

## ENGLISH LAW AND THE OUTLAW: RESISTANCE AND CONTEMPT

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Poetry and stories, both today and in the Middle Ages, tend to be written by non-experts in law. What the reader sees, or listener hears, is an author's understanding of the law, not an actual summary of law or legal opinion. In this article, English legal cases from the long fourteenth century of trials, and the administrative records connected to those trials, are compared to the accounts given in the tales of Robin Hood, including accusations, trials, and convictions of treason and outlawry. These cases appear mostly at the courts of the king's bench or common pleas. The administration arm of the crown supported the actions of these courts. Administrative records included arrest warrants, search and seizure requests, and outcomes of trials often published in the patent ("public") records, copies of which were inscribed onto long rolls, now kept in the Public Record Office of The National Archive in Kew, England.<sup>1</sup> The original warrants or requests were sent to the appropriate places to be read out to the public so that everyone knew trial outcomes, that someone was to be arrested or that someone had been charged with outlawry. This comparison of real court proceedings to the treatment of Robin and other characters provides an additional window through which to view the meaning of the tales. Most of the time, the authors of the Robin Hood stories were quite astute in their portrayals of outlaws and interactions between the public and law enforcement officials, which indicates that ordinary people, including the audience as well as the authors, had a good understanding of law and legal procedure in later medieval England.

Not all medieval people hid when summoned to court in medieval England, but a few chose concealment or to abjure the country rather than face incarceration, trial, or possible punishment, much like the followers of Robin Hood in the tales.<sup>2</sup> There were two types of outlaws, civil and criminal. Generally, when an individual failed to present himself when summoned by a court or a judge, the court tried to contact him several times—once or twice if accused of a criminal act, and three times if he was wanted for a civil offence or as a witness. The court sent out writs for his appearance (writs of *capias*) and the sheriff to arrest him. If the sheriff failed to find the individual, he seized ("distrained") all the person's belongings (movable goods and property), or the court "sued out" another writ (writ of *exigent*) if he had no goods and chattels to distrain. With all this accomplished, the court continued to seek the missing person, now ordering the sheriff to check with the five closest other counties for the person and proclaim at those courts that the person was wanted. If the fugitive continued unfound, the court would, at long last, change his status to outlaw.<sup>3</sup> All this is to say that it was certainly not a quick process to outlawry. Women were not

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<sup>1</sup> There are a few still in the Chancery Lane archive or in other locations, but most are at the archive in Kew.

<sup>2</sup> Like many people in 2020-21, I had plans to finish this article while at The National Archives in Kew, yet because of the pandemic my chance to visit the archives did not happen. The work here was instead accomplished via online research of the printed calendars of the archival manuscripts and secondary materials.

<sup>3</sup> Naomi D. Hurnard, *The King's Pardon for Homicide Before AD 1307* (Oxford: Clarendon Press, 1969); Margaret Hastings, *The Court of Common Pleas in the Fifteenth Century: A Study of Legal Administration and Procedure*

“outlawed” per se; the courts assigned females a “waived” status but treated them just like outlaws. In the case of conspiracy, treason, rebellion, or homicide, the court might add the status of outlawry to the indictment. Outlawry was not a punishment in and of itself, but “an outlaw could not safely approach the king in person and plead for pardon, although he might surrender, if he dared, to prison and petition” the crown from there.<sup>4</sup> Nevertheless, many people did not want to face the court for several reasons, discussed below, and so remained under the cloud of the status of outlaw, sometimes for years—much as had Robin Hood and his followers in the poems.

Common reasons people gained the status of outlaw included failing to come to court to pay a fine, to clear a debt, to give testimony, to answer criminal charges, or for harboring someone a judge already named as an outlaw. Most individuals who remained outlaws for a long time were those terrified of the justice for a felony—hanging. If the courts cited a person as an outlaw and, later, he came forward and either paid any fines owed or turned himself into the authorities, the court or crown would annul or pardon his outlaw status and return him to being under common law.<sup>5</sup> The courts summoned not only the accused but also witnesses and others needed to give testimony. Anyone not showing for successive court summons could be charged as an outlaw. Some of those individuals labeled “outlaw” were harboring an outlaw. Even an individual’s spouse or other relative could be outlawed for assisting someone outside the law because harboring a known outlaw—feeding, sheltering, or giving any type of aid—was seen as protecting or aiding a potential criminal. As the following examples demonstrate, many people got out of this sort of charge by claiming they had no knowledge of the outlawed status of their visitor or relative when they offered aid.

In many tales of Robin Hood, he is called “an outlaw,” even a “proud outlaw.”<sup>6</sup> In *Robin Hood and the Monk*, Robin Hood is also called “the kynggis felone” (line 85), “þe false felon” (line 87), and a traitor: “The traytur name is Robyn Hode” (line 91).<sup>7</sup> Not all those with the status of “outlaw” were guilty of a crime, and the tales do not directly explain to their audiences why or how Robin became an outlaw in the first place. Yet, Robin and many of his followers are referred to as outlaws in several of the stories. Certainly, as an outlaw, the character of Robin is not above murder and often steals from the rich or tricks them out of their money, if they dare to enter Barnsdale, Inglewood, or Sherwood Forests, depending on the poem.<sup>8</sup> Like the character of Robin Hood, medieval English records show that people found to be “outside common law” fell into an interesting legal category in medieval England. For one thing, they could be tried *in absentia*; in other words, the common law privilege of the accused to stand before his or her accusers was

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(Hamden, CT: Cornell University Press, 1947); Robert C. Palmer, *The Country Courts of Medieval England, 1150-1350* (Princeton: Princeton University Press, 1982).

<sup>4</sup> Hurnard, 32.

<sup>5</sup> Hurnard, 32-33.

<sup>6</sup> Thomas H. Ohlgren and Lister M. Matheson, ed. *Early Rymes of Robyn Hood: An Edition of the Tests, ca. 1425 to ca. 1600*, Medieval and Renaissance Texts and Studies 428 (Tempe: Arizona Center for Medieval and Renaissance Studies, 2013), Wynkyn de Worde edition of *A Lytell Geste of Robyn Hode*, p. 94, line 5, see also in the same volume the Antwerp edition of *A Lytell Geste of Robyn Hode*, p. 197, lines 1-4. See also Stephen Knight and Thomas Ohlgren, ed. *Robin Hood and Other Outlaw Tales*, <https://d.lib.rochester.edu/teams/publication/knight-and-ohlgren-robin-hood-and-other-outlaw-tales>.

<sup>7</sup> Ohlgren and Matheson, 9: Cambridge, University Library MS. Ff.5.48, folio130r.

<sup>8</sup> Ohlgren and Matheson, xvii.

waved since the individual, now outlawed person, lost all privilege under common law when he became an outlaw. A trial, if needed, for those named as outlaws could continue without their presence.

Medieval people could have imagined all sorts of scenarios in which the course of justice either went awry or was perverted for Robin and his followers. Some of those situations could have included them having been called to appear while away, fighting for the crown. They might have been given only one chance to appear, one writ of *capias*. The nearest five counties might have announced but not clearly or just before a break and people missed the announcement. If they missed the call to attend the court or their outlawry was written into an arrest warrant and they were innocent but had no evidence to prove that fact, like others in medieval England, they went into hiding.<sup>9</sup>

## DEBT AND CONTEMPT

The most common cases of gaining the status of outlaw from the Court of Common Pleas were of those people not showing up to repay their debt and a court fee for the suit. These individuals sometimes did not show because it was harder to raise money to pay the debt once inside prison, and the court sent anyone to prison that did not have the money when they came to court. Moreover, these debtors remained in prison until the debt was paid. Many people, therefore, found it more logical to collect up the money before attending court, that way they might be charged with a fine, but they would not have to go to gaol or prison.<sup>10</sup> For example, on 11 June 1369, the crown pardoned Nicholas Starky of his outlawry in Lancastershire for non-appearance at the King's Bench. He owed someone a debt of 32 marks (about \$19,600 in 2022), which is quite a sum. Once he surrendered to the Fleet prison, his outlawry was pardoned, but not his debt or his sentence in prison.<sup>11</sup> Nicholas showed up without the money to pay, and yet he was still pardoned of the outlaw charge once he surrendered to Fleet and his identity was certified by the local justice. In a similar case of 6 July 1356, Michael Crendon also had his status changed to outlaw for non-appearance before the justices of the Bench. He was called to the King's Bench to answer for a debt of 10 marks. Once he surrendered to Fleet prison and his appearance was certified by the chief justice, Robert Thorpe, he was pardoned of the outlawry.<sup>12</sup> Both of these men would have to work from within prison to try and pay their debts, which might be impossible without family or friends to help from outside.

The tales of Robin Hood, while naming him an outlaw, do not say of which crime or crimes Robin might be guilty, but there are hints. *A Lytell Geste of Robyn Hode* begins with a description of Robin Hood:

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<sup>9</sup> Hurnard, 32-33.

<sup>10</sup> A medieval gaol was something between a modern jail and a prison. For more information see: Wendy J. Turner, "Mental Health and Homicide in Medieval English Trials," in "The Medieval Brain," ed. Deborah Thorpe, special issue, *Open Library of Humanities* 4, no. 2 (2018): 11f.

<sup>11</sup> *Calendar of Patent Rolls, Edward III*, 16 volumes (London: HMSO, 1891-1916), V. 14, 1367-70, p. 270. There are multiple outlaw cases that appear on this page. Hereafter *CPR Edward III*.

<sup>12</sup> *CPR Edward III*, v. 10, 1354-58, p. 411.

Lythe and listin gentilmen þat be offrebore  
 blode I shall you tel of a gode yeman his  
 name was Robyn hode Robyn was a proudeout  
 law as he was one neuer non founde ...<sup>13</sup>

[Hear and listen, gentlemen, that be of freeborn blood; I shall tell of a good yeoman, his name was Robin Hood. Robin was a proud outlaw, like him was never to be found].

Here Robin is identified as a courtly person, a yeoman, and an outlaw. In the *Robin Hood and the Monk* fragment in the British Library, *Bagford Ballads*, volume 1, article 6 (C.40), there are a few lines about Robin Hood breaking out of prison:

He sayd Robyn Hode had brokyn prison  
 And owygt off hit was gon”<sup>14</sup>

[He said Robin Hood had broken the prison and out of it was gone].

This passage, too, is a good hint. Robin seems quite knowledgeable about prisons. His friend, Little John, comes, kills the porter, “And sone he hym unbonde”<sup>15</sup> [and soon had him unbound]. Together they leap over the walls to freedom. Yet, while this could have the consequence of the court giving him and Little John the status of outlaw, this fragment, if taken as part of the longer copy of *Robin Hood and the Monk* demonstrates both how irresponsible it was for Robin to go to a church where he would be seen and how great his friends are at getting him out of trouble.

Not attending to a request to attend court on the right day and time was similar to what we call “contempt of court” today—an act of disobedience or disrespect toward a court of law and, indirectly, the crown. The court did not make a summons lightly and, like today, kept a tight schedule. Not showing up might lead the court to sentencing the non-conforming individual to outlawry until the summoned person presented himself at court and paid a fine or spent time in incarceration, which is what happens in contemporary courts. In the later tale of *Robin Hood and the Tinker*, the Tinker says,

“I had a warrant from the king,  
 Which might have done me good,  
 That is to take a bold outlaw,  
 Some call him Robin Hood”.<sup>16</sup>

The Tinker fails, of course, after an encounter with Robin Hood who confiscates the warrant. To hold a warrant of arrest in late medieval England, meant that the Tinker, had he been a real person, would have carried a commission from the crown. The warrant carried the indictment, which could

<sup>13</sup> Ohlgren and Matheson, 61, Antwerp edition of *A Lytell Geste of Robyn Hode*, p. 197, lines 1-4.

<sup>14</sup> Ohlgren and Matheson, p. 21, lines 1-2. See also: Stephen Knight and Thomas Ohlgren, ed., *Robin Hood and Other Outlaw Tales*, <https://d.lib.rochester.edu/teams/publication/knight-and-ohlgren-robin-hood-and-other-outlaw-tales>, *Robin Hood and the Monk*, lines 273-4.

<sup>15</sup> Ohlgren and Matheson, p. 21, line 10. See also: Knight and Ohlgren, *Robin Hood and the Monk*, line 282.

<sup>16</sup> Francis James Child, *English and Scottish Ballads*, vol. 5 (Boston: Little, Brown, and Co., 1859), online: <https://archive.org/details/englishandscott50chilgoog/page/234/mode/2up>; p. 234, lines 77-80.

have included the outlawry. Still, this too, provides no evidence of what Robin did to break the law or gain the status of outlaw.

In an historic example, Hugh Carles, a clerk, “was outlawed [in 1359] at the suit of the late king [Edward III] and Lewis [de] Cherleton in a plea of trespass and contempt” for failure to appear at court.<sup>17</sup> “Subsequently, Hugh was restored to common law” and his lands and titles returned to him once he attended the request of the court and the issue was resolved; this case was reviewed in the Post Mortem records for Hugh, who died in June of 1359.<sup>18</sup> Likely this meant that Hugh paid whatever he owed to Lewis and paid a fine to the crown for his no-show to court, and later, safely in prison, found his release and pardon secured. Hugh and others like him acted contemptuous of court and at large in defiance when they needed to be outside of prison to raise the funds necessary to pay their debts and the court fines, which they could not do or would find difficult to do once inside prison. This remained true until 1869 in England, when the Bankruptcy Act abolished debtors’ prisons.<sup>19</sup>

Debtors were not the only ones avoiding court. Occasionally other people missed the call the court and were outlawed for non-appearance. In one example of 1348, Robert Thresk was pardoned of his outlawry in Yorkshire. He had not appeared at the King’s Bench when summoned, but in this case, he was not the one owing money. This case was a suit in which Roger Blaykeston recovered against the prior of Durham. Robert Thresk had been called to testify; he was absent because he had not been in the country at the time of the trial and was still outside of the kingdom when the publication of his outlawry came out. Upon his return, the local authorities took him into custody, which must have been quite shocking when he had no idea the court wanted him or had outlawed him while he was abroad. Finally at court, he claimed that he was entirely ignorant of the proceedings against him.<sup>20</sup> Eventually the king granted him a pardon, but grumblings against him continued in the letters patent because he had not surrendered to the king’s prison as required under the statute of law which was the normal process before waiting for a pardon. The local sheriff or magistrate had, instead, questioned him and let him go home, where he awaited his sentence and received a royal pardon. Like the fictitious Sheriff of Nottingham, this sheriff might have had his favorites.

The knight that Robin meets in *A Lytell Gest of Robyn Hode* and helps, later identified as “Syr Rychard at the [L]ee,”<sup>21</sup> had borrowed money against his lands to save his son, who killed a Lancaster knight and squire while jousting.<sup>22</sup> Richard plans to abjure the country, “over the salty

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<sup>17</sup> *Calendar of Inquisitions Post Mortem and Other Analogous Documents* (London: HMSO, 1904-2009), vol. XV, no. 102. Hereafter *CIPM*.

<sup>18</sup> *CIPM*, vol. XV, no. 102.

<sup>19</sup> Stephen P. Walker, “The Genesis of Professional Organization in English Accountancy,” *Accounting, Organizations and Society* 29, no. 2 (2004): 127-156; C. W. Lovesy, *The Bankruptcy Act, 1869, The Debtors’ Act, 1869, and the Bankruptcy Repeal and Insolvent Court Act, 1869; Together with the General Rules for Regulating the Practice and Procedure [etc.]* (London: Knight and Co., 1870); and see The National Archives, “The Official Home of UK Legislation,” on “The Debtors Act 1869,” <https://www.legislation.gov.uk/ukpga/Vict/32-33/62>.

<sup>20</sup> *CPR Edward III*, v. 8, 1348-1350, p. 136.

<sup>21</sup> Ohlgren and Matheson, 129: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. D4r, line 1222.

<sup>22</sup> Ohlgren and Matheson, 99: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. A5r.

sea,” if he is unsuccessful in his attempt to ask for more time to repay the “rich abbot” of St. Mary’s:

“Hastely I wyll me buske sayd the knyght  
Ouer the salte see.”<sup>23</sup>

If he had not paid, the abbot would have taken possession of his properties or, if the knight refused to vacate his castle, sent the matter to court. In all cases, had they been real, this would have ended with the abbot taking the knight’s property, which would have voided his knighthood because he would then be unable to fulfill his obligations to his lord or the crown. At other points within the tales of Robin Hood, Robin and his friends are clearly wanted by the sheriff to answer for one charge or another, and because they refuse to attend the court to answer those charges, a judge would have outlawed them in time.

Two references from the poems offer possible clues to the reason for Robin’s outlawry. The first is in *Robin Hood and the Monk* where the charges seem to be highway robbery on the word of the “gret hedid Munke,”<sup>24</sup> who tells the sheriff that he’s spotted Robin, “þis traytur name is Robyn Hode,” who once robbed him of “C libri” (100 pounds).<sup>25</sup> The monk here might mean that Robin did him an injustice—he acted as a “traitor” to the church in attacking its representative or to the monk personally—much as Robin calls “treason” when the sheriff tries to arrest him after winning the silver arrow.<sup>26</sup> Robin refers to a personal affront, not treason against the crown. The monk, though, might also mean that Robin was guilty of being a traitor to the crown, in other words, guilty of political treason. In either case, this event—the stealing from the monk—took place prior to the tale and may be the inciting incident for the status of outlaw.

The status of outlawry could be given for an act of treason if the individual could not be found for trial. Treason against the crown was also not the same as the medieval “petit treason,” which was either murder of or the violation of the authority by a social superior, such as wives who killed their husbands or violated his authority in killing their children.<sup>27</sup> Other instances of “petit treason” or petty treason included a servant killing his master or mistress, a servant committing adultery with the master’s wife or daughter, and even a clergyman killing his prelate or bishop. Counterfeiting coins was also considered petty treason. Robin Hood could have been guilty of treason against the crown if he refused to lay down arms when the king or Robin’s lord commanded it, if he took up arms against the crown or the crown’s agents, or if he acted to subvert the crown, such as being a spy or selling weapons to the enemy—none of which seem likely from someone who says, “I loue no man in all the worlde / So well as I do my kynge.”<sup>28</sup> It is for this

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<sup>23</sup> Ohlgren and Matheson, 100: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p.A5r, 222-23.

<sup>24</sup> Ohlgren and Matheson, 9: *Robin Hood and the Monk*, Cambridge, University Library MS. Ff.5.48, folio 130r, line 75.

<sup>25</sup> Ohlgren and Matheson, 9: *Robin Hood and the Monk*, Cambridge, University Library MS. Ff.5.48, folio 130r, line 91.

<sup>26</sup> Ohlgren and Matheson, 128: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. D3r, lines 1167-8.

<sup>27</sup> The National Archives, “The Official Home of UK Legislation,” on “Treason Act 1351,” <https://www.legislation.gov.uk/aep/Edw3Stat5/25/2>. William Blackstone, *Commentaries on the Laws of England* (Dublin, Exshaw, Saunders, Williams & Hay, 1773); Maurice Keen, *The Outlaws of Medieval Legend*, rev. ed. (London: Routledge, 2001).

<sup>28</sup> Ohlgren and Matheson, 128: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. E3r, lines 1523-4.

reason that the more common charges that led to outlawry—contempt of court or a felony—are more likely in this case of fictitious Robin.<sup>29</sup>

## CIVIL CRIMES

Most people who ran or hid rather than face trial were suspected in one way or another of trespass—which could include lesser trespass, such as theft, or greater trespass, such as homicide. A few of these people, those individuals suspected of and likely guilty of minor trespass, would be identified today as guilty of “white-collar crimes.” Legally, medieval trials of theft are interesting because many of those cases do not appear at the King’s Bench unless also accompanied by violence, such as when a thief *breaks* into a house, or when cattle thieves also *accost* farm workers; in other words, it was not a felony to take something. The felony was to harm a person or property. In part this is because people “barrowed” from one another, so the “taking” was not always malicious. It is the trespass of house breaking or battery that would land someone before the King’s Bench and on trial for a felony. In cases of theft without brutality—someone steals a basket of fruit from the doorstep—if the victim knows who did the stealing, they can sue at court for the return of goods or an equivalent payment and that, too, might end up at the King’s Bench, but more often those cases went before the court of Common Pleas or a court of Oyer and Terminer.

An example of this type of civil crime was a charge brought against William Love of Petleyng. According to the letters patent, William trespassed against John, the prior of Ware, and his men and servants (although the records gave no particulars). William became outlawed “in the county of Leicester for non-appearance before Simon Pakeman and his fellow justices of oyer and terminer in the county.”<sup>30</sup> Once William turned himself in and his presence was certified by the justice, his outlawry was lifted, but he still had to face the charges of trespass and the Oyer and Terminer court sent him to face those charges at Chancery, where, most probably, he had to pay fines both to the prior and to Chancery for his trespass.

Individuals guilty of theft could come before the Court of Common Pleas or the King’s Bench. For example, the executors of the will of Richard Hakeneye summoned the “receiver of the testator,” Thomas Rokele of Norwich, to appear at the court of the King’s Bench, to answer for the receipt of Richard’s goods. A “receiver of the testator” was the individual who either took charge of the estate of a person after they have died and managed the distribution of the estate on behalf of the executor or worked with the executor on behalf of the heirs to an estate. When Thomas did not come before the King’s Bench, he became an outlaw.<sup>31</sup> The crown, as usual, sent the sheriff to impound the outlaw’s lands and goods, but for some reason the sheriff did not go. The king became “disturbed,” and did not want the outlaw to go “unpunished,” so he sent a commission to take Thomas to Fleet Prison from Norwich to stand trial for his possible theft.

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<sup>29</sup> Child, *English and Scottish Ballads*, vol. 5, online:

<https://archive.org/details/englishandscott50chilgoog/page/42/mode/1up>; p. xxii-xxiii, also points to this as a reason that Robin does not seem to be guilty of treason and the fact that the king is willing to have him as a yeoman.

<sup>30</sup> *CPR Edward III*, v. 10, 1354-58, p. 351.

<sup>31</sup> *CPR Edward III*, v. 7, 1345-48, p. 322-23.

The sheriff in the *Gest* breaks his oath to Robin Hood—to protect him and his men in exchange for this life, which was not binding since it was an oath under duress—and, angry after Robin Hood eludes capture at the archery contest, attacks the castle of Sir Richard at the Lee [Lea?], where the injured Little John is recuperating. The sheriff says that the Richard is a “traitor” for harboring Robin Hood and the others and tries to impound his castle and lands. Sir Richard sends the sheriff on his way because they have no business attacking his home until they know the king’s will. The king tells the sheriff to go home and wait. The sheriff, though, likely feeling a failure, instead goes after Sir Richard and “As he went on haukyng by the ryuer syde / And let his haukes flee / Toke he there this gentyll knyght”<sup>32</sup> [as he (Richard) went out hawking by the river side, and let his hawks fly, took he (the sheriff) this gentil knight], but the sheriff had no warrant for the knight, and Richard had not been properly outlawed by the court, even though outlaws had stayed in his home. In no way was this action of the sheriff legal.

In another case like that of Thomas Rokele’s, a “receiver of the testator,” who was also the parson of the church of Dunre in Oxfordshire, John Rede, was outlawed for not attending court to “render an account of the time when he was [... a] receiver.”<sup>33</sup> John was later pardoned of the outlawry when he “surrendered to Flete prison, as Robert Thorpe, chief justice, has certified.”<sup>34</sup> It seems that John had been the receiver for Thomas, the bishop of Rochester, and there were questions concerning John’s accounting. Bishops and monks in popular locations regularly oversaw great sums of cash, even crown funds, to support not just building efforts but also care of the poor, annuities of the retired, and other obligations to the community, such as hospital administration or a holy site for pilgrims.

Robin Hood accuses such men of not living humbly, but rather as if royalty, skimming from funds intended for the poor. “The monke hath .lii. / And seuen somers full strong / There rydeth no bysshop in this londe / So ryally I vnderstond”<sup>35</sup> [The monks have fifty-two (men) and seven packhorses as well. There rides no bishop in this land, so royally I understand]. This type of overt wealth or abuse by those in power might be what is behind another historic case. Edward Chyke of Warham, became outlawed in Wiltshire because he “did not appear before the justices of the Bench to answer John Beton of Salisbury in a plea that he render him an account of the time during which he was bailiff in Salisbury and his receiver.”<sup>36</sup> In this case, John seems to be the receiver on behalf of an heir. Once Edward surrendered to Flete prison and was certified, he was pardoned of his outlawry but would now stand before the court and account for what he did as bailiff and receiver. It seems that these receivers were being questioned as to their records of distribution but also stood accused of theft, proving the authors of the Robin Hood stories’ point of wealthy administrators—both those from the government and the Church—stealing from the poor.

## FELONY

<sup>32</sup> Ohlgren and Matheson, 132: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. D5v, lines 1307-09.

<sup>33</sup> *CPR Edward III*, v. 14, 1367-70, p. 270.

<sup>34</sup> *CPR Edward III*, v. 14, 1367-70, p. 270.

<sup>35</sup> Ohlgren and Matheson, 118-19: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. C3v, lines 845-48.

<sup>36</sup> *CPR Edward III*, v. 14, 1367-70, p. 109.



Without more evidence of an historic person or a tale of how Robin Hood came to be outlawed, his outlawry could be for any number of reasons, but high on the list would be debt (he is stealing from the rich to support those in need and there is not really an indication of when this started), trespass (poaching in the king's forests, which might have begun earlier), and felony (he is armed and could have injured or killed someone or failed to disarm when commanded by a lord or his king).

In the *Gest*, Robin is called a “yeoman,” a mid-fourteenth-century term that denotes a servant in a noble, or even royal, household, who is a freeborn commoner employed as a household guard or in other such service. The term “yeoman” also referred to individuals raised as part of a nobleman's army in times of war. Some of those individuals—such as archers—were specialists. In the tales, Robin proves himself good at many war-related skills, including archery (“Somtyme I was an archere good”<sup>37</sup>), swordsmanship (“But Robyn toke *out* a too hond sworde / Þat hangit down be his kne”<sup>38</sup>), and hand-to-hand combat (“And smote hym with his hande”<sup>39</sup>).

As a yeoman, Robin Hood has a minor position in society and might have been part of a lord's household. Yet, the tales describe a contentious relationship between Robin and the Sheriff of Nottingham. In “The fifth fytt” of *A Lytell Geste of Robyn Hode*, Robin engages in an archery contest. He shoots and the sheriff sees him win “All by the butt he stode” [as by the butt, or target, he stood]<sup>40</sup> and when the sheriff's representatives give him the prize—a silver and gold arrow—they identify Robin and begin to sound the alarm;

wo worth the treason sayd Robyn  
Full euyll thou art to knowe<sup>41</sup>

[woe to you, treason, said Robin, complete evil are you to know].

This relationship of Robin and the sheriff is one of the driving themes in many of the earliest tales. Yet, the sheriff's quest to arrest Robin is only because he is doing his job to capture an outlaw. Francis James Child suggests that Robin Hood's poaching of venison landed him with the sentence of outlaw but offers little proof.<sup>42</sup>

People concealed themselves rather than facing charges of felony because punishment was severe, often dismemberment, scarring, or death. Yet, the crown was much less apt to grant pardons for outlawry to those accused of violent felonies such as rape or homicide. Thomas Leycestre, for example, had his lands “taken into the king's hand” by the escheator “on account of the outlawry of the said Thomas in co. Southampton for the rape of Joan late the wife of Peterde Bruge.”<sup>43</sup>

<sup>37</sup> Ohlgren and Matheson, 145: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. E6v, line 1727.

<sup>38</sup> Ohlgren and Matheson, 10: *Robin Hood and the Monk*, Cambridge, University Library MS. Ff.5.48, folio 130v, lines 103-4.

<sup>39</sup> Ohlgren and Matheson, 8: *Robin Hood and the Monk*, folio 129v, line 56.

<sup>40</sup> Ohlgren and Matheson, 127: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. D3r, line 1138.

<sup>41</sup> Ohlgren and Matheson, 128: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. D3r, lines 1167-8.

<sup>42</sup> Child, pp. xx-xxi.

<sup>43</sup> *Calendar of Inquisitions Miscellaneous (Chancery), Henry III-Henry V*, 8 volumes (London: HMSO, 1916-2003), vol. 4 (years 1-12 Richard II), no. 313. Hereafter, *CIM*. The land was at issue here. It was given to Nicholas

Accused of rape, Thomas became an outlaw rather than go to trial and, at the same time, worked to get out of the felony charges. While like contemporary investigations collection of evidence was done carefully, it could include witness statements from enemies, rivals, and other biased parties. Individuals could fear a miscarriage of justice, which might be why Robin lives “[u]nder his trystell tre”<sup>44</sup> [under his meeting tree] in the forest.

Robin has rules that he and his followers and guests live by, including the treatment of women:

Robyn loued our dere lady  
 For doute of deadly synne  
 Wolde he neuer do company harme  
 That ony woman was ynne”<sup>45</sup>

[Robin loved Our Dear Lady, (and) for fear of deadly sin, he never would do company harm, that any woman was in].

Before the first Statute of Westminster in 1275, there had not been consensus on how to proceed legally against those guilty of rape; although, taking a virgin against her will had been felonious from at least 1230.<sup>46</sup> Having intercourse, forced or consensual, with non-virgins and “common” women, in the most general use of that term, was not against the law before 1275. Women under the protection of fathers or other male family members were less likely to be “up for grabs.” It was single women living on their own who were at the most risk from assault, but they were not alone, as the second Statute of Westminster in 1285 made clear by including protection for an “*espouse*” (married woman) among other women.<sup>47</sup> Yet Robin must have made his rule quite clear because the wife of Sir Richard visits Robin in the forest after the sheriff arrests her husband and protector.<sup>48</sup>

Criminals charged with rape could also be given the status of outlaw if they did not come to court. In a brutal case just outside of London,<sup>49</sup> Adam Matte was outlawed in part because he did

Seyntloo after Thomas and his wife used the property to pay the fine in the king’s court. Thomas died, but this record does not say if his death was in punishment for the crime. His wife “is since deceased” as well.

<sup>44</sup> Ohlgren and Matheson, 127: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. D2v, line 1121.

<sup>45</sup> Ohlgren and Matheson, 94: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. A2r, lines 36-39. See also: Larissa Tracy, “‘For Our dere Ladyes sake’: Bring the Outlaw in from the Forest—Robin Hood, Marian, and Normative National Identity,” *Explorations in Renaissance Culture* 38, nos. 1-2 (2012): 35-65; see 38-39.

<sup>46</sup> J. G. Bellamy, *Felony Before the Courts from Edward I to the Sixteenth Century* (Toronto: University of Toronto Press, 1998), 164, 166-7; Isabelle Mast, “Rape in John Gower’s *Confessio Amantis* and Other Related Works,” in *Young Medieval Women*, ed. Katherine J. Lewis, Noël James Menuge, and Kim M. Phillips (New York: St. Martin’s Press, 1999), 103-132, 126n6; and Zoë Eckman, “An Oppressive Silence: The Evolution of the Raped Woman in Medieval France and England,” *Historian: Journal of the Undergraduate History Department at NYU* 50 (2009): 68-77, accessed November 4, 2019, [medievalists.net/files/11020201.pdf](http://medievalists.net/files/11020201.pdf).

<sup>47</sup> *The Statutes: Revised Edition*, vol. 1 (Henry III to James II) (London: George Edward Eyre and William Spottiswoode, 1870), “Statute of Westminster,” (1285) chap. 34, p. 59.

<sup>48</sup> Ohlgren and Matheson, p. 132-33, Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. D5v-D6r, lines 1317-38.

<sup>49</sup> Wendy J. Turner, “The Leper and the Prostitute: Forensic Examination of Rape in Medieval England,” in *Trauma in Medieval Society*, ed. Wendy J. Turner and Christina Lee, *Explorations in Medieval Culture* 7 (Leiden: Brill, 2018), 122-147.

Wendy Turner, “English Law and the Outlaw: Resistance and Contempt.” *The Bulletin of the International Association for Robin Hood Studies* 4 (2022): 1-18. DOI: 10.33043/BIARHS.4.1.1-18.

not show up to court when accused of the crimes of rape and homicide, but also because the woman that aided and abetted him could not be tried until he, the principal, was either found guilty or outlawed by the court. A year later, after all the proper writs were sent out to arrest Matte, Matilda Whetewell was made “to respond to our lord the king concerning her assenting, aiding and abetting of the [principle] felon,”<sup>50</sup> Adam Matte. She was later hanged for her part in the murder of a woman named Margaret. Matte, the outlawed rapist, was never found, but as in a few of the examples above, he was tried *in absentia*.

In cases of homicide, a greater percentage of those accused “disappeared,” hoping to avoid certain death. In resisting arrest, Robin makes more trouble for himself—“And xij he slew þat day”<sup>51</sup>—which alone would not have landed him outside the law, but his running away might have. Because the sheriff had Robin in custody and he cannot run, he would have been charged with the deaths but not outlawed since he had been arrested under the law. Those deaths would have led to Robin’s trial and execution by the sheriff, quite legally. The monk, though, calls him “the king’s felon” before any of this happened in the fictional tale, which, considering his armed response, could mean that Robin had a felony over his head of bodily harm or homicide already. It could also mean that Robin suspected that the sheriff would kill him the first chance he got, legally or not. After Robin’s attempt to escape the sheriff and his killing of 12 people in the process, he would have been held on charges of homicide on top of whatever his earlier crime had been on his writ of indictment, which could have also carried with it the status of outlaw.

In 1378, William Huntyngdon was outlawed for felony and died before anything could be resolved. His case never came to trial. His wife tried to get the court to release some of their property, the portion that had come from her family.<sup>52</sup> Because William had died in a state of outlawry, he was no longer under common law and his property had been confiscated by the crown. Huntyngdon’s lawyer argued that even though they were married, a wife was not subject to her husband’s outlaw status. She was still under common law and ought to be permitted the inheritance of her dower lands. The court argued the opposite, potentially leaving her a pauper widow, someone the character of Robin would have assisted.<sup>53</sup>

Other people accused of homicide and outlawed when they did not show at court, turned themselves in to the court or sheriff; buying a little time for their families to make arrangements, including shifting or selling movable property before the trial and the crown took it into custody. Others, like Matte, disappeared and were never found. In another example, John Gyst was “indicted and outlawed for homicide.”<sup>54</sup> The crown confiscated his lands as part of his being outlawed, just as it had with Thomas Leycestere. John Gyst may have been trying to avoid hanging for the homicide, and his running was both an act of resistance and of self-preservation. Yet, many of these individuals ended up committing more crimes since the crown had taken their property,

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<sup>50</sup> The National Archives, Kew (London), UK, King’s Bench manuscript KB 27/499, mem 22; this was Hillary 1386. See also: *Select Cases in the Court of King’s Bench Under Richard II, Henry IV and Henry V*, ed. G. O.Sayles, Selden Society 7 (London: Bernard Quaritch, 1971), no. 23 (pp. 45-6).

<sup>51</sup> Ohlgren and Matheson, 10: *Robin Hood and the Monk*, Cambridge, University Library MS. Ff.5.48, folio 130v, line 110.

<sup>52</sup> *CIPM*, vol. XV, no. 115-16.

<sup>53</sup> I have yet to find a resolution to this case.

<sup>54</sup> *CIM*, vol. 4, no. 201.

which would only be returned if the person was found innocent. Like Robin Hood's many "fyttes," these people could have eked out an existence from what they could beg or steal until they died or had enough to pay their fines to the court, settle their debts, or clear other charges that would return their status to being under common law. If there was doubt that they might have the charges against them cleared, some remained hidden or became serial bandits, moving away from their support network (to keep them from being implicated) and living off what they could steal.

In an odd case, Henry Lokere was accused of and outlawed for the death of John Coupeland. The crown confiscated his property "until such time" as he presented himself to court, and they reached a verdict. Just as when Little John is injured by an arrow to his knee and Robin and his followers move in with Sir Richard, Henry Lokere moved in with his ward and nephew, David Lokere. When the nephew died, though, Henry continued to live in David's house. The escheator kicked him off the estate because he was an outlaw, and "it was alleged that the said Henry the uncle was an adherent of the Scots and rode with them into England."<sup>55</sup> Henry claimed otherwise and said that he had "been ousted without due process" and wanted restitution, which is much like the sheriff arresting the "gentle knight," Sir Richard. In Lokere's case, though, the sheriff and court knew where Henry was and yet not until the escheator arrived did anyone try to do more than send messages about where he was—in other words, no one arrested him. Curiously, even as an outlaw, Henry felt his resistance justified and his inheritance of his nephew's lands to be intact; although, the law said that one could not inherit while outlawed. Henry also wanted redress at court;<sup>56</sup> he acted the injured party and maybe he was. Perhaps this man was much like the Robin Hood in the stories, feeling he was unjustly made an outlaw or that the court had not properly outlawed him.

There were individuals, who, once outlawed and now pardoned after turning themselves in, were found innocent or pardoned of the crime of homicide. For example, the crown pardoned John Maupas of Westbradenham of his outlawry and all charges concerning the death of Ralph Adamof Neketon.<sup>57</sup> Likewise, the crown pardoned William Monketon, clerk, for the "death of Nicholas Waleys, whereof he is indicted or appealed, and of any consequent outlawry."<sup>58</sup> The reason Monketon was pardoned, which was not provided in all cases, was that by testimony of the king's yeoman it was found that William Monketon killed Nicholas in self-defense.<sup>59</sup> Robin, too, was pardoned and given a position of trust by the king:

I aske mercy my lorde the kyng  
 And for my men I craue  
 Yes for god than sayd our kyng  
 And therto sent I me  
 With that thou leue the grene wode  
 And all thy company  
 And come homesyr to my courte

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<sup>55</sup> *CIPM*, vol. XV, no. 248.

<sup>56</sup> *CIPM*, vol. XV, no. 248.

<sup>57</sup> *CPR Edward III*, v. 8, 1348-50, p. 136.

<sup>58</sup> *CPR Edward III*, v. 10, 1354-58, p. 351.

<sup>59</sup> *CPR Edward III*, v. 10, 1354-58, p. 351.

And there dwell with me<sup>60</sup>

[“I ask mercy, my lord the king, and for my men I crave.” “Yes, for God,” then said our king, “and to that I agree, with that (agreement) you leave the greenwood with all your company and come home, sir, to my court and there live (in service is implied) with me.”]

Robin does as the king asks and leaves the wood to work for him for 15 months but is never quite comfortable there. Eventually, he says that “Sorowe wyll me sloo”<sup>61</sup> [sorrow will me slay] if he does not leave. This time, instead of becoming an outlaw, he gets the king's permission to go.

The final example of felony involves a Robin-Hood-type figure who sounds rather more villainous than Robin. Richard Deer was described as “vagabond” and conceivably was the “Friar Tuck” character of Middlesex. The crown sent a commission of two of the king's sergeants-at-arms:

to arrest and bring to the Marshalsea prison Richard Dear, chaplain, outlawed in the county of Middlesex for non-appearance before the king to answer touching divers felonies of which he was indicted; the king being now informed that he refuses to stand his trial and is vagabond in divers parts of the realm, without punishment, doing great damage, a pernicious example to other such malefactors.<sup>62</sup>

The commission sent to arrest Richard Dear in 1367 was to take him to Marshalsea prison, but he continued to steal and harass the local area. The later records say that he “refuses to stand to right” and that he “lurks and is vagrant,” and he perpetrates “much damage.”<sup>63</sup>

## HARBORING OUTLAWS

Robin Hood has friends and supporters who have not been outlawed and do not live in the forests with him, such as Sir “Rycharde at the le” and his wife.<sup>64</sup> Those who have joined him in the wood—Little John, William Scarlett, Much the Miller's son, and the others—are called outlaws likely for association with Robin Hood or for their own crimes.

When a court changed an individual's status to that of outlaw, their lands and goods were seized by the court, and, as mentioned in connection with the case of Henry Lokere, an individual also would be barred from inheriting. Anyone assisting them would also become an outlaw. When Hugh Fitz Johan Routhmel and Matilda Routhmel took Elias Knaresburgh—the bailiff of the wapentake of Stanliffin Yorkshire and an outlaw—into their home, they, too, were later named as outlaws by the court. Months later in 1344, they were granted a royal pardon of “any consequent outlawry and waiver” for their assistance of Elias,<sup>65</sup> while the search for Elias continued. In another

<sup>60</sup> Ohlgren and Matheson, 142: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. E5r, lines 1633-40.

<sup>61</sup> Ohlgren and Matheson, 145: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. E6v, line 1734.

<sup>62</sup> *CPR Edward III*, v. 13, 1364-67, p. 449.

<sup>63</sup> *CPR Edward III*, v. 14, 1367-70, p. 66.

<sup>64</sup> Sir Richard at the Le, Lee or Lea is spelled variously throughout the poems. This occurrence is at Ohlgren and Matheson, 141: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. E5r, line 1621.

<sup>65</sup> *CPR Edward III*, v. 6, 1343-45, p. 320.

instance, Maud de Blaggereve gave shelter to John Kyrkeby, a felon and outlaw in Warwickshire. She was indicted and later pardoned for aiding this outlaw.<sup>66</sup> In the letter patent John was labeled both an outlaw and felon, which meant that he had either taken off on the way to prison after a jury found him guilty, or he was tried *in absentia*.

Earlier in the story of *A Lytell Gest*, Robin and his friends aid Sir Richard, and later Richard pays them back and returns them many favors. He and his wife aid Robin and shelter him while the injured Little John is in recovery. For much of *A Lytell Gest*, the relationship of Richard and his wife to Robin Hood is kept quite secret—even the poet calls Richard the “gentle knight” rather than give him a name because the consequences for Richard and his wife would be great. In the story of *Robin Hood and the Monk*, Little John and Much stay with Much’s uncle and hide in waiting for the monk who named Robin Hood a felon.<sup>67</sup> The interesting part of this story is that while this might appear as though Much’s uncle is harboring outlaws, at no time to this point in the poem are they called outlaws—and only Robin is called a thief and felon.

### SOME CONCLUSIONS

There were several criminal offenses that led to a person becoming outlawed under medieval English law. First, under civil law, not presenting oneself at court when called—essentially contempt of court—was one such route to a judge altering a person’s status to that of outlaw. Individuals could have their outlaw status waved if ill at the time of a court appearance. People were called to court for a variety of reasons, including paying fines, clearing debts of all kinds, giving testimony, or bearing witness to a crime. Another way to earn outlawry was for a guilty person to not show up for sentencing by the court or for a stay in gaol. Second, if a felon, the status of outlaw could be written into the arrest warrant or into the indictment. Third, when an individual harbored a known outlaw, they, too, could be named an outlaw by the court; it was almost aiding and abetting.<sup>68</sup> If someone harbored a friend or relative and did not know they were outlawed, they were often only given a warning or pardoned of their outlawry later. Finally, the crime of treason was quite rare, but it included persons guilty of failing to obey a direct order from the king, his representative, or the individual’s lord; other than the king, someone else’s lord could not give a direct order to the employee or vassal of another lord. Those four actions—contempt of court, felony charges, harboring a known outlaw, and treason—could lead to a court revoking the privilege of being under the law.

Outlawry in England, then, spanned the legal gamut from civil offences and neglect of a summons to felony. The case of Robin Hood is interesting for a couple of reasons. The tales, if taken separately, seem to point in different directions as to the outlaw status of Robin and his friends. Most of the tales and fragments thereof agree that Robin is a yeoman and as such most likely trained in the art of war. The poems of *Robin Hood and the Monk* have the strongest implications in terms of a reason for Robin’s outlawed status in that the monk names him as thief

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<sup>66</sup> *CPR Edward III*, v. 14, 1367-70, p. 270.

<sup>67</sup> Ohlgren and Matheson, 11: *Robin Hood and the Monk*, Cambridge, University Library MS. Ff.5.48, folio 131v, line 149.

<sup>68</sup> Turner, “The Leper and the Prostitute,” 144-46.

and traitor, both actions which reportedly happened before the start of the extant stories. If this matter was taken to court—and readers had no reason to believe they had not—the monk would have sued for the return of his stolen money and, after the requisite calls to come to court, a judge would have either outlawed Robin Hood on the indictment or separately following a warrant for his arrest. Later in that same story, Robin breaks out of jail and his friend, Little John, kills the porter. Here they certainly act much like the wanted criminal and outlaw Richard Dear (1367), who refused “to stand to right” and “lurks and is vagrant.”<sup>69</sup> In other stories, such as *A Lytell Geste of Robyn Hode*, while the writer(s) agrees that Robin was a yeoman, there is no indication as to how or why he was outlawed. Yet, the king pardons Robin’s outlaw status once he meets and establishes, not that Robin is innocent, but that he is of good enough character and faith to assist the king. In these other stories, including *Robin Hood and the Potter*, while readers know that Robin and his followers are outlaws, the emphasis is on how poorly they are treated by the abbot and sheriff and other authorities, as if they deserved another chance or to have their legal status revisited. What still rings through and makes the poems compelling is the human qualities of Robin and the others; they want to do what is right, even if the legal structure says that they are bad.

In both history and the stories is the common factor of “contempt” or non-appearance at court. Those individuals outlawed for a felony could be seized and taken to prison without warning in later medieval England, which was better than in the early Middle Ages when they, at times, were killed without trial.<sup>70</sup> In the long fourteenth century, innocent people became frightened if caught up in events surrounding the accidental deaths of others. While the later laws were better, arguably popular, many individuals became concerned they would be wrongly charged as a felon, especially in cases involving the death of another party, and fled the scene, becoming outlaws even though they were not guilty.<sup>71</sup> Much like the stories of Robin Hood, the sheriff or other royal official was only as good as the human holding the office. Some individuals might not trust their local sheriff.<sup>72</sup> A few did not want their entire family destitute because of an outlaw charge and either fought back from outside the system or turned themselves in, fighting the charges from within prison. Occasionally, someone abjured the country. Others simply put off going to court because they needed to take care of personal matters, which might include finding a good lawyer or raising funds to pay their court costs. Some individuals the sheriff caught immediately. If on the run, some died before their trial. In all cases, outlawry meant that the individual was in some way, in our modern terminology, in “contempt of court,” and that as an outlaw they would have all liberties under common law stripped and their lands and goods confiscated by the crown. Robin

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<sup>69</sup> *CPR Edward III*, v. 14, 1367-70, p. 66.

<sup>70</sup> Patrick Wormald, *The Making of English Law: King Alfred to the Twelfth Century, Vol. 1, Legislation and its Limits* (Oxford: Blackwell, 2001), 324-25.

<sup>71</sup> Hurnard, vii. Hurnard points to a case of two men sitting on a bench, that collapses. One man’s knife slipped in the fall and killed the other person. He fled the scene and was outlawed by the justices in eyre in 1272. This was a complete accident and likely the court would have held him until trial and, when the jury found him innocent, let him go. Hurnard never found a pardon for this man.

<sup>72</sup> W. R. Jones, “Keeping the Peace: English Society, Local Government and the Commissions of 1341–4,” *The American Journal of Legal History* 18, no. 4 (1974): 307–20, see p. 318; and Christine Chism, “Robin Hood: Thinking Globally, Acting Locally in the Fifteenth-Century Ballads,” in *The Letter of the Law: Legal Practice and Literary Production in Medieval England*, ed. Emily Steiner and Candace Barrington (Cornell: Cornell University Press, 2002), 12-39, 14-15.

Hood could have been any one or all of these people; the iconic character stood for the fear everyone kept in the back of their minds, which might be why the outlaw Robin did so much good. It made him the “every man,” an ordinary person caught in a justice nightmare and making the best of his story.

For he was a good out lawe  
And dyde pore men moch god.<sup>73</sup>

[For he was a good outlaw and did poor men much good.]

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<sup>73</sup> Ohlgren and Matheson, 147: Wynkyn de Worde edition of *A Lytell Gest of Robyn Hode*, p. E8r, lines 1805-06.

Wendy Turner, “English Law and the Outlaw: Resistance and Contempt.” *The Bulletin of the International Association for Robin Hood Studies* 4 (2022): 1-18. DOI: 10.33043/BIARHS.4.1.1-18.



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