz berede ich wol." 5442-4

161. "iuwer bereden waz sol daz" 5446

have been much lower. Schnell points out that Rivalin and Blanscheflur could have subsequently legitimized the childbirth. Canonical law afforded Christian couples at the turn of the twelfth century the opportunity to marry afterwards in order to guarantee the child's right to receive an inheritance.¹⁶² That is to say, Tristan's birthright could have been guaranteed even if his birth preceded his parent's marriage. Since no proof is presented, and Blanscheflur dies after childbirth, it is plausible that Tristan could be an illegitimate heir to Rivalin's throne.

On the other hand, Tristan's attack could very well be the inevitable conclusion of another, less likely but more widely accepted, fact pattern. For the moment let us assume, as most critics do, that Tristan is the rightful heir and legitimate son to married, noble parents. If this is the case, then his return to his homeland for the retrieval of the throne and concomitant fiefdom is good fortune. Morgan, an insubordinate the deposed leader, may have attempted to resist new leadership and undermine Tristan's grip on the territory by presenting invalid evidence that contradicted Tristan's position. But if this account is true, then several other questions arise. Why are most but not all vassals familiar with Tristan's heritage? Why did Morgan not destroy Rivalin's bloodline by murdering all known heirs, either then or in the moment of reencounter? Why would Morgan invite Tristan and his soldiers with so much hospitality? Why does Tristan resort to rhetorical tricks and circular logic instead of directly presenting the key evidence that corroborates is legitimacy? Finally and most importantly, why would Rual, confidante to Rivalin, loyal

162. Rüdiger Schnell, "Gottfrieds Tristan und die Institution der Ehe." *Zeitschrift für deutsche Philologie* 101 (1982): 340-44.

mentor to Tristan, and masterful knight, decide not to accompany Tristan on this quest to confront Morgan? As a potential eyewitness to the marriage of Tristan's parents, Rivalin's murder, or at least Tristan's courtly behavior, his testimony would have been the most compelling evidence available. Unfortunately, these necessary questions beget more questions, and in no other portion of the poem does Rual provide testimony that Gottfried's audience can use in hindsight to answer them. Thus, in my view, the only plausible conclusion is that Tristan's birth occurred under questionable circumstances, and that Tristan's desire to avenge his father's death derives from his own assumption that Morgan murdered Rivalin, nothing else.

As Tristan himself must have realized, the Morgan episode represents a defamation dilemma; a continuation of slander against his name will mitigate all improvements he makes to his reputation through courteous activity. The young knight cannot persuade Morgan's knights of the duke himself that he is the legitimate heir, nor can he prove that Morgan is responsible for his father's assassination. Fortunately for Tristan, he can respond effectively to a single retort, namely, that his sword has not been tested in battle, an insult to his reputation. In a stroke of genius, Tristan utilizes the attempt to secure an oath of fealty as an opportunity to slay the only significant dissenting party to his new court. Yet such a murder plot would hardly receive endorsement from Mark or Rual. In fact, both warn Tristan that he ought to behave himself according to the highest knightly custom in order to improve his reputation. Cleverly, Tristan is never explicit about his desire to exact revenge on Morgan, and the legal category of revenge

disputes is completely unregulated compared to the paradigm of the duel. Furthermore, the assault on Morgan, whether provoked or not, is itself a manifestation of Tristan's need to demonstrate his yet unproven battle readiness.

But for Tristan's gambit in the Morgan episode to succeed, he must guarantee himself a military triumph in a legally justifiable, fairly fought battle. To accomplish this, Tristan premeditates his attack and pretends to concern himself with the outcome of the above petty argumentation. The young knight has no desire to convince Morgan or present compelling evidence for the knights in his retinue, or else he would have already laid plans for a surprise attack under the guise of revenge murder (*Blutrache*).¹⁶³ Gottfried's critics, however, have yet to reach agreement about the intentionality of Tristan's actions at this point in the poem. Hollandt and Haug attest to the fact that the practice of dressing cloth over armor reveals vengeful intentions and premeditation.¹⁶⁴ Yet Martin Jones argues that the confrontation with Morgan may have been spontaneous, suggesting that the original plan involved hunting in the woods of Bretagne, hence the

163. The sort of clandestine attack visible in this episode is not without precedent in the Arthurian tradition. Hartmann describes the same sort of surprise assault by means of disguised armor in Erec (3050-77). In an Anglo-Saxon context, David Wilton argues that the Old English word *fæhð* in Anglo-Saxon poetry provides greater definition to the Anglo-Saxon legal concepts of feud and jural retaliation, which are closely related to the concept of *Blutrache*. David Wilton, "Fæhð, Homicide, and Jural Retaliation in Anglo-Saxon Law and Poetry" (Paper presentation, Annual Meeting of the Modern Language Association, Boston, MA, January 3, 2013).

164. Gisela Hollandt, *Die Hauptgestalten in Gottfrieds Tristan. Wesenszüge—Handlungsfunktion—Motiv der List* (Berlin: Erich Schmidt Verlag 1966), 89; Haug, "Aventiure," 108.

discharge of superfluous knights.¹⁶⁵ Whether calculated or not, Tristan ultimately announces and enacts his revenge. This distinction is important, because of an exception in dueling standards for cases of revenge. Owing to this, Tristan is able to structure a war with the commander in Bretagne where the chances of victory are heavily skewed in his favor. Were it a duel, both parties would have agreed to implicit terms that would have guaranteed a fair fight.

The attack is a surprise for everyone except its instigator. First, Morgan is unaware of the impending battle. Second, Tristan's single lethal blow represents an unannounced attack, and despite advance preparation, Tristan leaves Rual uninformed of his future plans in Bretagne. Tristan hides his intentions from Rual by avoiding explicit contradiction with Rual's advice and he dispatches two-thirds of his army of knights (5555-9). Gottfried implies that these knights are also unaware of the impending strike. Third, Mark is not anticipating the begin of war with the Bretons; in fact, he counsels Tristan to behave courteously and chivalrously on the continent while resolving the dispute over territory and feudal tenure rights (5146-50). And war is an accurate term for the event, because the assault on Morgan equates to a formal declaration of war.¹⁶⁶ With minimal military support, Tristan is largely unprepared for the battle, though he demonstrates his hallmark opportunism in the battle. Morgan is even less ready for battle

165. Martin H. Jones, "The Depiction of Military Conflict in Gottfrieds »Tristan«,” in *Gottfried von Strassburg and the Medieval Tristan Legend*, Adrian Stevens and Roy Wisbey, eds. (Cambridge: Boydell and Brewer, 1990), 54.

166. Combridge, *Das Recht im Tristan*, 27.

than he is. Later, Tristan deploys a similar strategy in launching a strike against an underprepared Morold.

The Morgan episode also clarifies legal ambiguities for Tristan. Morgan's slander inadvertently benefits Tristan, because the gossip by its very nature concedes Tristan's parentage. In other words, the duke makes the concession that Blanscheflur and Rivalin were Tristan's mother and father in order to argue that they were unmarried at the time of his birth. One could easily imagine Tristan losing the argument with Morgan if his paternity was in question, too. Finally, avenging Rivalin's death serves yet another purpose for Tristan's esteem; it reconciles the suffering he endures through gossip with a firm assignment of guilt for his father's murder. Notably, this guilty verdict is the first but not the last one in the poem to be rendered without corroborating evidence. The revenge murder requires Tristan to satisfy a need for revenge above and beyond defeating his opponent. This must be the justification for the brutalization of Morgan's corpse. Why else would Tristan perform a gruesome and dishonorable killing (5455) by stabbing Morgan in the heart after already cutting through his skull, brain, and face (5420-37). The idiom for guilt which Gottfried supplies after the murder is all-the-more barbaric. The poet explains that Morgan's (unproven) guilt may rest with his corpse but never decompose (5458). The Morgan example is above all instructive for Tristan's real-world contemporaries: violence begets violence whilst injustice nurtures a desire for justice.

In conclusion, Tristan's advancement from knight to king is contingent upon three enterprises. Notably, each mission corresponds to a legal right. Tristan leverages political

influence in order to exercise his rights as a lord. Next, he asserts the legitimacy of his parent's marriage to undergird his right to inheritance. Finally, the courtier-knight launches a surprise attack in order to execute rightful revenge. Fealty, inheritance, and revenge are three prerequisites for the accumulation of power and wealth, which permit Tristan to enhance and maintain his reputation. In sum, the reputation-building dynamic of Tristan's return to Parmentie is predicated upon numerous contractual obligations. This sense of the Morgan episode never makes itself more felt than in the confrontation in Bretagne, wherein Tristan, convinced he has encountered his father's assassin, meekly introduces himself as the new leader and begins his speech with an introduction to his role in a new contractual configuration for fealty oaths in the region.

Lastly, there is the persistent matter of Gottfried's notion of a person-property duality. This passage in the poem demonstrates that the improvement of one's reputation often occurs through stutter steps. Tristan must suffer damage to his reputation in the confrontation with Morgan in order to secure long term improvement in that regard. Similarly, the courtier-knight must weigh the impact of breaking the chivalric oaths he had sworn hand-in-hand¹⁶⁷ with Mark and Rual to uphold his duties and the responsibilities he has taken on. Fortunately for Mark's court, Tristan decides to figuratively split himself (after literally splitting Morgan), because he is confident that a homecoming in Cornwall will further develop his status via Mark's offer. This offer is a

167. For a discussion of the symbolism and legalism intrinsic to the hand-swearing gesture, see Karl von Amira, *Die Handgebärden in den Bilderhandschriften des Sachsenspiegels* (München: Franz, 1905), 242-4.

third embodiment of the egg metaphor,¹⁶⁸ because it too involves a perfect division, namely, the equitable sharing of Mark's kingdom among two rulers. It is also auspicious for the members of Mark's court that Tristan returns to Cornwall with haste, for a new set of legal quandaries looms.

At this point, we shift our attention away from Tristan's meeting with Morgan toward his encounter with Morold, the collector of the Irish tribute and chief adversary to Mark's court. Gottfried presents his audience with a confrontation that eclipses the above episode in both its emphasis upon justice and the gamut of its legalistic argumentation. The poet presides over the event like a court clerk, assigning roles to each party. He assures the audience that he will present the most accurate account of the circumstances. Gottfried provides source attribution when he transmits from historical texts (5880), but he admits when he deviates from primary sources to practice poetic license, as during his firsthand account of the duel itself, which was only visible to spectators from a distance (6870-3). Additionally, the author declares that his retelling is not only truthful but also legally accurate ("I will tell you truly and precisely").¹⁶⁹ The implication here is that the poet invites the audience to judge Tristan's case against Morold and to deliver a verdict based upon empirical and theoretical arguments.

The episode divides easily into three sections. The first set of passages present a genealogy of the Irish right of tribute collection (*Zinsrecht*), after which Tristan delivers a

168. For a discussion of Gottfried's egg as a metaphor of the consolidated individual, see Chapter 2.

169. "des bescheide ich iuch reht und vür wâr" 5945

persuasive soliloquy to the landed nobility, and this call to arms is the impetus for a duel against Morold. The discourse of contention couples with legal vocabulary through the episode. The poet uses this opportunity to call into question the legal integrity of two paradigms: the tribute and the duel. The chief effect of these discussions is the promotion of a third judicial notion: responsibility. This umbrella term encompasses ideas like guilt and representation. This line of argument seeks to demonstrate how Tristan's agency derives not from his skills as a knight or artist, but from his penchant for legalism. The poet sets the stage for the debate over tribute rights by furnishing the audience and the protagonist himself with sufficient evidence regarding the history of the tribute as well as its legal premise.

Gottfried begins the chapter with a biographical account of Gurmun, the clever king whose conquests bring him from Africa to Ireland. Gottfried categorizes him as the power-hungry son, but not heir, to an unnamed African king (5888-90). Like Tristan, Gurmun's quest for autonomy and power begins with the denial of property inheritance normally guaranteed to noble sons at birth. Denied the same birthright as his brother and father, Gurmun assembles his own military and sets out for conquest.

Gurmun begins his ascent to power with a contractual agreement. The Roman Senate permits and him to overthrow kingdoms on the condition that he cede legal jurisdiction ("reht") to Rome and pay tributes ("êre") on his plundered lands (5905-11). The agreement qualifies Gurmun's sphere of influence as limited to those regions he

overthrows by force (“all he could subdue”)¹⁷⁰, an important legal precedent for the acquisition of human capital and fixed assets by means other than inheritance.

Furthermore, as the guarantor of Gurmun’s conquests, Rome bears responsibility for the legality of Gurmun’s activity. The Roman Senate sanctions the tribute-collection for which Morold later perishes. This contract facilitates a string of military overthrows which conclude in Ireland, where Gurmun becomes king. His sphere of influence extends loosely over Cornwall and England, where King Mark is too young to defend himself from Irish domination (5927-9).¹⁷¹ For this reason, scholars like Thomas Kerth have argued that Mark cannot be blamed for Gurmun’s rise.

Gurmun couples his military domination of Ireland, Cornwall and England with political and economic subjugation. Kerth proposes that Gurmun’s character deserves reevaluation as an extremely effective military leader with high political savvy.¹⁷² The manner in which the African tyrant harnesses duke Morold’s political capital sufficiently corroborates this claim. First, Gurmun married Morold’s sister Isolde as a means of establishing his power and honor over the local populace (5932). Recognizing his own thirst for power in his brother-in-law’s personality, Gurmun empowers Morold as his

170. “swaz er betwüinge mit craft” 5908

171. Mark’s inability to secure his own kingdom opens the leader to several criticisms. According to Okken, Mark was not yet of age and was not yet a knight. It is surprising that Mark was so helpless, without a marshal, as Rivalin had with Rual li Foitenant. Arthur’s absence during Mark’s childhood. Lambertus Okken, *Kommentar zum Tristan-Roman Gottfrieds von Strassburg*, 2nd ed., Amsterdamer Publikationen zur Sprache und Literature 57-58 (Amsterdam: Rodopi, 1996), 1:322.

172. Kerth, “Kingship,” 446-7.

military lieutenant and tribute collector. These appointments efficiently divorce Morold from his resources in Ireland and put the formidable fighter's talents to work in the task of intimidation and debt collection. With Morold's help, Gurmun extracts tributes from Cornwall and England without deposing Mark, binding him financially instead (“[Mark] became tributary to Gurmun”).¹⁷³ At this point, textual evidence suggests that King Mark is indefinitely indebted to Gurmun, who in turn must pay his debts to Rome to maintain his own kingdom.

Ever-increasing tribute demands severely weaken the economy and deprecate the military readiness of Mark's kingdom. The tribute demands are both symbolic and practical. In the first year, Gurmun demands 300 *marc* of brass, followed by the same quantity of silver and gold in the second and third years, respectively.¹⁷⁴ The escalation of the precious metal values suggests that Gurmun's dependency upon Rome was very high. The fixed quantities of increasingly valuable resources suggest that Rome sought a minimum level of productivity from Gurmun's conquests. The poem, however, explains tributes as both *zins* (tribute) and *êre* (honor). While the monetary instruments satisfy the former definition, only transfers of honor will fulfill the latter sense of the term.

The stakes are raised in the fourth year when Gurmun sends Morold to Cornwall to demand 30 young men for servitude in Rome (5963-4). Of all the demands, this tribute

173. “wart Gurmûne zinshaft” 5930

174. According to Okken, this amounts to approximately 70.14 kilograms per metal, based upon the Kölnische Mark which would have been the unit of measure in the 12th century. Okken, *Kommentar zum Tristan-Roman*, 1:323.

is the most heinous. Every five years, Rome deprives Mark and his peers of the wealth of their future generations of boys who would otherwise serve as knights and extend the noble line of their family heritage. The absence of women from this request is intentional, since land was not commonly transmitted matrilineally.¹⁷⁵ Besides undercutting the kingdom's morale, this tribute deprives Mark and his fellow lords ("barons and their peers")¹⁷⁶ of the means for maintaining their noble lineage, thus sabotaging their honor and wealth. This obligation imperils Tristan especially, for he is both of age and the only child in Mark's custody. Worse yet, the king has been unable to resist Morold and Gurmun's threats in the past.

It is notable that *Tristrams Saga ok Ísondar* (1226) describes the Morold ordeal and tribute cycle differently from Gottfried's *Tristan*. The prose *Tristrams saga* concurs with Gottfried on the design of tribute payments for the first three years, but it differs from Gottfried's *Tristan* in years four and five in several important ways.¹⁷⁷ Bédier suggests that this difference results from a transmission problem between Thomas's

175. *Historisches Erbrecht*, 1.1

176. "barûne und ir genôze" 5955

177. All verse line documentation refers to Kölbing's edition in the format of page numbers followed by line numbers. *Tristrams Saga ok Ísondar: Die nordische und die englische Version der Tristan Sage*, ed. Eugen Kölbing, vol 1 (Heilbronn: Henninger, 1978), 30. English translations of the Saga Tristan are Schach's. *The Saga of Tristram and Ísönd*, trans. Paul Schach (Lincoln: University of Nebraska Press, 1973). Schach notes that the discrepancy between the accounts of Brother Robert and Gottfried reflect "hopeless confusion," *Ibid.*, 37n2.

Tristan and its Norse successor,¹⁷⁸ but this claim is unfalsifiable. Stevens notes that it is equally probable that missing fragments from Thomas's *Tristan* could have shared the timeline of *Tristrams saga*, which establishes England and Cornwall as "client kingdoms of Ireland, subject to Irish, not Roman law."¹⁷⁹

En á hinum fjórða vetri skyldi Englands konungr ok hofðingjar safnast saman á Írlandi, at heyra lög ok svara réttindum ok halda uppi allra manna refsingum. En á hinum fimta vetri skyldi skattrinn vera LX fríðustu sveinbörn, er finnast mætti, ok þá fram greiðast, er Írlands konungr krefði sér til þjónustusveina. (30.11-15)

[“But in the fourth year the king and nobles of England were to assemble in Ireland to hear the laws, to dispense justice, and to fulfill the punishments of all men. But in the fifth year the tribute should consist of sixty of the most handsome boys who could be found and delivered up, whom the king of Ireland desire as his male servants.”]

In contrast to *Tristrams saga*, Gottfried's so-called *Kinderjahr* occurs in the fourth year and involves thirty young men instead of sixty. According to Gottfried, Rome, not Ireland, receives legal emissaries in the fifth and final year of the tribute cycle.

The most likely account of the Gottfried timeline places Tristan's arrival during the winter of the first year of the current tribute cycle, at the age of fourteen (2131).

Although the month he arrives is unknown, Gottfried's narrator explains that the Norwegian pirates landed in Cornwall after eight days of stormy weather (2437), which suggest a wintry setting. Gottfried declares that tributes were collected at the solstice but

178. Adrian Stevens, "Gottfried, Thomas, and the Matter of Britain," in *A Companion to Gottfried Von Strassburg's "Tristan,"* ed. Will Hasty (Rochester, NY: Camden House, 2003), 242-43.

179. *Ibid.*, 243.

he does not specify the season.¹⁸⁰ Gottfried probably meant the summer solstice, based upon a careful analysis of events. First, Rual arrived after three and a half years of searching (4122),¹⁸¹ placing his arrival in early summer, if we grant a winter kidnapping based upon the timing of the winter maelstrom. Second, the revelation of Tristan's noble birth forces the courtier and his father to rush preparations for the investiture ceremony, which involves assembling equipment for a retinue of thirty knights. The courtier must prepare himself within thirty days, lest the crucial period for the knighthood ceremony pass. It is safe to infer from the corpus of Arthurian romance that this month is May.¹⁸² Mark wished to bestow knighthood upon Tristan before June, the month when the king anticipated another tribute collection.

Unsurprisingly, Mark took the opportunity of Tristan's knighthood ceremony to rush the kingdom's most precious resources out of the country, in a failed attempt to mitigate the financial impact of Morold's visit. King Mark subsidizes Tristan's voyage to reclaim his homeland of Parmenie with gold and silver (5133) and thirty knights (5334). Tristan, long aware of the tribute cycle, returns to Cornwall to defend it against Morold's

180. "sunnenwende" 5983

181. This unit of time also occurs in Hartmann's *Erec*. Three and a half years of work were required to craft Enite's elaborate saddle, in contrast to the seven years in Chrétien's telling. Hartmann, *Erec*, 7467-75. A careful analysis of the excursus on Enite's horse and saddle can be found in Susanne Bürkle, "'Kunst'-Reflexion aus dem Geiste der descriptio. Enites Pferd und der Diskurs artistischer Meisterschaft," in *Das Fremde Schöne. Dimensionen des Ästhetischen in der Literatur des Mittelalters*, Manuel Braun and Christopher Young, eds. (Berlin and New York: Walter de Gruyter, 2007), 159.

182. For more analysis regarding the "Merry Men of May" see McDonald, "Tristan and the Arthurian Tradition," 149, 175.

demand of thirty young men. This may be the same cohort of thirty knights who supported Tristan in his homeland. If so, it certainly informs Tristan's motivation to fight Morold, because the satisfaction of the tribute would send away the very class of peers upon whom he depended for the restoration of his own birthright. Gottfried's chronology compels Tristan to revolt against Morold. Tristan defends both his own interests and those of the defenseless boys in question; the young knight is appalled by the notion that noble children would be demoted from noble ranks into a life of servitude.

For Gottfried, the fifth year entails submission to Rome's legal dominance, which the Senate achieved by means of legal development in its far-flung territories on a quinquennial basis. In the first four years Rome reinforced her hegemony by attrition, but in the fifth she deploys the coercive force of law. During the so-called Year of Emissaries (known as the *Gesandtschaftsjahr*), King Mark sent emissaries to Rome to receive legal instruction from the Senate. Gottfried explains that the ambassadors received an education in "the laws and statutes"¹⁸³ set forth by the Roman Senate. Here it becomes clear for the first time that the scrimmage between Morold and Mark has grander geopolitical implications, for Mark's subjects are themselves under Rome's purview (5990-1). This reality informs Rome's request for servants, and explains why Rome is described with the honorific "their noble mistress."¹⁸⁴

183. "welch gebot und welhen rât" 5987

184. "ir vrouwen" 6002. In the Arthurian tradition, women observe knightly activity, and their affection and esteem is the prize for contests, thereby constructing their honor. See Laufenberg, *Women and Gender*, 375; Geoffrey of Monmouth, *History of the Ancient Britons*, 9.13.

Essentially, the Roman Senate uses the fifth tribute year to ensure that Roman law is exercised in all realms. But the enforcement of Roman law begins with an understanding of the legal system, hence the need for legal messengers and envoys. Senators read laws aloud,¹⁸⁵ instructed Mark's emissaries how to practice the "laws and statutes of the land,"¹⁸⁶ and explained how courts of law could be institutionalized in their home kingdoms ("how to conduct their courts of justice").¹⁸⁷ Moreover, the senators demanded exactitude from their legal representatives (5998). Whereas human resources and physical wealth exported goodwill to Rome, this tribute was an effort to inculcate Roman institutions and mindsets locally.

Assuming that Mark has already sent emissaries to Rome twice before, it must be concluded that Cornwall, England and Ireland all operated under Roman law. Furthermore, it may be deduced that the right of tribute collection is both a legally valid concept and legitimately implemented by Morold. For these reasons, it is peculiar that Gottfried would attribute Mark's commitment to Rome as the effect of Gurmun's influence, as opposed to Roman law or even God's law.

185. This data corresponds to the function of the *Alte Schrae* (1367), a Latin book of statutes that was declaimed by a municipal clerk annually. In 1531, Stadtsekretär Jasper van der Borch was forced to flee Soest, because he was unable to read the Latin text. This empirical account suggests that Germanic customary laws attained much of their power from the regularity with which they were read aloud to large groups. Stephan Dusil, *Die Soester Stadtrechtsfamilie: mittelalterliche Quellen und neuzeitliche Historiographie*, *Forschungen zur Deutschen Rechtsgeschichte* 24 (Köln: Böhlau, 2007) 127.

186. "loys unde lantreht" 5995

187. "wie s'ir gerihtes solten pflegen" 5996

doch buten s'ir dise êre
 niht ellîche alsô sêre
 weder durch reht noch durch got
 sô durch Gurmûnes gebot. (6003-6)

[Yet they did her this honor less as a due, either in law or religion, than by
 command of Gurmun.]

With this passage, Gottfried puts the legality of the tribute rights into question. Moreover, it undercuts the perception that individuals adhere to laws because they are legitimate or in effect. In stark contrast to the guidelines of the Roman Senate, the poet presents alternative avenues of justice. According to the narrator, God is a parallel source of law. In this same vein, Gottfried implies that King Gurmun's orders hold the same power as Roman law. These lines suggest that Gurmun's hegemony exceeds that of Rome. This subtle distinction is important, because it significantly lowers the hurdle that Tristan must overcome in order to free Mark's kingdom. In other words, Tristan only needs to overcome his master, not the master of his master. If Tristan can resist Gurmun's demands, then the Roman burden will also be lifted. Curiously, this passage also brings God into the power struggle, suggesting that God disapproves of the subjugation. Alas, the poet provides no details of God's laws, so the comparison of holy and secular law must begin elsewhere in the text. In sum, the presence of multiple powerful agents limit the degree to which the *zins* can be regarded as valid Germanic customary law.

In other ways, the complexity with which Rome exercises its rights to collect tribute is only compounded by the presence of what I will refer to as the self-defense

clause.¹⁸⁸ According to Gottfried, the kingdom had at its disposal two means of defending itself against the tribute: duels (“einwîge”) or war (“lantvehte”). The poet highlights the mutual exclusivity of these two propositions by means of enjambement. As it stands, the self-defense clause puts forth an either-or scenario. Unfortunately, this distinction has suffered oversight in the Tristan scholarship. Both Kerth and Combridge treat the two aspects of the self-defense clause uniformly, explaining the clause as a necessary fulfillment of the right to resist (*Widerstandsrecht*) at the turn of the 13th century. Although this argument has merit, it overlooks the degrees of magnitude which separate a duel and full scale war. For the sake of argument, I shall briefly adopt the conventional wisdom on this matter with the hope that when I return to the self-defense clause, the importance of its duality will be all the more salient.

For now, it should suffice to say that the tribute contract affords Mark’s subjects the right to defend their children by military means. As Gottfried and his predecessors tell it, Cornwall and England possess the legal right to self-defense, and they may exercise it in the form of a duel, whose outcome shall determine their sons’ freedom (5970). If a father does not elect to duel Morold, then they concede Rome’s right to indenture their children’s labor. Unfortunately, Mark and his nobility have been remiss to act on this

188. My terminology differs from the current scholarly discourse. Kerth regards the exception in the tribute system as an “escape clause,” a term I reserve for another legal consideration (e.g. the premature end to a duel so that the vanquished party may escape death but not dishonor). I prefer the term “self-defense clause,” because it more aptly describes the legal mechanism at work. Also, the narrator, not Morold, explains the nature of the tribute system and its exceptions (5941-6006). Kerth, “Kingship,” 449.

right, and the exportation of young knights into Roman slavery has significantly weakened the morale of the realm, not to mention its military readiness.

Gottfried underscores the crisis at Mark's court with an allusion to Hartmann's Erec. The poet aligns Tristan with Enite, who felt compelled to alert her husband Erec to defamatory gossip about his neglectful attitude. Similarly, Tristan hears complaints regarding the tribute policy's negative impact upon the kingdom (6013-7). Barons complain about the plight of their children, who are removed from a life of nobility and forced into servitude (6035-7). They adopt postures of kneeling and praying, symbolic of their hope to receive assistance from their king or from God (6039). The bad news affects Tristan so deeply that he is forced to act upon it (6021-2). The parallel narrative then diverges, as Tristan confronts all of the nobles as a group, addressing Mark and his subjects collectively as "you lords."¹⁸⁹ Because the group consists of the king and his vassals, this honorific is derogatory to Mark and complimentary to his subjects.¹⁹⁰

Whereas Gottfried had moments before shifted blame for the Year of Emissaries from Rome to Gurmun, Tristan's speech assigns guilt squarely to King Mark and his barons. He addresses the elites under the same title (6064) and uses a rhetorical question to shame the nobility for the damage they have done to the kingdom (6067-8). One hundred lines after the narrator presented the self-defense clause, Tristan reiterates it, demanding that the nobles exercise their legal right to protect their lineage and honor

189. "ir hêrren" 6063-4

190. For more information on this point, please refer to the discussion of *Heerschildordnung* in Chapter 1.

(6071). Further, Tristan accuses them of submitting to the enslavement of noble children, an act which diminishes their own honor as fathers (“your birth and good names!”).¹⁹¹

The tribute poses a threat to both noble fathers and sons. For this reason, noble fathers should protect their sons with their own lives, because each father’s survival is inextricably linked to their son’s welfare (“their lives are one and indivisible”).¹⁹² The loss of future generations endangers the fragile patrilineal thread which binds them (6140-6).¹⁹³ Tristan considers the corruption of noble lineage to pose an immanent danger, inspiring him to wager his life in the defense of the kingdom’s interest (6092). The young knight believes that the duel will determine whether or not the Cornish and English sons will maintain their noble status.

Once subjugated, the sons enter into “serfdom and bondage.”¹⁹⁴ The poet describes their plight with offensive imagery, imagining the noble children on their hands and feet, posed like domesticated animals (6075-9). Finally, the young advocate

191. “iur geburt und iuwer êre!” 6134

192. “wan sî mit ein leben sint” 6103-5

193. Ranke applies the terms “ebenbürtig,” and “gleichgestellt” to describe kings, their noble subjects, and the noble subjects of their noble subjects as equivalent in nobility. Gottfried is more precise in his description: nû sît ir an gebürte doch / allen künegen ebengrôz / und aller keisere genôz, / und wellet iuwer edelen kint, / diu iu gelîche edele sint / versellen und versachen [By birth you are peers of all kings, and equals of all emperors, and you mean to barter away your noble sons, who are just as noble as you...?] (6140-46). Kings, their noble subjects, and their noble vassals were, historically speaking, only equivalent to the degree that they all were *lehnsfähig*, or capable of leasing property to others, a key distinction from serfs and knights without the ability to indenture others to their land holdings. Droege, *Landrecht und Lehnrecht*, 176.

194. “schalken unde z’ eigen” 6083

proclaims that the nobles, including the king (!), are guilty for the sacrifice of their children because they cannot prove that they were forced to do so.¹⁹⁵ According to Tristan, each noble is guilty because they failed to exercise their right to self-defense, and he excludes any other potentially mitigating factors from this assertion (6088). Later, Tristan will remind the assembly of nobles that they may only remedy this offense by wagering their lives for those of their sons in a duel (6205-13). According to Tristan's legal paradigm, one is guilty if one has failed to behave rightfully, whether it mean breaking the law or upholding it. This position has far-reaching ethical implications; it creates a moral imperative to act rightfully, compelling a judicial duel.

Tristan's violent struggle with Morold is noteworthy for the manner in which Gottfried portrays physical violence alongside a debate on the legality of the duel itself. Unlike other instances of judicial duels in Arthurian romance, which appear to simply heighten the honor and enhance the skill of the victor, the duel with Morold is interwoven with rhetorical flourishes that are legally substantive. This section identifies the uncertainties associated with the duel: location, fairness, finality, and symbolism.

As legal arguments percolate to the surface of the poem, it becomes apparent that the only common ground between Tristan and his opponents is a literal one. Gottfried uses the middle voice to indicate two indisputable aspects of the duel; the fighters were directed to fight on a near-coastal and easily observable island, to which nobody else could sail until the battle had concluded ("none should set foot on it till the battle was

195. "und *enkunnet* niht gezeigen, / wer iuch *betwinge* dar zuo / oder welher hande nôt ez tuo" 6084-6; italics added.

over”).¹⁹⁶ Scholars propose that such islands directly off of the coast were ideal and frequently chosen as battlegrounds because they permitted safe spectatorship at a distance as well as the assurance of isolation.¹⁹⁷ Even when Arthurian poets have depicted duels situated elsewhere, there is never an instance of interruption by a third party on the area (Kampfbahn) before the end of battle, as is the case in Tristan’s fights with Morgan and the Seneschal. The fact that these battles escape all intervention gives the impression that the legal certainty of a duel’s outcome derives in large part from the uninterrupted and transparent nature of the contest itself. That is to say that the duel is a means of legal reconciliation that excludes mediation and qualification in favor of absolute verdicts. The isolation and location of the duel preserve the chivalric maxim of fairness.

Unfortunately for Mark and his followers, the laws concerning duels disregard the imbalance between opponents. Mark’s noblemen justify their inaction by claiming that Morold is too physically dominant (“none can face him and live!”).¹⁹⁸ The poet also attests to Morold’s strength by noting that the duke had been frequently tested (“the

196. “nieman dar in kaeme, / biz der kampf ende naeme” 6729-30

197. Loomis notes that, “The advantages of an island or a boat in the middle of a stream as a meeting place for rival powers seem to have been appreciated throughout the Middle Ages...Magna Carta [was] signed on an island at Runnymede...For the judicial combat the island position would be especially favorable. Disturbances from the crowd or interference from friends of one or the other of the combatants would be effectually prevented. On the other hand, the spectators would be afforded a favorable position to watch the combat from the opposite shores or from boats along the stream. Fair play on the part of the champions would be further assured by the fact that the island offered a natural boundary beyond which neither could withdraw.” Gertrude Schoepperle Loomis, *Tristan and Isolt. A Study of the Sources of the Romance*, 2nd ed (New York: Burt Franklin, 1960), 2:339.

198. “ime kan nieman vor genesen” 6137

seasoned warrior”).¹⁹⁹ Gottfried backs this claim with empirical evidence from outside sources, boasting that Morold was honored for his strength and repeated success in battle (6510-20). The poet speaks highly of Morold, who defeated his opponents in accordance with the chivalric code (“as the knightly code required”).²⁰⁰ Compared to Morold, Tristan is inferior in strength, experience and for the first time, knowledge. In keeping with the theme of fair play, the narrator takes three precautions to equalize the competition.

First, Tristan invokes holy sanction to affirm the righteousness of his cause. In fact, he couches the entire notion of justice in the paradigm of God’s will. The knight is critical of the child sacrifice, which he considers against God’s law (6106-10). He implores the noblemen to fight for justice in the name of God (6151-2). He also urges the group to pray for success in the duel, aligning secular justice and God once more (6126-8). But no knight among the population (*lantgesinde*) is willing to give their life over to destiny (6114-9). For this reason, Tristan proudly announces that he will defend the children of Mark’s kingdom and enlist God as his partner (“leave it to God and to me”).²⁰¹ Gottfried peppers Tristan’s soliloquy with phrases like “in God’s name,” “God grant it,” and “God willed it”²⁰² to reiterate the role that divine intervention will serve in the enforcement of secular institutions like the duel. The logic of contingency that

199. “der wol gestandene man” 6484

200. “nâch ritteres rehte” 6518

201. “an got gelâzen unde an mich” 6155

202. “durch got” 6158; “got lâze” 6160; “gotes gebote” 6171

follows is straightforward; if and only if Tristan acts in accordance with God's will shall justice be delivered to Cornwall and England (6161).

Tristan also presents his audience, Mark's followers, with the line of reasoning with which to interpret his actions, so as to legitimize his actions on a legal and holy basis. The champion is empowered by God, justice, and determination (6184). But for now, let us examine the logic. If Tristan defeats Morold, the kingdom has God's gratitude, implying that the knight and God act in harmony. This condition seems inevitable, because according to Tristan, he can not act without God's help, nor can he succeed without it being to God's credit. This correlates with Tristan's prior claim, that knights who overcome injustice gain esteem (6099-6102).

It is therefore curious that Tristan is willing to take complete credit if he loses. By implication, courage and righteousness are unable to secure a victory without God. The reverse, however, is not true. The hero guards himself against the possibility that he might perish with another conditional statement. Even if he loses against Morold, the loss does not tarnish the legal rights of the group to exercise a duel as per the self-defense clause (6162-4), nor does it worsen (or improve) anyone's lot (6165-9). Although this explanation seems to alleviate apprehensions that would permit Tristan to fight, it presents two distinctly negative outcomes. If Tristan loses, then Mark's dearest servant dies as does any hope that God supports their decision to retaliate. In other words, a defeat means that Mark loses his most capable knight and God's necessary support, rendering a future victory impossible by Tristan's own logic. Having invalidated this

argument of divine support, one must conclude that Tristan's belligerence poses an alarming risk to the kingdom, for Mark's kingdom will surely be at a loss without God's blessing, despite the apparent durability of the legal blessing of the actions.

Second, King Mark indirectly enhances Tristan's honor by becoming subservient to him. Mark adopts a subservient posture to his freshly knighted nephew by lamenting Tristan's decision to duel Morold. The king worries about Tristan's livelihood to an even greater degree than a wife would worry about her husband (6521-5). And the humbled monarch reveals that he would rather continue to suffer, that is to say the king would rather sacrifice resources and dozens of noble children, than to risk Tristan's well-being (6508-10). Gottfried accentuates Mark's pessimism by describing the certainty with which Mark believed Tristan would die in battle (6526-7). In part due to Mark's "spiritual blindness and simple gullibility,"²⁰³ the king fears God and Morold equally, a fact which severely undercuts his ability to maintain justice in his realm. As a result, Tristan appears braver than the group of nobles and even the king, augmenting his worth.

Next, Mark takes on the role of the loyal, yet royal, squire. He supplies and equips Tristan with his armor, literally. However inexperienced, Tristan girds himself with chain mail on his torso and legs. Then the fighter adds an armored breastplate and a set of leg-guards. The extraordinary weight of the equipment makes this feat impressive by itself. Traditionally, Arthurian romantic heroes dressed themselves in such fashion, as in Hartmann's Erec and Wolfram's Parzival, though they often donned a borrowed suit of

203. McDonald, "Tristan and the Arthurian Tradition," 251.

armor. Given this context, it is surprising that Mark joins Tristan to fit the less burdensome pieces of his uniform. Tearfully, the king attaches a set of spurs, fastens the straps for his weapon, clothes him in an adorned tunic (6547-6560). Mark then provides him with a sword, which “proved the very life of him.”²⁰⁴ Both the gift of the sword and the tears he sheds are associated with his heart.²⁰⁵ Herewith Mark transfers the object which is responsible for his survival, and it passes on to Tristan as if it were an unfulfilled Excalibur. The humbled king then offers his nephew an exceptional helm, carved from crystal and adorned with an arrow, whose power infuses the knight with long-lasting love (6594-8). Finally, Mark equips his nephew with an ornate mirror shield decorated with the image of a boar. The animal symbolizes and reflects Tristan, the headstrong courtier-knight who tucks his hair behind his ears in the fashion of the boar’s tufts of fur. The shield completes an artwork which shines forth as a totality.

sô schône, ob sî der werzman
 alle viere alsô haete ûf geleit,
 daz iegelîches schônheit
 dem andern schoene baere
 und sîn geschoenet ware,
 sone kunde ir aller vierer schîn
 ebenliehter niemer sîn. (6628-6634)

[so beautifully that if the armorer had designed all four to enhance each other with their beauty and be beautified in return, their splendor could never have been matched more evenly.]

These discrete pieces of armor combine to enhance the beauty of the whole, shining forth

204. “sîn leben und sîn herze” 6579

205. In the period, tears of suffering were understood to flow from the heart. Thus, this phrasing is not metaphorical. Okken, *Kommentar zum Tristan-Roman*, 1:112.

in what Moses Mendelssohn might label an “all-the-more transfigured light.”²⁰⁶ Gottfried favors composition imagery for scenes of identity formation.²⁰⁷ Certainly, the poet exercised this aesthetic in the systematic field dressing of the deer, which cemented Tristan’s competence as a master hunter. Here the inverse is true, for each article of combat functions to construct Tristan’s identity as an Arthurian knight par excellence. Each component in Tristan’s suit of armor intensifies the degree to which Mark transfers his own prestige to his nephew.

Third, Gottfried presents the duel as a broader battle between two troupes of four as a means of equalizing the contest. The passage in question (6866-6892) serves as the poet’s *obiter dictum*, offering Gottfried’s unverified speculation on the battle at hand. The rich numerical wordplay presents an arithmetic series. The duel begins as one-on-one combat (“*einwîc*”) between only two combatants.²⁰⁸ At least this much of his report is historically founded. Then the narrator drifts from history telling into more explicit storytelling. He does this to explain how Tristan could have overcome Morold, whose victory would be all but certain based upon his superior skill.

206. Moses Mendelssohn, *Philosophical writings*, ed. Daniel O. Dahlstrom, Cambridge Texts in the History of Philosophy (Cambridge and New York: Cambridge University Press, 1997), 172.

207. Gottfried achieves a similar effect in his metaphor of the egg and in the description of five supplies that Tristan and Isolde bring to the *Minnegrotte*: provisions, a harp, a crossbow, a sword, and a horn.

²⁰⁸ “*niuwan zwêne man*” [no more than two] 6870

To this end, Gottfried manipulates an equation to achieve equilibrium in the duel. Gottfried hypothesizes that the battle was fought not between two men, but between two cohorts, though the poet admits to filling in these details himself.

ich prüeve ez aber an dirre zît,
 daz ez ein offener strît
 von zwein ganzen rotten was
 swie ich doch daz nie gelas
 an Tristandes maere,
 ich mache ez doch wârbaere (6871-76)

[But now I shall show that it was a general engagement between the two whole detachments, and though I never read this in the tale of Tristan, I shall nevertheless make it credible.]

Then the narrator transforms Morold and Tristan into fractions of four. Morold becomes a knight with the strength of four men.²⁰⁹ But the poet divides Tristan's army into quarters. Tristan's war party is accompanied by the three forces. The first two, God and Justice, are his guardians. As the third member of the team, Tristan functions as their "vassal."²¹⁰ The fourth addition to Tristan's team takes the form of Determination, which is well-suited to such emergencies ("Firm Resolve, who works wonders in extremities").²¹¹ With these lines Gottfried transforms Tristan's own rhetoric (cf. 6184) into reality. The poet sums up his take on the battle by describing it as four versus four, "otherwise eight men."²¹²

209. "der haete vier manne craft" 6879

210. "gewaerer dienstman" 6885

211. "willeger muot, / der wunder in den noeten tuot" 6887-8

212. "oder ahte man" 6891

It is important, however, to note that this passage does not simply multiply the parties at risk, rather it indicates each knight's degree of representation and responsibility. On the one hand, the narrator multiplies Morold by four. One reason for this is the fact that Morold acts alone, despite the fact that he ought to represent the interests of Gurmun, Ireland, and Rome. Morold admits that he is unprepared for battle (6405-6), because he expected Mark to capitulate to the tribute demands without a fight, as had empirically been the case. On the other hand, the division of Tristan turns the knight into a metonym for holy and secular justice, which he defends with his life. This role correlates to the representative power Mark and his noblemen afford to Tristan, which is reinforced on three occasions during the episode. In the dialogue with the barons, the young knight argues persuasively for dispatching Morold through the self-defense clause. When Tristan elicits a response from the nobles ("My lords all, state your opinion! What in effect do you wish me to do?"),²¹³ all but Mark himself respond with bated breath. They anxiously express their collective wish that Tristan make good on his promise to deal with the foreign oppressor. For reasons mentioned above, Tristan's speech has not yet procured the king's support. The fact that Morold requires confirmation of Mark's support indicates that the delegation of advocacy had been a salient legal notion at the time. Morold asks Mark whether or not Tristan's verbal threats represent the wishes of the kingdom as a whole, to which the king replies:

213. "ir hêrren alle, redet hie zuo, / waz ist iu noch liep, daz ich tuo?" 6227-28

»jâ herr, eist unser aller rât,
 unser wille und unser muot,
 swaz er gesprichet oder getuot.« (6350-2)

[Yes, my lord. Whatever he says or does, that is our common policy, our will and our intention.]

With this gesture, Mark affirms and exceeds the duke's request, empowering Tristan with representative power in not only his words but also his actions. Tristan's entry into the duel is an implicit acceptance of this role. His awareness of it is revealed at the midpoint of the battle, after Morold strikes him down with a poison-tipped sword. If Morold had acted as a representative of his country, he would have killed Tristan. Instead, the duke speaks on his own accord, offering to trade Tristan's life for his servitude. The young knight could have refused this armistice contract based upon his personal aversion to the enslavement of nobles, but Tristan dismisses the offer on the grounds that he has vowed to fight to the death for the parties he represents, the "two free countries"²¹⁴ of Cornwall and England.²¹⁵ Tristan's refusal to surrender is a symptom of a larger set of disagreements or misunderstandings concerning the legality of the duel itself.

Now that the fact pattern of the duel has been sufficiently established, it is productive to re-examine how Morold misunderstands the purpose and function of the battle. The duke considers Tristan's aggression illegal because it will constitute an abrogation of Mark's oath to Ireland (6444; 6355-6; 6933). Unfortunately, Morold arrives

214. "zwei vrîiu lant" 6966

215. Fascinatingly, Tristan refuses even on the occasion of his near-death to present himself as an ambassador of his homeland Parmenie.

in Cornwall without an army because he had not anticipated resistance from the barons (6400-6). Tristan taunts him into a duel by launching verbal threats, deftly using reverse psychology to prevent a devastating war (i.e. *lantvehte*) (6411-6). Morold responds to the provocation predictably, voicing his fearlessness (6437) and defending the security of King Gurmun (6440). Morold proposes the duel on the following terms:

wir suln ez hie mit handen,
 wie zwêne under uns beiden
 in einem ringe scheiden,
 weder ir reht habet oder ich. (6446-9)

[We shall decide now between the two of us on the duelling-ground with our own hands whether you or I am in the right!]

The duke hopes that victory will grant him the rights to enforce the tribute. Through the passage, he maintains he is rightfully entitled to collect “zins” (6339). He believes that a loss will eliminate that right. Of course, the young knight counters this supposition as quickly as he accepts the duel, declaring the meaning of its outcome explicitly. Tristan

announces the duel officially with the offering of his glove (“hantschuoeh”),²¹⁶ and he sets explicit terms for victory. If he wins, Mark’s kingdom will become immune from tribute requests issued by Morold, Gurmun, or any other force (6454-67).

Although Morold accepts these terms, he seems to believe that he will survive the duel, even if he loses. This may be inferred from two portions of the passage. In the first instance, each knight is given a boat with which to sail to the island battleground, Morold keeps his docked but Tristan decides to cast his own off into the ocean. The duke is confused by Tristan’s choice to forego his avenue of escape, to which the young knight explains his complete dedication to achieving victory in the name of justice (6791-6806).

By implication, the duke must have believed they would both return to land with their horses and equipment alive. Notably, Morold admits that the duel is binding in one

216. It should be noted that Morold is a valid agent in the duel for the same reason as Tristan, because both kings have vested the power of representation in their respective champions. The glove symbolized legal power, whether it involve scenarios of representation, dispute resolution, or marital engagement. Schwineköper presents the essential genealogy of the legal symbolism of gloves in the Germanic tradition. Berent Schwineköper, *Der Handschuh im Recht, Ämterwesen, Brauch und Volksglauben*, (Sigmaringen: Jan Thorbecke, 1981), 95-97.

Analogues to the glove-offering scene in Gottfried’s *Tristan* are not infrequent. For a discussion of the ceremonious tossing of the glove (i.e. casting the *essoine*) in French customary law, see Paul R. Hyams, "Thinking English Law in French: The Angevins and the Common Law," in *Feud, Violence and Practice. Essays in Medieval Studies in Honor of Stephen D. White*, Belle S. Tuten and Tracey L. Billado, eds. (Burlington, VT: Ashgate, 2010), 185n43. For a discussion of the role of gloves in vengeance duels in Holland, see P. C. M. Hoppenbrouwers, "Vengeance Is Ours? The Involvement of Kin in the Settlement 241 of ‘Cases of Vengeance’ in Later Medieval Holland," in *Love, Marriage, and Family Ties in the Later Middle Ages*, Isabel Davis, Miriam Müller, and Sarah Rees Jones, eds. (Turnhout, Belgium: Brepols, 2003), 260. Bérout’s *Tristan* presents a unique context for the glove; upon discovering Yseut sleeping beside Tristan and a sword in the *Minnegrotte*, King Mark stuffs his glove into a crack in order to block sunbeams from Yseut’s face.

moment, but offers a truce and even praise to Tristan in the next (6807-19). This gesture suggests that Morold believed that the battle would and should end with one party's surrender, instead of death. Secondly, the poisoned sword betrays Morold's hope that the duel will end without death. This premeditated act grants the duke leverage during the duel. After Morold strikes his opponent, he may pursue one of several paths. Either he can kill his opponent outright or he can use the threat of poison to coerce a surrender. In both situations, Morold believes he can risk his life because he has ensured his opponent's death even in the event that the duel is lost. Notably, the poison presents Tristan with a hypothetical scenario, in which he surrenders his freedom in exchange for his life (6954-61). This offer constitutes the duel's escape clause.

In contrast, all of Tristan's actions indicate that he considers the duel to be a fatal one. Tristan declines the truce and reaffirms his intent; he will suffer death if he cannot be victorious (6968-9). This dispute is one of many that distinguish each champion's interpretation of the law. The young knight rejects Morold's assertion that resistance is illegal. Tristan must explain this point carefully to the barons, who fear that they will lose honor if they break an oath, so he argues that the duel is a legitimate option before he indicts the legality of the tribute contract itself. Tristan responds with an analysis of the tribute contract, which requires either payment or battle (6359-88). Mark's nobles simply wish to exercise the latter. Since the self-defense clause does not expire, Morold's claim that the duel could immutably establish the tribute as legal is unwarranted. Moreover, his death would certainly exclude the possibility of a second defense of its legality.

In addition, Tristan argues that the tribute contract is categorically unjust. He notes the extensive duration of the Irish tribute but describes it as unlawful (“without sanction of law”).²¹⁷ Gottfried peppers Tristan’s plea to the nobles with echoes of this plea, as in “injustice”²¹⁸ and “great wrong.”²¹⁹ Tristan advocates a military solution to the Irish oppression, which he finds both empirically successful and necessary. He argues that the weak have empirically triumphed over their unjust oppressors (6125). According to Tristan, Cornwall and England must take action to restore that which has been forcibly robbed from them (6305-7). The young knight believes that this injustice will be reversed if they take violent action (6296-9). The duel will restore the freedom of Cornwall and England’s sons (6321-3), and recover their property completely (“down to the last trinket”).²²⁰ In addition to the full restoration of physical assets (6310-7), Tristan conceives of the duel as a means of redeeming his rights.

217. “âne reht” 6268

218. “mit unrehte” 6277

219. “michel unreht” 6285

220. “an den jungesten rinc” 6315

gewalt hoere wider gewalt
 und craft wider crefte.
 sît man mit ritterscheftē
 lant unde reht sol swachen,
 hêrren ze schalken machen
 und daz ein billîch wesen sol
 sô getrûwen wir des gote wol,
 daz unser aller swacheit
 noch werde wider hin z'iu geleit. (6420-8)

[Violence must be met by violence, force by force. Since the land and its rights are to be humbled by war and noblemen made serfs, and this is to be deemed equitable, we put our trust in God that our humiliation will yet be visited on you!]

In his view, Mark's court can only emancipate itself by the same mechanism by which it was oppressed. This excerpt summarizes Tristan's legal position; tribute has enfeebled Mark's kingdom and Tristan believes that military action is the only means to deliver justice to his subjects. The passage reiterates Tristan's belief that the duel will reveal God's justice and grant Mark's court reprieve from the *Kinderjahr*.

His speech also alludes to the role of God in the duel's verdict. Kerth describes judicial duels and the role of the *Gottesurteil*, accounting for God's judgement as a standard, secondary means of redress, "should the lord...fail to give justice."²²¹ Correctly, Combridge limits the scope of God's role in the judicial duel to the determination of the legitimacy of the tribute.²²² Moreover, Combridge explains that the international scope of

221. Kerth, "Kingship," 449.

222. "Nur wenn die Frage nach der Rechtmäßigkeit des Zinses nicht die förmliche Basis des Zweikampfes wäre, dürfte man diesem den Charakter einer Gottesurteils absprechen. Der Zweikampf soll hier nicht nur, wie ein Aufstand, ein (ungerechtes) Joch abwerfen, sondern er soll etwas beweisen, er ist ein Beweismittel im rechtlichen Sinn. Das Gottesurteil des Zweikampfes entbehrt hier der gerichtlichen Formen." Combridge, *Das Recht im Tristan*, 52.

the dispute necessitates an ordeal.²²³ This narrower perspective is supported textually through Tristan's statements about the role God plays in achieving justice. Before the battle, Tristan believes that his fight will bring justice to the just ("may He restore justice to its own"),²²⁴ because God protects and preserves justice (6783). Unsurprisingly, he proclaims that God will smite the unjust fighter (6450-3) during one of his taunts. The narrator elaborates upon this motif during the battle scene as well, claiming that God and justice temporarily fade from his team, but soon return to equalize the battle and enable Tristan's victory (6980; 6990; 7002). But Tristan's rhetoric does not permit this reading absolutely. The young knight manipulates the laws in question to reframe the duel as its own legal institution of tribute. Tristan explains how the battle collects its own tax: one life ("The tribute will be either your death or mine!").²²⁵ In this sense the duel retains its secular legal paradigm.

Despite the fact that Tristan's victory promised to restore autonomy to the Cornish and English, the duel's verdict exacerbates courtly hostilities. Previously, Gurmun had exercised authority over Mark's court in a cooperative manner, but the vicious duel sours the peace between the two kings. Gurmun alleges that the duel is illegal and regards it as an act of war (7208-20). This position is opposite to Gottfried's argument that the duel is

223. "Der Kampf Tristans mit Morold findet aber nicht vor Markes Gericht statt, denn Morold kann diesem nicht unterworfen sein, auch ist die Angelegenheit des Zinses keine inländische, sondern eine internationale; folglich müßte der Richter übernational sein. Man könnte also dahin definieren, der Zweikampf sei nicht nur ein Gottesurteil, sondern er finde im eigentlichsten Sinn vor einem Gottesgericht statt." Ibid., 52.

224. "der bringe reht ze rehte" 6780

225. "der zins ist dîn tôt oder der mîn" 6975

a legally justified action (7224). The Irish king responds to the rebellion over the tribute contract with further legislation, which banishes Mark's subjects from Ireland. This unexpected result has harsh consequences for Tristan, who desperately requires medical attention for his poisoned wound from Isolde, the Queen of Ireland, and Morold's sister. This turn of events bears its own irony. Purportedly, the same God who sanctions the duel and rescues Tristan from his opponent delivers the champion a death sentence in the form of an irremediable, poisonous wound. This law becomes the next hurdle for Tristan to overcome, and it provides the courtier with a justification to trespass, a crime which eventually necessitates his exile. In the aftermath of the duel, Tristan contends with the same allegations that begun the fight, namely that his actions are criminal and that he will perish for his behavior. Similarly, the accusations Tristan levies against Mark and his barons go unanswered. Mark and the group of nobles break the law primarily by inaction. The enslavement of children they supply to Rome for tribute violates holy doctrine. Tristan accuses the barons of criminal passivity, noting that the failure to act rightfully in defense of the king is a treasonous deed unto itself. Mark's failure to respond to this pernicious criticism disgraces his court even further.

In closing, I remind the reader that the poem, despite its emphasis upon legal conflict, appeals to the genre of Arthurian Romance through attendance to courtly ideals and norms. For this reason, the poet explains that Tristan's primary goals include the maintenance of his honor, the improvement of his worth, the defense of his reputation, and the pursuit of justice. The current study describes the legal stakes associated with the

achievement of said objectives and examines the verbal rebuttals posed by Tristan's opponents, Morgan and Morold. In doing so, this chapter identifies the legal factors that contribute to or denigrate one's honor and reputation. Regarding the duel with Morgan, the chapter elucidates the degree to which defamation and revenge complicate Tristan's goal of gaining legal purchase over his father's former kingdom. In the case of Morold, the poet details the history of the tribute and question its legality as a *prima facie* issue. The chapter delineates the legal deliberations in the Morold episode with regard to taxation, oppression, and the conflict between secular and divine notions of justice. Gottfried's advocate of choice, Tristan, offers cogent analysis of the legal issues at hand before he instigates a duel for which he offers himself as the chief defendant of Mark's kingdom. Morold, on the other hand, is as unprepared for military resistance in Cornwall as he is for a lengthy argument on the merits of his tribute-collection. The episode concludes with the judicial duel, a physical manifestation of the legal debate at hand. Strikingly, the combatants manage to advance their legal positions during the fighting, although Tristan wins the day through more nimble arguments and attacks. In the following chapter, I will demonstrate the manner in which the poet tests Tristan's extraordinary guile and cunning logic in settings less forgiving than the arena.

Chapter 4: Evidence and Reason: Proof of Infidelity

Legal discourse in Gottfried's *Tristan* frequently revolves around the notion of evidence. This chapter critiques the presentation of evidence and the testing of its rigor, in addition to offering an analysis of each character's decision calculus with regard to direct and circumstantial evidence. With the exception of Isolde's Trial by Fire, which Combridge and Pensel explicate in great detail, the present study examines the domain of evidentiary analysis in five scenes of great importance. After defining the core concepts of evidence, this chapter investigates three episodes that exhibit evidence-based inference: The Seneschal and the Dragon Tongue, Isolde and the Sword Splinter, and the Flour on the Floor. Following these, the chapter explores the relationship between jurisprudence and evidence through the episodes in which Mark's minions, Marjodoc and Melot, surveil the couple for evidence of an affair. At the close, the chapter expounds upon the theoretical implications of Tristan and Isolde's success at deception, and takes up the question: does Gottfried model jurisprudential thought for his audience?

Evidentiary materials and corroborative statements can take several forms, but they follow a basic categorical differentiation between direct and circumstantial evidence. To clarify, direct evidence can validate an assertion, but circumstantial evidence can only supply facts that validate an assertion by means of an inference.²²⁶ For instance, in the

226. In German, the composition of compound nouns is more semantically transparent, revealing the internal differentiation between proof and proof-by-inference: *Beweis* vs. *Indizienbeweis*, respectively. For more on the differentiation between direct and circumstantial evidence, see Combridge, "Das Recht im Tristan," 93; Hanne Hauenstein, *Zu den Rollen der Marke-Figur in Gottfrieds "Tristan,"* Göppinger Arbeiten zur Germanistik, no. 731 (Göppingen: Kümmerle, 2006), 117.

case of a witness who testifies that Tristan and Isolde meet privately under the olive tree, the witness provides direct evidence of a rendezvous, but only circumstantial evidence of an affair, because inferences are required to connect the meeting to infidelity. Whether evidence is used as corroboration in the act of proving oneself to be innocent or demonstrating another's guilt, the concept of evidence and the privileging of evidence-based judgements is omnipresent in the poem.

The episode of the Seneschal and the Dragon Tongue²²⁷ relies upon a basic premise of the genre of Arthurian Romance: women sacrifice their autonomy in order to bestow high social esteem upon their husbands and enhance their reputation.²²⁸ For this reason, finding a suitable groom for Queen Isolde's daughter Isolde presents a unique opportunity to resolve a community dilemma. She declares that the first suitor to slay the dragon, which is wreaking havoc on the court's environs, will have the opportunity to have her hand in marriage. In other words, the daughter (blonde) Isolde is a trophy to be awarded to the most capable and brave knight in the kingdom.²²⁹ Upon closer inspection, however, it becomes obvious that the queen creates a challenge with a nearly unattainable objective in order to further elevate Isolde's worth and to serve as an obstacle for one

227. "Der Kampf mit dem Drachen" (8897-9982).

228. For instance, Hartmann's Erec wins Enide as the implied prize in the sparrow hawk tournament. Yet Enide's erotic hold over Erec endangers his status as a knight and lord. Consequently, Erec must reinforce her subjugation to him by means of a silence mandate (Schweigegebot).

229. Gottfried's *Tristan* suggests that brides in the twelfth century could not refuse marriage outright. Queen Isolde could, however, erect impossible challenges by decree: slay the fiercest serpent in Ireland in order to earn Isolde's hand in marriage.

undesirable suitor in particular: the Seneschal (Truchseß). Put simply, Queen Isolde dislikes the Seneschal and offers to him her daughter in marriage if he can satisfy an impossible contingency: slaying the dragon. The slain dragon serves an implied evidentiary function as well; he who is best suited to marry Isolde will validate that assertion with direct proof of their strength in battle, that in turn will serve as circumstantial proof of their relative value compared to other suitors. Unfortunately, the Irish Queen fails to define the proof of victory for slaying the dragon—an ambiguity that the Seneschal tries to exploit.

In this episode, the poet problematizes the concept of evidence through the presentation of two pieces of direct evidence that lead to mutually competitive logical conclusions. On the one hand, the dragon's head serves as the crucial piece of evidence in support of the claim that the queen can credit the Seneschal with the dragon's death. On the other hand, the dragon's tongue establishes a chronology of interrelated actions that demonstrate via direct evidence that Tristan has slain the beast, for if he had not, how would he have extracted any of its limbs? The dragon's tongue serves as a crucial piece of evidence that corroborates Tristan's claim to have slain the beast, a fact which the Seneschal adamantly contradicts.

In the episode, the poet describes Tristan's collection of the dragon's tongue, but does not explain the reasoning behind it. Here, Gottfried departs from Eilhart,²³⁰ who describes the tongue as Tristan's trophy.²³¹

230. Loomis, *A Study of the Sources*, 1:18.

231. *Ibid.*, 1:204n5.

und also der trache dô gelac,
 daz er in tôten gesach,
 den giel er im ûf brach,
 mit micheler arbeit.
 ûz dem rachen er im sneit
 der zungen mit dem swerte
 der mâze, als er ir gerte.
 in sînen buosem er si stiez;
 den giel er wider ze samene liez. (9056-64)

[When the dragon pitched over and Tristan saw that it was dead, with much effort he wrenched its jaws apart, cut off from the tongue in the cavity as much as he wanted with his sword, thrust the piece into his bosom, and let the jaws snap to.]

This portrayal is curious, because Tristan expends great energy to open the dragon's jaw, and the tongue itself is dangerous, eventually causing the knight to lose consciousness. One recalls that, after discovering Tristan weakened by the tongue's noxious residue, Queen Isolde capitalizes on the discovery of the tongue and suggests that she has a plan to dismiss or invalidate any spurious claims from the Seneschal about having slain the dragon.

«unser truhsaeze, als er dâ giht,
 seht, der enluoc des trachen niht,
 und der in sluoc, den weiz ich wol.
 daz bewaere ich, swenne ich sol.
 al iuwer angest leget nider! (9735-39)

[‘Well, our Steward did not kill the dragon as he claims, and I know the man who did! I shall prove it at the right moment.]

Although she never acts on her statement, the poem implies that Queen Isolde understands how the tongue, if necessary, could serve as the essential circumstantial evidence to validate Tristan's assertion that he defeated the dragon without witnesses. Later, the poet informs us that the queen desires evidence to discredit the Seneschal,

because she dislikes him as a suitor. The fact that the poet, through the queen's dialogue, expresses a general design to apply evidence and inference to resolve a dispute.

It is also noteworthy that the queen anticipates the utility of the tongue evidence before Tristan understands how he will use it. As Tristan excises the dragon's tongue, the poet provides no explanation of his purpose for doing so. Gottfried will not explain the significance of the tongue until the Proof episode,²³² some 2177 lines later, when Tristan introduces it as incontrovertible evidence of the Seneschal's deception.

«hêrre kûnec» sprach Tristan dô
 «sît er des houbetes sô
 ze bewaerde wil jehen,
 sô heizet in daz houbet sehen.
 vindet man die zungen dâ,
 ich entwîche mînes rehtes sâ
 und wil von mîme criege gân.» (11233-39)

[‘Your Majesty,’ said Tristan, ‘since (the Seneschal) wishes to cite the head as evidence, have it examined inside. If the tongue is found there I will void my claim forthwith and withdraw my opposition!’]

Tristan's rhetoric is both clever and compelling. In the breath of a few lines, he invites the queen to qualify the Seneschal's evidence in order to validate his claim. With the same gesture, Tristan intends to weaken support for the Seneschal's assertions, and the poet realizes advocacy of rational, jurisprudential thought. The contingent logic of Tristan's request is explicit. If the Seneschal beheaded the dragon before Tristan, then the tongue should be intact. If, however, someone else killed the dragon before the Seneschal and

232. “Das Wahrzeichen” (10803-11366).

removed its head, then he who possesses the missing tongue is responsible for the dragon's death.

In the poem, the cases of the Dragon's Tongue and the Sword's Splinter follow a legalistic fact pattern that is nearly identical. In both cases, Isolde realizes that a minstrel possesses an object that proves his connection to a murder, because it exists in a part-to-whole relationship with another critical piece of evidence. And in both cases Tristan is the murderer disguised as the minstrel Tantris. In contrast to the Dragon's Tongue episode, in which Queen Isolde delivers the accurate reading of the evidence at hand, the Sword's Splinter episode showcases young Isolde's interpretive abilities. When the blonde Isolde hoists Tantris' sword into the air, she instantly identifies a missing shard and locates the puzzle piece to fit into it. With this circumstantial evidence in hand, Isolde correctly infers that Tantris possesses the sword that Tristan had used to slay her uncle Morold. Thereafter, she observes the strong similarity between the names of the knight and the minstrel, quickly deducing that the minstrel is Tristan in disguise.

«ich weiz ez wol, ez ist Tristan.
 diz swert ist sîn, nu sich ez an
 und sich die scharthen dar bî
 und merke danne, ob er'z sî.
 ich sazte iezuo diz stuckelîn
 ze dirre veigen scharthen î.
 owê, dô sach ich, daz ez schein
 einbaerelîche und rehte als ein.» (10183-90)

[I am certain it is Tristan! This is his sword, look at it and note the fragment beside it, and then judge if the man be he! But a moment ago I inserted the piece into this cursed gap, and, oh, misery, I saw it made a perfect whole!]

Remarkably, Isolde is able to repeat her series of deductions in perfect sequence a second time, to communicate to her mother the exact method with which she arrived at her conclusion. Such a series of logical arguments repeated in identical sequence has no parallel in the poem. The poet's emphasis upon logical deduction alters the audience's reception of her character; she appears more rational than emotional, despite confronting her uncle's murderer face to face. Furthermore, the poet permits her to model her reasoning for another character in the story, a device which achieves the powerful effect of modeling the act of interpretation for the poem's audience.

The definitive proof of the sword splinter contrasts sharply with the ambiguous circumstantial evidence that Mark discovers in the Flour on the Floor scene (15117-266). In the scene, Mark attempts to resolve his doubts about Isolde through a trap. To accomplish this, the king permits Melot to cover the floor of the royal bedchamber with flour, with the intention of detecting a trail of footprints between Tristan and Isolde's beds. After dark, Tristan attempts to bypass the flour through a dangerous leap that falls short of his target of Isolde's bed. Having sustained an injury from the fall, Tristan leaps back to his bed and rests in a pool of his own blood. When Mark returns to the bedchamber the next morning, he observes that the flour on the floor is undisturbed, and from this he concludes that the alleged lovers could not have visited each other the evening before. His interpretation of the evidence, however, is incompatible with other traces of activity in the room. The king finds some blood on Isolde's bed and blood-soaked sheets in Tristan's bed. He finds the presence of blood peculiar but he is not able

to draw any conclusions from the weak evidence.²³³ The lovers each state that their veins opened up overnight, though this excuse cannot allay Mark's suspicion of a more sinister explanation. Unfortunately for Mark, he is not able to attribute the presence of blood wholly to a wound suffered during the night, as Tristan and Isolde participated in bloodletting earlier that day, which provides an appropriate alibi for the bloody bedroom. In contrast to Isolde's ability to calmly synthesize evidence and draw logical conclusions, Mark appears helpless, frustrated, and unable to interpret the circumstantial evidence at hand. In total, the circumstantial evidence in the scene raises Mark's suspicion to the extent that the undisturbed floor cannot assuage it.

The episodes that feature Mark's vassals, Marjodoc and Melot, are composed of the collection and examination of evidence. Their mission is to confirm courtly gossip of a secret love affair between Tristan and Isolde. In order to realize this goal, Mark tasks his stewards with a close investigation of the couple. The poet allots substantial space in his poem to the *huote* excursus, a discussion of the roles of trust and verification in a marriage.²³⁴ As McDonald notes, Mark's decision to surveil Tristan and Isolde represents "all that is hostile to the lovers," and also creates a dishonorable association "through the

²³³ "die bewaerde die was aber swach" [But the evidence was slender] 15236.

²³⁴ 17817-17924. See Emil Nickel, *Studien zum Liebesproblem bei Gottfried von Strassburg*, no. 1, (Königsberg: Gräfe und Unzer, 1927), 26; Richard Preuss, "Stilistische Untersuchungen über Gottfried von Strassburg," *Strassburger Studien I* (1883): 42-58, 68. See also Richard Grenville Dunstall, "The Rôle of Art in Gottfried's Tristan." (MA diss., McMaster University, 1968), 91-99.

alliteration of his name to the ‘unholy alliance’ of Marjodoc and Melot at the court.”²³⁵

That is to say, the investigation of the affair forces the loving couple into a defensive posture, from which Tristan and Isolde outwit Mark and his partners. Willson correctly notes that cunning (“list”) is an essential feature of legal enforcement and the circumvention thereof. He writes, “*List* is employed to uphold the law and itself engenders the *list* required to circumvent it. The *list* of Tristan and Isolde is designed to combat the *list* of Mark, Melot and Marjodo.”²³⁶ Thus, every motion in the direction of surveillance precipitates an equal and opposite motion against it in the form of deception. And in the following case, even one of Mark’s vassals deceives him.

The episode with Marjodoc represents a legal case study in hearsay, because the steward refuses to provide direct testimony of Tristan’s treasonous behavior and Isolde’s infidelity. Like Hartmann’s Enite, Marjodoc chooses to voice his dismay with the sexual impropriety at court by announcing gossip instead of personally testifying. The poet intersperses contradictory and confusing information throughout the narrative of Marjodoc’s experience in order to discredit hearsay on an evidentiary basis. Through the indictment of this type of evidence, the poet prompts a more thorough and empirical investigation of the relationship shared by Tristan and Isolde. In the following analysis, I will examine the three components that undermine the credibility of Marjodoc’s hearsay

235. William C. McDonald, “King Mark: Gottfried's Version of the Ovidian Husband-Figure?” *Forum for Modern Language Studies* 14 (1978): 257. Perhaps readers should also assign Morgan and Morold to the alliterative alliance, as they also strive to undermine Tristan.

236. Willson, “The Old and the New Law,” 219.

testimony: the authority of the speaker, the event experience, and the potential impact of the testimony.

The passage begins with Gottfried's qualification of Marjodoc as an integral figure. This fact is established through a careful description of Marjodoc's close social relationships to Tristan and Mark as well as his hierarchical status.

In den selben stunden
 haete Tristan einen cumpanjûn
 der was ein edeler barûn,
 des küneges lantsaeze,
 sîn oberster truhsaeze,
 und was geheizen Marjodô. (13460-65)

[In those days Tristan had a companion, a noble baron and vassal of the King and indeed his Steward-in-Chief, who went by the name of Marjodoc.]

It would appear that Gottfried's account exaggerates Marjodoc's loyalty to Tristan, given the pattern of events that follow. Nevertheless, the poet elevates this esteemed vassal in the text by granting him the critical faculty of interpretation. Indeed it is Marjodoc who must decipher clues and apply moderately complex logic if he wishes to understand his disturbing experiences at Mark's court. Although relatively little is known about Marjodoc, he is a talented listener and an obedient servant of the king. Like the members of court who would listen to Gottfried's lyric with rapt attention, Marjodoc remains in Tristan's chambers into the evening because he is fond of listening to Tristan tell stories before bed (13472-9). In this sense, Gottfried uses Marjodoc's behavior to model reception and synthesis of evidence for the audience.

Plot events in the episode set Tristan and Marjodoc in opposition to one another; Tristan undertakes a clandestine operation while Marjodoc attempts to reconcile his experience with his suspicion of Tristan's treachery. After Marjodoc falls asleep, Tristan exploits the gap in supervision to secretly rendezvous with Isolde. Unfortunately for Tristan, a series of unlucky coincidences befall him during his stealth mission. The full moon illuminates his path, which opens the possibility that he could be visually detected.²³⁷ Plus, the ground is blanketed with fresh snow, allowing a potential witness to trace his footsteps more easily, foreshadowing the plot device in the Flour on the Floor scene. In addition to the moonlight and fresh snow, Brangaene neglects to close the door to Isolde's chamber after Tristan's arrival, a mistake which exposes the couple to detection.

The poet presents Marjodoc with both the motive and the opportunity to expose the secret love affair. That evening, Marjodoc awakens distraught from his nightmare about a boar that emerges from the woods and wreaks havoc in Mark's court before sullyng his bedroom.²³⁸ Hoping to retell his story, he seeks Tristan out, but feels no body in his bed and hears no response from him when he calls out his name. Marjodoc

237. It is of possible interest to law in literature scholars that the moon's luminosity also plays a decisive role in John Ford's "The Young Mr. Lincoln" (1939). At the conclusion of the court trial, the defense attorney in the murder trial, played by Henry Fonda as Abraham Lincoln, invalidates the testimony of an eyewitness through the presentation of contradictory evidence from the Farmer's Almanac, which indicates that the sky was not fully illuminated ("moon bright") as claimed. The dissolution of this warrant permits Lincoln to win his legal argument.

238. For more discussion of the symbolism of the boar and its connection to Tristan, see Chapter 3.

immediately becomes suspicious and is probably inspired by the boar dream, which so closely mirrors Tristan's own emergence from the woods and disruptive activities at Mark's court. He suspects that if he discovers Tristan's whereabouts, he will discover the meaning of his prophetic dream, though as Gottfried notes, Marjodoc has yet to make the connection between the dream and Tristan's covert affair.

aber umbe sînen haelinc
 hin zuo der küniginne
 des enhaete er keine sinne,
 ern haete keinen wân dar an (13550-53)

[But of Tristan's intrigue with the Queen he had no notion at all.]

Consequently, the vassal attempts to detect Tristan's presence. Marjodoc cannot hear or find him in the bedroom (13547-9). In contrast to the dream narrative, this physical evidence of Tristan's absence causes Marjodoc to investigate further.

er sleich vil lîse hin zer tür
 unde wartete dervür
 und sach Tristandes spor der vor.
 hie mite sô volgete er dem spor
 hin durch ein boumgertelîn. (13561-65)

[He crept softly to the door, looked out and saw Tristan's footsteps. He then followed these tracks through a little orchard.]

The investigation takes on many of the attributes of espionage. Marjodoc sneaks to the door, observes Tristan's trail in the snow, and follows his footsteps to the orchard. He also takes advantage of the chamber door that Brangaene carelessly leaves ajar. Every step in the pursuit sequence follows the same pattern of perception and judgement, collecting clues and processing the meaning of that evidence.

Marjodoc only becomes suspicious of Tristan's evening excursion when the trail of evidence furnishes proof of Isolde's infidelity. Marjodoc suspects misdeeds²³⁹ and considers the possibility that Tristan is visiting a young woman,²⁴⁰ who he later deduces must be none other than Queen Isolde herself (13582). The baron feels his way through the darkened room as if he were blind, grasping at the walls.²⁴¹ Finally, Marjodoc reaches earshot of two speakers whom he believes to be Tristan and Isolde, confirming the worst of his suspicions. The realization that Tristan and Isolde engage in a secret love affair resurrects the distress Marjodoc felt after waking from his nightmare. Tricolon, chiasmus and anaphora express the mixture of extreme hate and anger Marjodoc experiences.²⁴²

239. "er bedâhte übel unde guot" [weighing good and bad] 13575.

240. "juncvrouwelîn" [young lady-in-waiting] 13578.

241. "und greifende mit henden / an mûren unde an wenden" [feeling along the walls with his hands] 13591-92.

242. This scene is reminiscent of Ovid's *Metamorphoses* (Book IV, 55-92) and the lyrical account of Pyramus and Thisbe. Ovid describes their illicit love affair and how it survives through a small crack in the wall separating their quarters. But the rhetorical devices Ovid deploys here are the same that Gottfried selects: chiasmus and repetition. Ovid constructs a chiasmus that juxtaposes Pyramus and Thisbe across from one another, just as they sat on opposing sides of the wall that separated them. Ovid's repetition of the word "more" explains to audiences that the lovers were becoming more and more infatuated with each other by the day in the same manner that Gottfried's Marjodoc becomes increasingly enraged during the incident. Finally, Ovid switches to second person in the scene, personalizing his knowledge of the situation. In this instance, Gottfried's use of an investigator to unveil the affair strongly resembles Ovid's rhetorical approach. For an analysis of motifs and characters shared by Ovid and Gottfried, see William C. McDonald, "King Mark," 255-69.

nu was daz allez underslagen
 mit hazze und mit leide.
 er haete an ir dô beirde
 haz unde leit, leit unde haz
 in muote diz, in muote daz. (13600-4)

[But now this was all cut short by hatred and anger; now he felt hatred and anger,
 anger and hatred towards her.]

In spite of this rush of feelings, Marjodoc remains silent because he fears a violent reprisal and retires to his quarters quietly. When Tristan returns to his bed undetected, he is unaware that his alibi for that evening has been falsified.

Based on Marjodoc's outrage upon learning of the love affair firsthand, it is altogether shocking that the baron would avoid divulging his firsthand experiences. Like Enite, who describes to Erec how gossip at court diminishes his honor, Marjodoc suggests to King Mark that members of his court are spreading rumors about his marriage that will tarnish his reputation. Marjodoc withholds the key eyewitness testimony evidence in this statement to Mark, relegating his assertion to simple hearsay. Ironically, Mark explains his desire to observe the pair carefully to the very individual who possesses such "proof."²⁴³ These efforts are in vain, however, since Tristan is able to alert Isolde of Marjodoc's suspicions in time.

In the next episode, Mark creates a ruse to trick Isolde into explicitly stating that she has a strong affinity for Tristan. Before examining this interrogation in detail, it is first necessary to explain the implied premise thereof. Mark does not feel that Marjodoc's retelling of gossip at his court about Isolde's infidelity meets a crucial evidentiary

243. "bewaerde" 13665.

standard. In other words, the king is not convinced by mere hearsay, though it can also be said that he disfavors circumstantial evidence in general. It is for this reason that he endeavors to produce a full confession from Isolde. As we shall soon see, Mark misses this target with his line of questioning. His prosecution of the matter fails in part due to Brangaene's counsel, for she recognizes Mark's intentions and helps Isolde outfox him. It is important to note, however, that it is improbable that even incriminating responses would have met a burden of proof that was higher than the initial hearsay from Marjodoc that he sought to corroborate.

There are several features of this conversation that indicate that Mark is an incompetent and impotent king. First, it does not bode well for Mark that Isolde's handmaiden is a superior match to his intellect. Second, it does not reflect well upon Mark's cunning that his ruse could not have yielded satisfactory evidence of an affair, even if it had been successful. Third, the two hypothetical scenarios that Mark presents to Isolde both violate his co-regency contract with Tristan. In any case, it appears that Mark lacks some degree of reason, logic, or legal understanding. Ultimately, these factors exacerbate the problems at hand; Mark is a poor leader who cannot manage his marriage, not to mention his kingdom.

In the first hypothetical scenario, Mark suggests that he will leave Cornwall and attempts to suss out Isolde's preference to be in Tristan's custody during his absence. Unwitting of her husband's scheme, Isolde gladly reveals that if he intends to make a pilgrimage, she would prefer that the court and Cornwall be supervised and defended by

none other than his nephew Tristan. For Mark, this answer is compelling enough to warrant further investigation and suspicion.

[Isolde:] iuwer swestersun, hêr Tristan,
 der ist manhaft und wîs
 und wol debahtic alle wîs.
 Die rede begunde Marke
 bewaeren harte starke
 und misseviel im harte. (13699-701)

[Your nephew, lord Tristan, is brave, prudent, and circumspect in every possible way. Mark grew very suspicious indeed at this answer; he did not like it at all.]

For what reason did Mark deem this response suspicious? Isolde clearly justifies her decision to have Tristan rule over Cornwall in Mark's absence. Mark's umbrage suggests that he disagrees with Isolde's assertion that Tristan is qualified (in terms of status, skill, lineage, and reputation). His offense bears a dose of irony.

[Marke:] Dar zuo wil ich dir stiure geben.
 mîn lant, mîn liut und swaz ich hân,
 trût neve, daz sî dir ûf getân.
 als ich von dir vernomen hân,
 sone spar des mînen niht dervor.
 Curnwal daz sî dîn urbor,
 mîn crône sî dîn zinsaerîn. (4460-69)

[Furthermore, I will give you this revenue: my land, my people, and all that I have shall be at your disposal! If you aspire to high distinction and your ambitions are such as I have heard you say, do not spare what is mine merely because it is so. Let Cornwall be your domain, my crown your tributary!]

Notwithstanding the overwhelming praise for Tristan that saturates this passage, Mark himself recognizes Tristan's capability and potential. When given the choice, Mark would readily entrust Cornwall's land, people, and wealth to Tristan. More than a promise, Mark

and Tristan contractually bind themselves to a *Mitregentschaft* clause.²⁴⁴ For this reason, the implication that Isolde ought to think otherwise is irrational. Nevertheless, Mark uses Isolde's platitudes about Tristan as the warrant for increased surveillance and suspicion.

The above excerpt is notable because Mark reprises this speech in a similar proffer to Isolde. Herein, Mark effectually abrogates his co-regency contract with Tristan and extends the offer to Isolde instead. The terms of the contract are nearly identical: complete authority over land and people. This change of position grants her such an increase in power that she is able to take Tristan as her guardian (13938).

ir habet doch z'iuwerre hant
 beidiu liute unde lant,
 diu sint iuwer unde mîn.
 dar über sît gebietaerîn.
 daz sol z'iuwerm gebote stân.
 swaz ir gbiertet, deist getân. (13929-34)

[You will have the land and the people at your command. They are yours as much as mine. Rule them, they are yours to dispose of. Whatever your bidding, it shall be done.]

Of course, this reversal of attitude only occurs after Isolde tones down her praise for Tristan under Brangaene's counsel.

Following Tristan's warning about increased scrutiny, Brangaene enjoins Isolde on two occasions to revise her comments so as to cast aspersions on Tristan whenever possible. In the first place, Brangaene is the first to identify Mark's

244. For a detailed analysis of the co-regency contract, see Chapter 2.

deceitful intent.²⁴⁵ That is to say, she recognizes that Isolde is under interrogation and surveillance and that she ought to be cautious in the statements she makes, lest they be considered evidence corroborating an affair with Tristan. Thus, Isolde quickly retracts her praise for the courtier-knight and expresses disgust toward him instead.

In the next passage, Isolde explicitly disparages Tristan to Mark in order to allay the king's suspicion. This contrivance goes beyond simply casting aspersions on Tristan. Isolde suggests to Mark that all social engagements with Tristan, ranging from conversation to friendly glances, constitute a complex ruse to convince his nephew that she enjoys his company.²⁴⁶ This admission that the queen deftly practices deceit at court ought to alert Mark to his wife's cunning. Instead, Mark is pleased to hear that Isolde abhors Tristan so. Consequently, he invests himself even further into Isolde's confidence game. Isolde also launches a counterargument relating to the metric by which one's love can be measured. She explains that she would like nothing more than to join Mark's retinue on his journey, even if that companionship comes at the cost of her life (13998-14003). The self-sacrificial quality of this gesture recalls the maiden in Hartmann's *Armen Heinrich*. Intrinsicly, this stance is juxtaposed against her critique of Mark, whose love for her must not be nearly as strong, due to his readiness to leave her in Tristan's care during a leave of absence.

245. "daz hoere ich wol, / daz ist ein list" [what was said on this subject was a trap] 13738-9.

246. "daz er wol gesworen haete, / daz ich 'z von herzen taete" [so that he would have sworn I did it from my heart] 13993-4.

mirn ist niht rehte lieb wan ir
 und weiz daz wârez, daz ir mir
 sô holdez herze niht entraget,
 als ir gebâret unde saget.
 daz ir den muot gewunnet ie,
 daz ir hin vüeret und mich hie
 in dirre vremede soltet län,
 dâ bî mac ich mich wol enstân
 daz ich iu vil unmaere bin (13917-25)

[There is nothing so truly dear to me as you, and I know that you do not love me as much as you say and pretend. From the fact that you ever conceived the wish to go away and leave me in such strange surroundings, I can see that you heartily dislike me, so that I shall never feel happy again!]

Isolde cunningly engages in a two-fold strategy: she argues that Tristan is an inadequate substitute for Mark while also calling into question the steadfastness of Mark's love for her. Perhaps outwitted through this rhetorical move, perhaps overcome with sentiment from Isolde's weeping,²⁴⁷ King Mark is unwilling to question Isolde's loyalty after this speech, so much so that he disregards her bluff about joining him on the next adventure (14016-21). With renewed trust in his wife's fidelity, he foregoes the opportunity to call Isolde's bluff and instead confronts Marjodoc about his slanderous statements regarding Isolde. The ease with which Isolde and Marjodoc are able to persuade their king to take action, even when it poses harm to the reputé of his court, demonstrates Mark's gullible and low esteem.

Due to Marjodoc's steadfast resolve, Mark resumes his bedroom interrogation of Isolde, this time threatening to expel Tristan from the court. The king suggests that

247. The poet notes that women possess the unique ability to cry on command, which enables them to outwit men from time to time (13895-13902).

Tristan ought to leave Cornwall, for “he must sail to Parmenie and see to his own affairs—both he and his country need it.”²⁴⁸ The expulsion ultimatum subverts Isolde’s vigilance, causing her to contradict herself and reveal her true fondness for Tristan.

Out of kilter and unable to censor herself, Isolde pleads for Tristan to remain in Cornwall at her side before repudiating her own arguments under Brangaene’s counsel. First, Isolde argues that Tristan’s departure would harm her own repute, because members of court would gossip that she had Tristan ejected as revenge for her uncle’s death (14080-9). Second, the queen posits that the simultaneous departure of Mark and Tristan from Cornwall would create a leadership void in the court. Such a deficit would translate into a risk of defeat in battle, she suggests. The absence of competent leaders might endanger the kingdom—Tristan, she implies, would serve as an emergency backstop should such a wartime circumstance arise (14107-10). She elaborates upon Tristan’s role as a defensive asset as his core competency, which she appreciates despite her dislike for his behavior (14135-8). Brangaene, however, finds her speech fulsome and advises her to recant quickly.

Isolde promptly reverses her position and abandons her previous warrants. Now, she describes a scenario in which Tristan, if left in charge, will irrevocably damage the reputation of the kingdom and rob her of her honor (14193-7). She presents two proposals for Mark’s consideration. Tristan could either join the king’s expedition or be sent back to Parmenie. In either case, Isolde requests that Marjodoc act as her guardian in

248. “er sol ze Parmenîe varn / und sol sîn selbes dinc bewarn” [he must sail to Parmenie and see to his own affairs] (14063-4).

the king's stead (14204-7). This cunning speech assuages Mark's doubts of her infidelity and coaxes the king into believing Marjodoc to be a liar (14229-34).

The competing notions of strategizing and confession pervade the "Plot and Counterplot" episode. After Marjodoc announces (but fails to corroborate) a claim of Isolde's infidelity, Mark takes it upon himself to investigate the matter in the intimate setting of the royal bedchamber. The bedroom prosecution which follows involves a careful give-and-take of artfully worded testimony on Isolde's behalf and cautious cross-examination by the king. Mark's tactic is a simple one: verbally trick Isolde into admitting her fondness for Tristan.²⁴⁹ Unfortunately, this play would not have gathered sufficient evidence to convict Isolde of infidelity even if it had succeeded. Further, the mere suspicion of intrigue at his court, especially that generated by Mark himself, is certain to damage his reputation and the honor of his throne. These circumstances inform Mark's apparent complacency with Isolde's behavior. If Mark actually sought to prosecute Isolde's testimony to his fullest ability, he would surely react more cautiously when presented with outstanding praise of Tristan one moment, only to hear Isolde's outright disparagement of the courtier the next. The fear of appearing to be a *mari complaisant* is the most probable motivation for Mark. The king's subtle investigation of

249. Vickie Ziegler notes how this circumstance contrasts sharply with other scenarios that fit the Susanna paradigm. Ziegler points out that Mark is surreptitious in his investigation of the affair and that his interrogation is also warranted, since Isolde has never been faithful. On the other hand, Karl's discussion of infidelity charges with Richardis in the *Kaiserchronik* lacks all ambiguity. Both partners recognize that infidelity ought to lead to death and that the only proof for or against said crime would be an ordeal (i.e. a trial by burning wax shirt). Ziegler, *Trial by Fire and Battle*, 124; *Kaiserchronik*, 15400.

Isolde's opinions about Tristan serves as due diligence in the investigation of court gossip. The episode does, however, introduce a peculiar logic of absence and worth. If Mark and Isolde believe that a king must be present at court in order to protect the kingdom and its sphere of honor, then why is the king apt to leave? Worse, how would Mark, who believes that his own role is central, understand his suggestion to Isolde that she co-rule Cornwall (an offer he also extended to Tristan)? Perhaps Mark's erratic, irrational, and contradictory statements stem in part from frustration over Marjodoc's failure to report the successful collection of direct evidence.

If Mark considers Marjodoc to be his bloodhound in the investigation, then Melot is his stealthy snake in the grass. Gottfried explains that a description of Melot is absent from the source material, except for one account that the vassal was "cunning, artful, and elegant."²⁵⁰ For this reason, Gottfried grants himself license to embellish the character with traits that fit his behavior. The narrator introduces Melot as a both a dwarf and a star-reading prophet, traits which add to the vassal's notoriety.

Melôt petit von Aquitân
und kunde ein teil, alsô man giht,
umbe verholne geschicht
an dem gestirne nahtes sehen. (14240-23)

[Melot le petit of Aquitaine, who had some skill in reading the secrets of the stars, so it was alleged]

The special status Melot holds in King Mark's court raises several questions. Gottfried asserts that Melot is a special confidante to Mark. The relationship between Mark and

250. "kündic...listic unde rederîch" 14248-49.

Melot is altogether peculiar, because characters of lowly or oversized stature carry stigmas in courtly romances. Simply, dwarfs were unfit members of Mark's court. Middle High German poems often depict dwarfs either as evil or manipulative. The dwarf who lashes the maidens in Erec's charge is an example of the former.²⁵¹ The latter holds true for the *Straßburger Heldenbuch*, which describes the powerful, manipulative nature of dwarfs. According to Boyer's analysis, God created knights and giants to serve the desires of dwarfs, "In order to help [dwarfs], God also created...heroes to defend the dwarfs from the giants, dragons, and other monsters...dwarfs would take giants into their service, which is exemplified in the epic *Walberan*, where the dwarf king has several fighting giants at his disposal."²⁵² The fact that some dwarf kings would exercise power over giants casts the relationship between Mark and Melot in an unsettling light. It may be for this reason that Mark's steward, Marjodoc, acts as intermediary to Melot.

Melot's primary objective involves the confirmation of an alleged affair between Tristan and Isolde through the collection of evidence. Marjodoc's request of Melot implies a certain improvement in quality over the unsatisfactory hearsay testimony previously acquired. Marjodoc instructs Melot to observe Tristan and Isolde whenever he visits the "Queen's apartment,"²⁵³ a space to which the dwarf possesses privileged access.

251. Hartmann, *Erec*, 1-147.

252. Tina Marie Boyer, "Chaos, Order, and Alterity: The Function and Significance of Giants in Medieval German Epic." (PhD diss., University of California Davis, 2010), 17-18.

253. "kemenâten" 14251.

möhte ez im dâ zuo guot gesîn
 daz man die wâren künde
 der minne an in bevünde,
 ez haete es iemer mêre
 wider Marken lôn und êre. (14256-60)

[If he could serve him so far as to procure firm proof of love between them, Mark would reward and esteem him ever after]

Marjodoc encourages Melot to uncover through surveillance any “firm proof”²⁵⁴ of a love between Tristan and Isolde, for any evidence in this vein would earn the dwarf enduring respect and rewards from King Mark. The manner with which Melot undertakes his surveillance is unclear. The audience learns that the dwarf spies on the couple from sunset to daybreak until he is satisfied that the behavior of the couple warrants further investigation. The audience assumes that Melot’s ability to read the silent and subtle movements of celestial bodies also enables the dwarf to infer from the lover’s gestures and language their internal motives and desires. Through interrogation and observation, Melot surmises that Tristan and Isolde care for each other as lovers do (14269-70). Melot reports his findings to his superiors without revealing any particulars, which causes Mark to take immediate action.

When Melot, Mark, and Marjodoc conspire to test the couple (14275-80), evidence of the emotional strain of the separation becomes visible, which is the stated goal of the operation.²⁵⁵ Mark forbids Tristan to visit places where women congregate. Exile from women’s areas produces the opposite of the desired effect, resulting in courtly

254. “wâren künde” 14257.

255. “Die wârheit offenbaere sehen” [the truth would be clearly revealed] 14281.

gossip about the reasons for which Tristan's proximity to Isolde may have been shameful in the first place. Furthermore, Tristan's sudden absence causes his own courtly reputation to decline, resulting in more negative gossip. Tristan and Isolde's emotional torment manifests in the form of depression symptoms. They both suffer greatly from the harsh treatment.²⁵⁶ Unable to communicate, they feel as though they lose one another, and as a consequence they lose their reciprocal vitality, leaving each lover with a pallid countenance.²⁵⁷ The poet interweaves and repeats words in his description of the couple's anguish, such that the audience understands that each partner feels the pain from the other's soul.²⁵⁸ To Mark's advantage, the distance between the lovers reveals the magnetic bond between the pair, bringing to light the proof of their secret love.²⁵⁹ Having increased the stress on the lovers to ultimate tensile strength, Mark leaves court hoping to ensnare the lovers in a trap.

Under Mark's direction, Melot spies on the lovers during the king's twenty day hunting absence. Tristan claims to be ill in order skip the hunt, an excuse that Mark anticipates, as he expects to track the movements of his wife instead of wild game. Of

256. "si haeten leit unde leit" [they suffered two kinds of sorrow] 14310.

257. "der man bleichte durch daz wîp / daz wîp bleichte durch den man / durch Îsote Tristan / durch Tristanden Îsôt" [The man grew pale for the woman, the woman for the man; Tristan for Isolde, Isolde for Tristan.] 14320-3.

258. "ir beider übel, ir beider guot, / ir beider tôt, ir beider leben" [Their pleasure and their pain, their life and their death] 14330-1.

259. "diu wort sô schînbaere / under ir beider ougen, / daz man vil cleine lougen / der minnen an ir varwe vant." [Their deep dejection was written so plain on their faces that there was little in their appearance to deny that they were lovers] 14340-3.

course, the extended hunt presents a natural opportunity to disobey Mark's separation order, and Isolde encourages a secret meeting. Fully aware of the surveillance at court, Brangaene organizes and plans for the lovers to rendezvous at the olive tree in the garden near Isolde's quarter. Brangaene devises a method for each meeting; first, one carves "T + I" into a twig from the olive tree, then one places it into the pond such that the stream will take it to Isolde's apartment. The presence of an engraved twig in the stream informs Isolde of Tristan's plan for a secret meeting beneath the olive tree. Hence, the olive tree represents both the means for arranging secret meetings and the destination. Tristan and Isolde meet in this fashion for eight nights in a row (14505). Alas, the system is conspicuous enough that Melot follows and furtively observes the couple (14508-14). When he does, Melot witnesses an unidentifiable woman embracing Tristan near the tree (14519-20). Believing to have ascertained direct evidence of an affair, Melot visits the king on his hunt and invites the king to observe the couple on a future occasion.

*«ir muget die wârheit selbe sehen»
 sprach Melôt «hêrre, wellet ir,
 ze naht sô rîtet dar mit mir.
 ine versihe mich keines dinges baz,
 swie sô sî gevüegen daz,
 sine komen noch hînaht beide dar.
 sô muget ir selbe nemen war,
 wie sî gewerben under in.» (14590-7)*

[Sire, *you can see the truth for yourself*. There is nothing on which I count with greater confidence than that they will meet there this very night, however they manage to do so. *Then you can see for yourself* how they behave.]

Here, the implication is that Mark prefers direct evidence in the form of a personal eyewitness account above all other forms of evidence. One wonders, is Gottfried's Mark

so skeptical that he requires a personal corroboration of all direct evidence? It is possible that the poet sought to differentiate Tristan and Isolde's skills of inference and logic from Mark, and therefore forced the king to validate his tryst theory through the simplest and most transparent form of evidence, direct eyewitness.

The next evening, Melot and Mark travel together to the meeting, however, the lovers detect hints of surveillance and successfully avoid exposure.²⁶⁰ First, Mark and Melot climb into and hide within the canopy of the olive tree in anticipation of the lovers' arrival and embrace (14600-12). This time, the moonlight which had exposed the lovers under Marjodoc's surveillance saves the couple from discovery. When Tristan arrives, he instantly detects the shadows of Melot and Mark. Tristan hopes that Isolde will also recognize the shadowy clue and infer from it that spies are lurking in the olive tree. Aware of the surveillance, Tristan strives to alert Isolde as covertly as possible with two more clues. First, he sends her a second clue on the olive branch, engraving in it their full names, instead of their initials. Second, he does not approach her as is customary, sending a gestural warning. Isolde notices all of the clues and infers from them that she must pretend to encounter Tristan for a different reason. She uses doublespeak to communicate to Tristan that she is aware of the surveillance, referring to a God who bears witness to her actions.²⁶¹ Here, the poet diminishes Mark's position even further, because the king is

260. The episode is commonly known as *The Assination by the Brook* or *Belauschtes Stelldichein* (14583-15046).

261. "des sî got mîn urkünde" [May God be my witness] 14755.

unable to understand Isolde's encoded messages to Tristan. For this reason, he is unable to process the conversation in question critically.

The discussion under duress foreshadows Isolde's trial and reveals that both lovers are practiced in the art of equivocation. Tristan and Isolde exploit Mark's ignorance to shore up their defense against courtly gossip of an affair. Isolde explains that she has only ever loved one man, the man to whom she lost her virginity (14755-66). Mark receives this statement as direct evidence and presumes that Isolde has only ever loved him. Of course, this deduction is incorrect, as it is based on the premise that Mark and Isolde shared sexual congress. Gottfried's audience enjoys the dramatic irony of knowing that Brangaene, Isolde's handmaiden, slept in Mark's bed on the first evening of their marriage. Tristan, on the other hand, as the intended recipient of the subtextual content of the message, is able to decipher Isolde's true meaning: she shared her first sexual experience with Tristan and professes her love for only him. She will return to this trick in her Trial by Fire and testify that she has only enjoyed the embrace of two men, namely, her husband Mark and the Pilgrim who lifts her from the ground. Furthermore, Isolde asserts that God knows that Mark's suspicion is unjustified. Here, the poet highlights Mark's ignorance, for she speaks these words only for his benefit. In this vein, she pleads with Tristan for more fair treatment at court, asserting that she treats all of Mark's knights and servants with equal respect and care as a means to honor him. From his hidden position, the king can only think of Isolde's most honorable qualities and enjoy the fact that he is the nucleus of her concerns and conversation. These statements

permit Isolde to place false evidence at Mark's feet, asking Tristan to understand that her depression stems from the gossip at court that means dishonor for the king. She also engages in sins of omission, forgetting to contradict the gossip, but instead only noting that the gossip is unfair and cruel.

Following the model that Isolde sets forth, Tristan begins to plead his innocence, which is so effective that Mark reverses his course.²⁶² He then alleges that he can only preserve their honor and the king's if he exiles himself from Cornwall.²⁶³ The series of falsehoods is highly effective, and the overheard conversation causes Mark to feel guilt and regret over his own suspicions, reversing his course of action.²⁶⁴ Mark misinterprets the content of the coded conversation and scolds Melot for his (correct) assertion of an affair. He blames Melot for deceiving him and for contributing to the negative gossip about his wife (14925-8). Isolde's praise of Mark and his court endears her to him and blinds the king to further clues of an affair. When he asks her about her recreation, she reveals that she enjoys small pleasures, which happen to be Tristan's own hobbies, such as playing the harp and lyre.²⁶⁵ In spite of clear circumstantial evidence of an affair, Mark

262. "daz ich sô rehte unschuldic bin" [how altogether guiltless I am] 14807.

263. "daz ich von hinnen kêre" [I shall make my preparations to leave] 14819.

264. "der betrûret aber daz / und gieng im rehte an sînen lîp, / daz er den neven und daz wîp / ze arge haete bedâht" [(Mark) was deeply distressed for having suspected his wife and nephew of infamy] 14918-21.

265. "sô was aber mîn vîre / diu harpte und diu lîre" [to distract me the harp and the lyre] 14951-2.

claims that he is newly confident in his nephew. He attests to his innocence,²⁶⁶ abandons his suspicions (15030), and places Isolde in Tristan's charge (15035)! Gottfried's audience recognizes the irony of Tristan's new assignment, but perhaps more importantly, grasps the relative value of rational thought, which enables the lovers to deceive even close surveillance.

Generally speaking, Tristan and Isolde excel at navigating the complexities of courtly life, and they exhibit extraordinary skill at evaluating evidence, as in the cases of the dragon tongue and sword splinter. Moreover, they use their knowledge of evidentiary interpretation to conceal or miscast incriminating evidence, as in the cases of Marjodoc and Melot's surveillance. Taken in aggregate, the scenes of evidentiary analysis function as a model for using evidence as a basis for logical reasoning and hypothesis testing. Audiences learn through the various episodes that direct and circumstantial evidence form the building blocks of rational thought. Likewise, the poet establishes serious consequences for misinterpretation, an error which Tristan and Isolde rarely commit. It is therefore probable that Gottfried intended his audience not only to understand how evidence functions, but also to engage with his story critically and exercise individual faculties of (legal) judgement.

In his Christological reading of Gottfried's *Tristan*, H. B. Willson argues in favor of the jurisprudential modeling hypothesis, but argues that the poet stops shy of inviting his audience to pass their own moral judgements. He casts doubt upon the notion that

266. "wan ich hân sîne unschuldekeit / in kurzen zîten wol vernomen" [I will never again harbour thoughts that are injurious to his honor] 15008-9.

Gottfried intended his audiences to “invoke the law and pass judgement on his hero and heroine, as their fellows at court are so anxious to do,” noting that, “such rigidity of mind is inappropriate to the situation.” Willson posits that Gottfried creates an implicit juxtaposition between rigid and flexible systems of judgement. He suggests that Gottfried’s audience cannot form individual judgements of Tristan or Isolde due to two deficiencies of the human condition: original sin and the rigidity of earthly legal institutions, as opposed to the flexibility of divine judgement. Willson also states that “it is not possible for mere human beings to judge others fairly when they are themselves sinners.”²⁶⁷ I argue the opposite—Gottfried invites his audience to pass judgements in the same fashion as his characters, who navigate complex legal institutions and evaluate evidence on a case-by-case basis before resorting to God for *post hoc* validation of human assertions. One sticking point for this line of argument comes from Gottfried himself. At the conclusion of Isolde’s Trial by Fire, the poet describes that Christ is as “pliant as a windblown sleeve.”²⁶⁸ For Willson, this line serves as the linchpin for arguments that Christ is flexible enough to withhold punishment and offer mercy.²⁶⁹ But does Christ actually commute Isolde’s judicial sentence or show flexibility of judgement? It is useful to consider that Isolde, through a careful equivocation, tells the truth in her oral defense and that the ordeal correctly determines the validity of her statement. Consequently, divine judgement flawlessly interprets the truth value of Isolde’s soliloquy.

267. Willson, “The Old and the New Law,” 223.

268. “wintschaffen also ein ermel” 15736 as quoted in *Ibid.*, 212.

269. *Ibid.*, 221.

Furthermore, the Trial by Fire demonstrates that neither secular law nor divine judgement exhibits flexibility.

Even if one adopts the opposite view of Isolde's ordeal, and presumes that Christ's judgement is malleable and that secular law is not, there is not enough textual support of Gottfried discouraging his audience from practicing jurisprudence. Willson suggests that Christ's acquiescence during Isolde's testimony stems from Christianity's conceptualization of "love [as] the highest courtly law."²⁷⁰ He warrants this argument with evidence of a more tolerant treatment of adultery in the New Testament.²⁷¹ But the above conception of higher, or more valid, courts of law does nothing to discount the audience's ability to render moral judgements. The above reading creates even more ground for Gottfried's audience to interpret the legal discourse and paradigms presented in the poem as they see fit. In fact, for jurisprudential thought to advance, it must continually adapt to the particularities of circumstance. In other words, if Christ behaves as a weathervane does, then Christians can as well. Tristan's novel legal quandaries, such as the constellation of legal obligations and judicial conflicts he encounters, suggest that a flexible jurisprudence is a necessary prerequisite for any approximation of God's infallible judgement.

Strikingly, several episodes in Gottfried's poem establish articles of evidence as drivers of the plot and the hinge upon which all dialogue swings. The above chapter extrapolates from five discrete scenes in the poem a series of logical deductions and

270. *Ibid.*, 221.

271. *Ibid.*, 214.

inferences related to the discovery of direct and circumstantial evidence. Following these, the above study examines two schools of jurisprudence, the rational and deductive school of Tristan and Isolde, and the rash and illogical school of Mark, Marjodoc, and Melot. Moreover, the chapter argues in favor of the reading of Gottfried's poem as a casebook which models jurisprudential thought for the audience. In short, I argue that the poet, through positive and negative examples of judgement, advocates for a theory of justice and interpretation that is rational and evidence-based.

Conclusion

At the outset of the epilogue to this dissertation, it behooves the reader to revisit Gottfried's prologue (1-244), which has proven resistant to critique and interpretation. The fifth and eighth stanzas of the prologue are of particular relevance to the current study, as they begin with the most significant letters of the poem, "T" and "I," and address the question most vital to our investigation: what is the role of jurisprudence in the poem?

*Tiure unde wert ist mir der man,
der guot und übel betrahten kan,
der mich und iegelîchen man
nâch sînem werde erkennen kan. (17-20)*

[That man is dear and precious to me who can judge of good and bad and know me and all men at our true worth.]

*Ir ist sô vil, die des nu pflegent,
daz si daz guote z'übele wegent,
daz übel wider ze guote wegent:
die pflegent niht, si widerpflegent. (29-32)*

[There are so many today who are given to judging the good bad and the bad good. They act not to right but to cross purpose]

The "T" stanza indicates Gottfried's desire to frame his poem as a study of jurisprudence. He praises the individual who delivers his own estimation of true worth and can craft his own judgements. The "I" stanza problematizes the poet's status quo, explaining the common tendency to convolute matters of morality and justice. Taken together, the "T" and "I" stanzas communicate the poet's intention to ameliorate the patterns of poor judgement through his own model of Tristanian jurisprudence. Gottfried presents this

model through Tristan and Isolde, who act as positive models of jurisprudential thought. Their rationality and persistence reflect their desire to establish a theory of law that satisfies Gottfried's standard of one "who can judge of good and bad" and "know all men at (their) true worth." As a practical matter, modeling jurisprudence necessitates periodic testing of the legal institutions, and for this reason, audiences more frequently regard Tristan and Isolde as lawbreakers than lawmakers. The couple deviates from the rules of courtly life while at the same time modeling the behaviors congruent with their own jurisprudential framework. Gottfried permits Tristan to probe the institutions of inheritance, marriage, taxation, and judicial combat in order to provide his audience with contours of a yet-to-be-codified law.²⁷² The resulting story establishes Tristan's own extemporaneous, utilitarian system of legal ethics.

This dissertation defines the scope and quality of Tristanian jurisprudence through the explication of legal antiquities and juridical situations that appear in the episodes of Gottfried's *Tristan*.²⁷³ This study explicates the legal discourses present in judicial conflicts and evidentiary debates in order to formulate a new jurisprudential account of character behavior in the poem.

272. For this study, lawbreaking is mostly relativized to the legal system inherent to Gottfried's work, although Gottfried's legal paradigms occasionally resonate in later codes of Germanic customary law.

273. Isolde's ordeal is the exception to this rule, because the Trial by Fire has already received generous attention in the critical literature. See Combridge, *Das Recht im Tristan*; Pense, "Rechtsgeschichtliches."

The first chapter outlines the current state of research in the field of law in medieval German literature. To this end, the chapter reiterates Grimm's pioneering hypothesis concerning the equiprimordial nature of law and poetry. Then, it traces the genealogy of the (sometimes distinct, sometimes overlapping) threads of research on German medieval law and literature. The chapter identifies meaningful gaps and unanswered research questions in the field. On the one hand, this dissertation strives to demonstrate that Gottfried's *Tristan* satisfies Grimm's theory of a vernacular law-poetry comprising common paradigms of figurative language. On the other hand, the present study expands the investigation of legal topoi in the poem beyond Isolde's Trial by Fire, to which the majority of literary criticism has gravitated heretofore.

The second chapter delves into the Morgan episode to explain the web of legal considerations associated with geography and feudal power organization in the High Middle Ages. The episode serves us as a hermetic example of legalistic rhetoric serving in evidence's stead. The exegesis of the "Inheritance Dispute" between Tristan and Duke Morgan reveals how the novice knight masterfully leverages his eloquence to mask the circular logic of his assertions concerning his birthright and lordship, not to mention the grounds for his murderous revenge-seeking. Furthermore, the chapter explores how Tristan negotiates competing contractual obligations in a manner which satisfies both his stakeholders and his reputation.

The third chapter explicates the matter of judicial duels in the poem, considering them as examples of secular legal debate under the specter of a divine judge. In the first

order, the chapter returns briefly to the duel with Morgan, to explain its framework and implications for the story as a whole. However, the confrontation with Morold is the centerpiece of the chapter, which concerns itself primarily with the poet's recasting of Mark's court as Tristan's courtroom. The conflict between Tristan and Morold thematizes the interpretation of the tribute contract, establishes the role of God in judicial duels, and exemplifies the structure of and consequences for juridical combat. From the duel with Morold, the audience learns that battle renders its own verdict, which assigns guilt and innocence through death and survival, respectively.

The fourth chapter is a study of rational, evidence-based deduction; it examines the role of evidence as both a plot device and as fulcrum upon which individual interpretations pivot. The chapter addresses various types of direct and circumstantial evidence, such as witness testimony and material evidence, in three scenes (from *The Dragon's Tongue*, *The Sword and the Splinter*, and *The Flour on the Floor*). Finally, this chapter explores the actions of the "unholy alliance" of Mark, Marjodoc, and Melot, who surveil the lovers in vain. These figures function as counterexamples of jurisprudence for Gottfried's audience. By contrast, the poem invites its audience to emulate Tristan and Isolde, who enjoy repeated success in each juridical confrontation. In sum, Gottfried characterizes the lovers as paragons of his theory of justice and tasks them with educating his audience in the proper negotiation of legal institutions.

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