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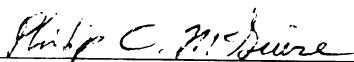
"IN DANGER FOR THE BREACH OF LAW": TRIAL SCENES
IN SHAKESPEARE'S 2 HENRY VI, THE MERCHANT OF VENICE
AND MEASURE FOR MEASURE

presented by

Craig A. Bernthal

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**"IN DANGER FOR THE BREACH OF LAW": TRIAL SCENES IN SHAKESPEARE'S
2 HENRY VI, THE MERCHANT OF VENICE AND MEASURE FOR MEASURE**

By

Craig A. Bernthal

A DISSERTATION

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ABSTRACT

"IN DANGER FOR THE BREACH OF LAW": TRIAL SCENES IN SHAKESPEARE'S 2 HENRY VI, THE MERCHANT OF VENICE, AND MEASURE FOR MEASURE

By

Craig A. Bernthal

This examination of trial scenes in 2 Henry VI, The Merchant of Venice and Measure for Measure takes as its fundamental theoretical assumption Levi-Strauss's proposition that all cultural artifacts are to be read as symbolic resolutions of political and social contradictions. I take "contradiction" to mean a seemingly irresolvable opposition of principles within a particular ideology. Thus, in the Thump v. Horner trial of 2 Henry VI (I. iii and II. iii.) loyalty to the king and loyalty to the family, two fundamental principles in the Tudor ideology of obedience, are brought into conflict. In the trial scenes of the Cade rebellion, Cade's ideology of rebellion is composed of the opposing elements of egalitarianism and hierarchy, democracy and tyrannical monarchy; also in these scenes, the aristocratic ideology of class distinction as well as the rebels' ideology of egalitarianism is undermined by everyone's desire to occupy a higher class position.

The abstract principles which clash throughout 2 Henry VI, The Merchant of Venice and Measure for Measure -- Old Law v. New Law, Justice v. Mercy, Equity v. Law, Natural Law v. Positive Law, The Rule of Law v. The Arbitrary Use of Power, Due Process v. No Process -- are set forth in the forensic oratory of characters who come close to embodying a particular principle or position. By resolving or failing to resolve the clash of principles

within an ideology, or of competing ideologies and power groups, trials in these plays function as critical generators of order or disorder in the body politic and of comic closure or tragic reversal in drama. Trial is always a major political event which operates either to undermine or preserve the social order. In 2 Henry VI, resolution of contending forces is not achieved, and the disintegration of the trial process parallels the political disintegration of Henry's kingdom. Though in the two comedies, The Merchant of Venice and Measure for Measure, a resolution of the forces which threaten society is arguably achieved, it is a tentative and imperfect resolution which blurs generic distinctions between the way trial scenes are used in comedies and histories. Despite Shakespeare's shrewd appreciation of the law's shortcomings, trial emerges in these plays as perhaps the fundamental political activity for balancing forces which threaten to tear society apart.

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To the memory of Dr. Donald Herbert Bernthal, 1923-1983

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TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER 1 Political Disintegration and the Trial Scenes of <u>2 Henry VI</u>	31
CHAPTER 2 Contexts of Play and Earnest: The Interpretation of Shylock's Bond	135
CHAPTER 3 Staging Justice: The Trial Scenes of <u>Measure for Measure</u>	170
NOTES	247
LIST OF WORKS CONSULTED	287

INTRODUCTION

In Shakespeare's day, good government was equated with fair adjudication, and the judicial system was the felt embodiment of official authority. Though parliament might legislate and the monarch decree, for most Englishmen, contact with the law came through the courts and court officers: judges, JPs, constables and coroners. In The Boke Called the Governour, Thomas Elyot describes judges and magistrates as the "members" of the body politic, necessary because the king, "one mortall man," cannot "haue knowledge of all thynges done in a realme or large dominion, and at one tyme, discusse all controuersies, refourme all transgressions, and exploite al consultations."¹ The judges who rode the six circuits of England, and the justices of the peace were the nerve net of the body politic; they not only transmitted and enforced the laws and decrees of the central government, but also reported to King and Counsel the people's response to the law.

In 1565 Sir Thomas Smith also used the metaphor of the "body politic" to describe the King's relationship to the judicial system. In De Republica Anglorum, he explained, "To be short, the prince is the life, the head and the authority of all things that be done in the realm of England,"² adding "this head doth distribute his authority and power to the rest of the members for the government of his realme, and the commonwealth of the politique bodie of England. . . . in choosing and election of the chiefe officers and magistrates and . . . in the administration of justice."³

Another metaphor sometimes used in describing the prince's involvement with the judicial system was that of the king as a fountain.⁴ In 1642, William Hughes, in The Diversity of Courts and Their Jurisdictions, stated "the king is the fountain of justice."⁵ The metaphor was more generally applied to the process of judicial lawmaking in Bacon's 1612 essay "Of Judicature," where he uses it to describe the continuing effect of bad judicial decisions: "One foul sentence doth more hurt than many foul examples; for these do but corrupt the stream, the other corrupteth the fountain."⁶ Ironically, in the 1621 proceeding in Parliament to impeach Lord Chancellor Bacon, Sir Robert Phelps, reporting from "the Committee of the abuses in the Courts of Justice," turned the same metaphor against Bacon:

It's a cause of great weight. It concerns every man here. For if the fountains be muddy, what will the streams be. If the great dispenser of the king's conscience be corrupt, who can have any courage to plead before him.⁷

The fiction implicit in Phelps' rhetorical questions is that the closer one gets to the king, the purer the waters of justice. If the fountains be muddy, what will the streams be? Bacon emphasized the purity of royal justice in a 1617 speech to the judges and justices of the peace of England, in which he notes that "itinerant" justices, i.e., the assize judges who toured each circuit twice a year, were more likely to be disinterested and free from local prejudice than justices of the peace, who resided where they held court:

... the six circuits of England are like the four rivers in Paradise, they go to water the whole kingdom, and pass through the whole land to the distributing of justice for a man's life, his goods and his freehold, and do justice from the greatest to the groom: ... where justice is local and not itinerant, there judges

are subject to be affected and infected with the conditions and humours of the country where they are; but Justices itinerant in their circuits, they preserve the laws pure, and are not led by affections. . . this manner of Justices itinerants carrieth with it the majesty of the King to the people and the love of the people to the King; for the Judges in their circuits are sent a latere Regis to feel the pulse of the subject and to cure his disease.⁸

Though the King was the fountain from which the judges, as vessels, distributed justice throughout the body politic, God was the source of the fountain. In his Archeion, William Lambarde flatly states: "It is the Office of the King to deliver Justice." ⁹ and at the end of the book he explains from whom the delivery is being made:

Now therefore, as God is highly to be thanked, that these Flowers of Justice are thus delivered forth, and Dispersed abroad: So is hee also heartily to bee prayed unto, that those which occupie the place of Justice by them, may so behave themselves as it may appeare, that they doe not exercise the Judgments of man, but of God himselfe, the chiefe Justice of the World for so shall the good be succoured, and the evill suppressed, so shall the Judges themselves be well acquitted, so shall her Majestie be duly served, and God himselfe honoured aright.¹⁰

Thus, the administration and enforcement of law was embedded in a politico-theological framework in which trials and verdicts, in the most mundane of cases, had national and cosmological significance. Poor kingship could lead to unfair adjudication and unfair adjudication could undermine the king. Likewise, corruption in the judicial system, for whatever reason, could arouse the wrath of God, whose displeasure might then be visited on the kingdom in rebellion and anarchy. Trials, therefore, did not merely decide the fate of individual criminal defendants or settle the claims of civil

litigants, but provided microcosmic readings of the kingdom's health and its conformance to cosmic patterns of order.

The fairness with which a trial was conducted indicated as much about the health of the body politic as the result. The ethical foundation of trial rested on principles of due process and the "rule of law," the conviction that judicial proceedings would be conducted by a set of rules, known beforehand, which bound all participants. In his History of the World, Raleigh distinguished monarchy from tyranny solely on the basis of the manner in which judges administered the law:

The most ancient, most generall, and most approved [form of government] was the Government of one, ruling by just Lawes, called Monarchy; to which Tyranny is opposed, being also a sole and absolute Rule, exercised according to the will of the Commander, without respect or observation of the Lawes of God or Men. For a lawful Prince or Magistrate (saith Aristotle) is the Keeper of Right and Equity; and of this condition ought every magistrate to be, according to the rule of God's word. Judges and Officers shalt thou make thee in thy cities and these shall judge.¹¹

The recent work of social historians such as J. A. Sharpe, John Brewer, John Styles, J. S. Cockburn, John Stevenson, Anthony Fletcher, and E. P. Thompson¹² shows that the ideal of justice and the rule of law described by Bacon, Raleigh, Lambard and Elyot was not just the possession of an educated elite, but was widely held, and that it was the people's contact with the judicial system which helped to spread the ideal. Fletcher and Stevenson state that "By 1600, even more certainly by 1700, the idea of a rule of law was central to men's understanding of what gave the English political system its distinctiveness."¹³ Brewer and Styles elaborate:

It was in the courtroom or, at least, in the presence of the justice of the peace and his clerk, that men were most aware of the powers that were wielded over them. Good governance was equated with justice, and the fair dispensation of the law with good government: in this sense 'the rule of law' was no empty phrase.

Indeed, the notion of 'the rule of law' was central to seventeenth and eighteenth-century Englishmen's understanding of what was both special and laudable about their political system. It was a shibboleth of English politics that English law was the birthright of every citizen who, unlike many of his European counterparts, was subject not to the whim of a capricious individual but to a set of prescriptions that bound all members of the polity. Such a characterization of the English 'rule of law' will not, of course, pass muster as an accurate description of the modus operandi of the legal process, but it did serve as an idealization, a potent 'fiction', to use Edmund Morgan's term, which commanded widespread assent from both patricians and plebeians.¹⁴

That this "potent fiction" operated in England before 1600 is evident from the writers whom I have already quoted. The list could be extended. The ideals of the rule of law, due process, trial by jury and habeas corpus were developed during the Middle Ages in the three centuries following the signing of Magna Carta in 1215;¹⁵ they occur as populist ideals in the written grievances submitted by Jack Cade and his followers to Henry VI,¹⁶ and are affirmed throughout the Tudor chronicles of Camden, Stow, Hall and Holinshed.¹⁷ The formulation of the ideal -- and its frequent lack of fulfillment -- is one of Shakespeare's major subjects from the very beginning of his career, occurring implicitly in the story of Egeon in The Comedy of Errors, and as a central theme in Shakespeare's first tetralogy of history plays. From the Comedy of Errors to Henry VIII, Shakespeare presents

thirty-five trial scenes -- and several other scenes in which lack of trial is of central significance. For Shakespeare the fairness of an accused's trial -- or the failure to even give the accused a trial -- becomes one of the major diagnostic tests in assessing the health of the body politic; and the trial scene, as dramaturgic device, puts the pulse of the body politic before the audience.

Although I will be focusing mainly on the scenes in Shakespeare's plays where a trial actually occurs, the ideal of fair trial and the rule of law is often most pointedly illustrated in scenes where trials are prevented. In Richard III, Clarence, imprisoned and awaiting his treason trial, confronts the two men that his brother Richard has sent to murder him. Clarence's address to the two murderers is perhaps the most powerful speech by any of Shakespeare's characters on the political, moral and theological significance of trial to the Elizabethans:

Are you drawn forth among a world of men
 To slay the innocent? What is my offense?
 Where is the evidence that doth accuse me?
 What lawful quest have given their verdict up
 Unto the frowning judge? or who pronounced
 The bitter sentence of poor Clarence' death
 Before I be convict by course of law?
 To threaten me with death is most unlawful. . . .
 Erroneous vassals! the great King of Kings
 Hath in the table of his law commanded
 That thou shalt do no murder. Will you then
 Spurn at his edict and fulfill a man's?
 Take heed; for he holds vengeance in his hand
 To hurl upon their heads that break his law.
 (I. iv. 176-82; 190-5)

When the murderers reply that Clarence himself is guilty of murder

and treason for the slaying of Prince Edward, the son of Henry VI, Clarence acknowledges his "ill deed," and mistakenly believing that his brother, King Edward, has sent the murderers, argues that the Yorkist King is as guilty of Lancaster blood as he. There is no need for the murderers to avenge the death of Prince Edward by murdering Clarence, for if God seeks vengeance, it will occur through a kind of heavenly "due process":

If God will be avenged for the deed
O, know you yet he doth it publicly!
Take not the quarrel from his pow'rful arm.
He needs no indirect or lawless course
To cut off those that have offended him. (I. iv. 210-14)

The official Tudor line was that even tyrannous proceedings, though sinful, were a tool of God for the chastisement of his subjects. This, however, did not excuse those who committed tyrannical acts. Though God sometimes allowed murder and injustice to occur, they were sins just the same. Clarence's assertion that God could accomplish his purposes without human resort to an "indirect or lawless course" was also part of the Tudor position. Thus, violating the due course of human law also violated divine law.

In Shakespeare's plays due process and the rule of law are ideals cherished by commoners as well as the nobility. When Suffolk murders Duke Humphrey of Gloucester to prevent Humphrey's treason trial, Parliament demands Suffolk's head. When Richard III executes Hastings without a trial, he is forced to find some excuse to the Mayor of London which anticipates the Mayor's objection that due process was violated:

Richard: What? think you we are Turks or infidels?
Or that we would, against the form of law,
Proceed thus rashly in the villain's death,

But that the extreme peril of the case,
 The peace of England, and our person's safety,
 Enforc'd us to this execution? (III. v. 41-6)

Richard's exception, of course, threatens to swallow the rule, as "national security" exceptions generally do, and this is not lost on the commoners who, though they dare not speak against Richard, are certainly not fooled by Richard's argument. The scrivener, who finishes Hastings indictment after Hastings has been executed, speaks for the commoners who at least in their thoughts judge how far Richard III has departed from accepted standards of due process; in the time it has taken the scrivener merely to write the indictment -- the first step in the criminal process -- the last step has already been completed:

Here is the indictment of the good Lord Hastings
 Which in a set hand fairly is engrossed
 That it may be to-day read o'er in Paul's.
 And mark how well the sequel hangs together:
 Eleven hours I have spent to write it over,
 For yesternight by Catesby was it sent me;
 The precedent was full as long a doing;
 And yet within these five hours Hastings lived,
 Untainted, unexamined, free, at liberty.
 Here's a good world the while! Who is so gross
 That cannot see this palpable device?
 Yet who's so bold but says he sees it not?
 Bad is the world, and all will come to nought
 When such ill dealing must be seen in thought.
 (Richard III: III. vi. 1-14)

Thus, the ideal of justice set forth in theory by Elyot, Bacon, Raleigh, Lambarde, and many lesser writers, finds dramatic embodiment in Shakespeare's plays. The repeated lack of fulfillment of that ideal is also found in Shakespeare's plays, and before Shakespeare is labelled a



conservative spokesman for the Elizabethan judicial establishment,¹⁸ under which censorship thrived and the treason trial became a national past-time, it is well to remember the speech of the scrivener in Richard III: Who is so bold to say he sees not the performance of justice?

□ □ □

In Richard III, Shakespeare demonstrates how power is used by Richard to impose fiction on an audience. Though the people of England may not believe Richard's fiction, they have no power to deny it. They are forced into the role of believers. Conversely, fiction can be used to examine power and the fictions used to legitimate power. That is certainly Shakespeare's project in Richard III. It is possible that in many of his trial scenes, Shakespeare puts the fictions of his own time on stage -- fictions which could often not be seen, acknowledged or explored outside of the theatre. Shakespeare's trial scenes reflect the tensions and contradictions, breakdown points and dilemmas of his age, and show trial to be a potent human activity for creating or resolving conflict and imposing or dispelling fiction. The trial scenes in Shakespeare's dramas are analogous to his plays within plays; they invite the audience to judge the process of judgment itself. The purpose of this introduction is to spread, in rough fashion, the canvas on which I intend to examine the trial scenes in several of Shakespeare's plays. My aim is to explore Shakespeare's trial scenes within the ideological and socio-economic context of his times -- to examine the judicial reaction of Shakespeare's age to the contending forces of the time and the way in which this response influenced (and more speculatively was influenced by) Shakespeare's drama.

The judicial system was perhaps the most potent tool at the disposal of the Tudor and Stuart monarchs for exerting social control -- for imposing order of a type which was most favorable to them. The various reactions

against this order, from riot and rebellion to the odd acquittal by a stubborn jury of a defendant accused of treason, were branded as "disorder" by the government. But as Jack Cade suggests in 2 Henry VI when he tells the rebels, "then are we in order when we are most out of order" (IV. ii. 174-5), binary oppositions have a way of flip-flopping as one's point of observation shifts. Order for the Elizabethan merchant trying to export grain was not the same thing it was for the hungry people on the dock trying to stop the ship from leaving port. During times of famine in the 1590s, the Elizabethan government often took administrative and judicial action to stop the export of grain and to distribute food to the poor. When court cases arose out of conflicts between merchants, the poor and the government, the judge was charged with applying Elizabethan concepts of order -- set forth in The Book of Orders ¹⁹ -- to decide the case. Though various ideological formations and concepts of order collided in court and sometimes on stage in the drama of a trial scene, the collision occurred within another ideological framework of nearly universal acceptance: that of due process and the rule of law. Thus, the operation of the judicial system, and Shakespeare's dramatization of trial can only be understood within the context of contemporary ideologies of order, some of which conflicted with others.

The dominant ideology during the Elizabethan period was most notably described by E. M. W. Tillyard, who in studying Shakespeare's histories, "concluded that the pictures of civil war and disorder they present had no meaning apart from a background of order to judge them by."²⁰ So was born The Elizabethan World Picture, that seminal attempt to establish a stable point from which the unstable worlds of Shakespeare's plays and of Renaissance society could be examined. The current "new historicist" approach emphasizes the converse of Tillyard's strategy: that the

preoccupation with order displayed in Shakespeare's plays has no meaning apart from a background of disorder to judge it by. At its worst, this results in a critical binary opposition of Tillyardian "idealists" on one hand and new historicist "power people" on the other, each exaggerating the others' position and debating whether to crack the literary egg from the larger or smaller end. To be fair to Tillyard, he did not claim that the view of cosmic order he described was "shared by all"²¹ members of Elizabethan society, nor did he claim to have described "a single political vision . . . identical to that . . . held by the entire literate class or indeed the entire population."²² Tillyard claimed to have described a view that "was the possession only of the more learned part of society,"²³ though perhaps even in this he was claiming too much and too little. The claim is too broad because the shift to empiricism -- the new philosophy that "calls all in doubt" -- had begun even in Shakespeare's day, and too narrow, because the view described by Tillyard may not have been limited to a "more learned segment of society" (whatever limitation that phrase may have), but actually may have been rather more widely held. To argue that Tillyard presented an utterly "monological view" of English society, is an exaggeration resulting as much from the academic antinomies of our own time as from the deficiencies of Tillyard's view. Though the tensions, contradictions, conflicting cosmologies and political views of Shakespeare's age are far more complicated than Tillyard's description indicates, the "picture" presented by Tillyard is a major ingredient in the ideological stew of Tudor and Stuart England. Thus, while Fletcher and Stevenson, for instance, recognize that different views of "order" existed in England during the sixteenth and seventeenth centuries, they also recognize the elaborate enshrinement of social and cosmological inequality described by Tillyard continued to be very influential:

The most striking feature of this [Elizabethan and Stuart] society, recognised by these writers [William Harrison, Sir Thomas Wilson, Gregory King] and others was social inequality. There was a broad consensus among contemporaries about the pattern of inequality, though there was room for emphasis on different criteria of status. When Oliver Cromwell told parliament in 1654 that the distinctions between a nobleman, a gentleman and a yeoman were 'a good interest and a great one' he was expounding an assumption so fundamental that in more settled times there was no need for it to be said.

What gave abiding strength to these perceptions of the social order was that they were based upon an old cosmology in which the concepts of a 'Great Chain of Being' and of a 'body politic' held sway. While these concepts prevailed, an ideal of harmony, of society as a living organism in which each man and woman had an allotted role, underpinned the complex reality of a system of hierarchical relationships. These relationships were mediated by the vertical ties of patronage and clientage and softened by additional horizontal ties of kin and neighbourhood. The nobility's exercise of 'good lordship' was still evident in the dealings with their tenants of some great families, like the Percies and Stanleys, between 1500 and 1640. . .²⁴

Despite my reservations about the "new historicist" interpretation of Tillyard, I find the new historicist emphasis on the complexity of Elizabethan attitudes toward authority and order convincing. Jonathan Dollimore is certainly correct when he states "Tillyard's world picture can . . . be seen as in some respects a dominant ideology, in others a residual one. . . . Culture is not by any stretch of the imagination -- not even the literary imagination -- a unity."²⁵ The social cauldron of early modern England, over which the Tudor and Stuart monarchs precariously perched, displays to the historian and literary critic a brew of tantalizing complexity and mobility. The main ingredients in the social pot form a long list,

including at least: the domestic Catholic - Protestant opposition and the foreign Catholic threat; Elizabeth's shaky and challenged claim to the throne; the pull between neo-feudalism and nationalism; economic crises connected to inflation, rising population, enclosure, stoppages in the cloth trade, and consistently inadequate agricultural production punctuated sporadically by disastrous harvests; the rise of Puritanism; a "revolution" in education and literacy; collision between scholastic humanism and empiricism; massive changes in land ownership and the composition of social "classes." Of course, simply to list the elements of social conflict gives no idea of their dynamic interplay or synergistic effects. Each of these elements was in some way connected to the others, acting and being acted upon, in a complex network of social interchange which must have given even the most securely situated people in Elizabethan and Jacobean England some queasy moments. Lawrence Stone suggests that the sixteenth and seventeenth century preoccupation with order was actually a defense against the pervasive chaos of the time:

In the late sixteenth and early seventeenth centuries. . . this almost hysterical demand for order at all costs was caused by a collapse of most of the props of the medieval world picture. The unified dogma and organisation of the Catholic church found itself challenged by a number of rival creeds and institutional structures. . . the reliance upon the intellectual authority of the Ancients was threatened by new scientific discoveries. Moreover in England there occurred a phase of unprecedented social and geographical mobility which at the higher levels transformed the composition and size of the gentry and professional classes, and at the lower levels tore hundred of thousands of individuals loose from their traditional kinship and neighbourhood backgrounds.²⁶

The tensions produced by the social dynamics of Elizabethan and Jacobean England often manifested themselves on a grand scale in rebellion, riot, and mass protest, and more subtly in commercial and property disputes and crime. J. P. Sommerville notes that the three main causes of rebellion during the Tudor period were faction, religious division and poverty;²⁷ but one could as well say that these were the sources of all disorder. These manifestations of social unrest in turn could lead to judicial proceedings. However long the chain of events, the antinomies and conflicts of Shakespeare's day produced and were embodied in trial. Shakespeare's dramatic representations of trial not only hold a mirror up to nature -- they depict a mirror already in place, in which a particular case involving a few individuals could capture the forces at work in an entire society.

As an example of the way a national problem eventually resulted in trials, which in turn became the subject matter of Shakespeare's plays (as, for instance, 2 Henry VI and Measure for Measure) consider the effect on Tudor England of inflation, overpopulation and inadequate agricultural production. During the sixteenth-century, prices in England rose over 300%.²⁸ The rise was partly caused by debasement of the coinage under Henry VIII, and perhaps exacerbated by the inflow of bullion into Europe as a whole via Spain. The main reason for the inflation, however, was the failure of English agricultural production to keep pace with population growth. In addition to the steady rise of food prices throughout the century, there were massive fluctuations in price. As Penry Williams notes: "... average grain prices from 1596 to 1600 ... were more than 50 per cent higher than for 1591-5 and nearly 50 per cent higher for the following quinquennium."²⁹

Inflation hastened the death of traditional relationships between

landlords and tenants. The paternal ethic of "good lordship" often cracked under the pressure to make the land pay: rents were raised and land was enclosed, by both owners and tenants, in the interest of more efficient grain production or to pasture sheep. Those at the bottom of the rural social scale were often evicted, and large bands of rural "vagabonds" roamed the countryside or flocked into the cities. Their ranks were increased by ex-retainers of the great households, numbers of ex-servicemen, and those too old or handicapped to work.

Families on fixed incomes found their standard of living threatened; and as a growing population entered the labour-market the real wages of urban workers were reduced by almost 50 per cent over the century. With food-prices and population rising, rents also increased; and although substantial farmers producing for the market could sustain the high burden of rent and still profit from rising prices, the subsistence farmer -- the cottager or small husbandman -- was often forced off the land in the competition for holdings. Growing sheep flocks, the property of landlords and richer farmers, encroached upon the common pastures, squeezing out the animals of the poorer tenants; and some landowners, especially in the midlands, converted arable land to pasture in order to feed their beasts.

Unfortunately, the expansion of industry was insufficient to provide employment for the surplus population. The market for cloth was subject to volatile movements of demand. When sales went well it was easy for the clothiers, who needed little fixed capital, to expand their operations; when demand slackened the extra labour could easily be laid off. . . . The size of the unemployed and landless population cannot be estimated, but it was large enough to frighten property owners and to shock moralists. William Lambarde, speaking in 1594, was conscious of the connection between population and poverty: younger marriages and the absence of plague had, he said, brought more people into the world and created a new class of poor.³⁰

John Pound also emphasizes the magnitude of the problem of poverty, and rather tentatively provides an estimate of the proportion of poor in the population:

Poverty was rife in England throughout the whole of the sixteenth-century and beyond. It has been estimated that between one-quarter and one-third of the population of most English towns were below the status of wage-earner, and at any moment their numbers were liable to be swelled by a slump in one of the major industries.³¹

Historians have generally divided the poor into two categories: those who would work if given the chance and those "determined to avoid it at all costs." The later group, according to John Pound, "contained a whole host of individuals, ranging from the professional beggar on the one hand to the thief and murderer on the other."³² Elizabethan constables and parish officials did not always make adequate distinctions between these two groups. The presence of this large groups of unemployed people was a constant source of anxiety and aggravation to the more established members of society, who had to administer the Elizabethan Poor Laws in an attempt to buy order by ameliorating the misery of the poor.

During times of bad harvest, such as occurred in 1586 and 1595-1597, grain prices sky-rocketed, people went hungry, and there were food riots. "There were between 1586 and 1631 at least forty riots, as well as two attempted insurrections and a considerable number of other riots and insurrections planned or rumored, all of which were related in some way to the state of the food market."³³ As Buchanan Sharp has shown, most of these "riots" were led by rural artisans, people of the kind Shakespeare includes in his portrayal of the Cade rebellion. Food riots brought

participants within the greatly expanded Elizabethan law of treason. Most rioters and rebels were quite wisely set free, as we shall see in the Cade episode of 2 Henry VI. Frequently, however, the ring-leaders suffered the penalty for treason and were publicly hung, cut down while still alive, castrated, disemboweled and drawn and quartered.

Poverty also led to subtler kinds of crime, such as Shakespeare examines in Measure for Measure. For instance, poverty delayed or made marriage impossible for a large number of women. Poor women, whose families could not afford to pay dowries, often could not find a husband. This, of course, did not stop the sexual activity of these women and their partners. Historians have found that the numbers of cases of bastardry and incontinency brought to court correlated directly, in Shakespeare's day, with periods of economic crisis:

The main evidence for the escalating number of moral cases presented in the courts has been given by Keith Wrightson, who shows that nearly one-third of the cases of bastardry presented between 1570-1699 for Terling in Essex were brought between 1597 and 1607, and another notable group between 1613 and 1616. He calls this dramatic upswing 'an astonishing and, until recently, unsuspected aspect of the history of the period.' Bastardy was very much an offence of the poor and obscure and even bridal pregnancy was increasingly presented for the poor. Martin Ingram, in his thesis on 'Ecclesiastical Justice in Wiltshire, 1600-1640' has done a very subtle analysis of presentments in the ecclesiastical courts. He shows that, in two parishes in the increasingly impoverished, populous and partly industrialized area of the county, 60 per cent and 75 per cent of the cases in which pre-nuptial pregnancy can be deduced from the parish registers ended up by being presented in the ecclesiastical courts.

But in another pair of parishes where population pressure was far less great, on the sheep-corn uplands, either no cases or only 7 per cent of cases of pre-nuptial pregnancy

were presented. He, too, demonstrates that presentment for fornication or conception out of wedlock was far more likely if the sinners were poor. The suggestion, very reasonably, is that at a time of increasing population pressure, immediately after the introduction of the new poor law, the village officials were afraid of the cost of bastards falling on the rates. This financial lever added, as it always so wonderfully does, an additional impetus to the moral fervour of these officials.³⁴ (underlining added)

Thus, for financial and economic reasons, there was what is often described as a "Puritan" moral crackdown at the turn of the sixteenth-century which resulted in a flood of cases to the ecclesiastical courts. Incontinency and bastardry were punished by local officials in an attempt to keep parish welfare expenditures under control. Shakespeare transfers this situation almost bodily to the stage in Measure for Measure, where Claudio and Julietta delay their marriage (or at least its public proclamation) so that Julietta can obtain a dowry from her friends -- and are convicted by Angelo for incontinence when Julietta's pregnancy becomes apparent. Lucio has attempted to escape his financial responsibilities as the father of Kate Keep-down's child -- and is eventually made to pay. And of course Angelo himself has refused to marry Marianna because her dowry has failed. The complex antinomie between sexual morality and poverty, as mirrored in the trials of the day, is again mirrored in the dramatized trial in Act V of All's Well That Ends Well, featuring Diana's contrived breach of promise suit against Bertram, Helena's claim that Bertram is the father of her child, and the King's promise to help Diana by providing her with a dowry. Both Diana and Helena are having trouble finding husbands, Helena because her lack of social status and Diana because of her poverty.

Though the effect of poverty as a cause of "social crime"³⁵ is a

pervasive subtext in many of Shakespeare's plays, the most sensational aspect of the Tudor/Stuart judicial environment was the big treason trial. Treason trials could arise from all three major sources of unrest in England: poverty, faction and religious dispute. Popular riot and uprising (i.e., mass protest) had come within the scope of treason statutes during the reign of Henry VIII. In addition to treason trials arising from popular protest, two other contemporary categories of treason trials were available to Shakespeare for use as models: (1) treason trials resulting directly from the Reformation antagonism between Protestant monarchs and Catholic subjects, or in the case of Mary Tudor, a Catholic monarch and her Protestant subjects, and (2) treasons trials in which the defendant's personal ambition was alleged, by the crown, to be the motivating factor. Personal ambition and religious affiliation sometimes went hand in hand, as Shakespeare dramatizes in his story of Wolsley; and a rebellion motivated at least partly by religious fervor, such as the Wyatt Rebellion during the time of Mary, or the Northern Rising of Elizabeth's reign, could bring participants afoul of both the 1352 treason statute against making war upon the king in his realm, and the more recent Reformation treason statutes aimed at securing the monarch as head of the church in England.

Nothing illustrates the fears of the Tudor monarchs and their own sense of English instability better than the proliferation of treason legislation and trials from the ascendancy of Henry VIII to the end of Elizabeth's reign.

Between 1485 and 1603, according to one calculation, there were no fewer than sixty-eight treason statutes enacted, though there had been less than ten in the period 1352-1485. This proliferation is explained by the fact that many Tudor acts were the by-product of royal concern over the succession to the crown and the king's ecclesiastical supremacy, problems

previous kings did not face in the same form, and also by the reluctance of the Tudor monarchs to put their trust in judicial construction based on existing statutes.³⁶

The breadth of interpretation given to treason statutes was even more significant than the volume and breadth of legislation passed. During the reign of Henry VIII, judges sometimes determined that treason laws did not apply to a particular defendant. Especially notorious was the case of Elizabeth Barton, the "Nun of Kent," who predicted that if Henry VIII married Anne Boleyn, he would die. Though in 1533 Henry sought her conviction for treason, the conditional form of her declaration saved it, according to her judges, from being a treasonous statement, and she was acquitted by the special council Henry had assembled to convict her. Subsequent legislation made even such conditional statements treasonous, and the Barton case was an important factor in convincing the Tudors that broad judicial interpretation of treason statutes could not be counted upon. In response the Tudors legislated massively against treason. In addition, during Elizabeth's reign, judges almost uniformly gave these statutes broad construction, expanding the scope of the crime even further:

Judges' declarations as to what was and what was not treason seem in this period to have gone almost entirely in favour of the monarch. Another significant development in this field was that the most celebrated of legal interpreters was not a judge, but Edward Coke who was attorney-general. His success in getting various popular riots and assemblies classified as treason brought the Tudor era to a close with the establishment of a markedly royal interpretation of the scope of treason.³⁷

The effect of this was that, by the end of Elizabeth's reign, if the government wanted an individual dead, it had a virtually infallible legal

instrument for achieving its aim. The procedural disadvantages faced by defendants, together with the breadth of the offense, made escape from execution nearly impossible, and the treason trial was used by the government extensively. Lacey Baldwin Smith relates that in 1557, Etienne Perlin, a Frenchman who visited England "reported in his journal the existence of a macabre jest: in order to achieve gentle status, an English family had to have at least one head impaled upon London bridge."³⁸ Some prominent families lost members on a regular basis, the Howards, perhaps, being the most extreme example: Thomas Howard, the third Duke of Norfolk, had barely escaped execution in 1547 due to the fortuitous event that Henry VIII died on January 28, the day Thomas was to be executed. His son Henry, the Earl of Surrey, was not so lucky, and was executed for treason a few days before his father. Thomas's nieces, Anne Boleyn and Catherine Howard were both executed for treason, and in 1571 his grandson, Thomas Howard, the fourth Duke of Norfolk was tried and executed for his involvement in the Ridolfi plot. In 1554, in one of the most remarkable treason trials of sixteenth-century England, Nicholas Throckmorton, after brilliantly defending himself, was acquitted of treason (and his jurors fined and jailed for several months when they refused to reverse their verdict), but in 1603 his son-in-law Sir Walter Raleigh, in perhaps the most sensational treason trial of the seventeenth-century, was not so fortunate. In addition to the huge legacy of treason trials produced during the reigns of Henry VIII and Mary, Shakespeare had a great volume of celebrated contemporary treason trials to use as models. The most prominent would include the trials of Edmund Campion and several other Jesuits among the Catholics prosecuted under the 1581 treason statute (1581); of Mary Stuart, Queen of Scots (1586); Philip FitzHoward, the Earl of Arundel (1589); John Udall (1590);

Robert Devereux, the Earl of Essex (1600); Sir Walter Raleigh (1603) and the Gunpowder Plotters (1605).

From the twentieth-century view, the hallmark of these trials was the virtual impossibility for the defendant of getting an acquittal. The procedural disadvantages faced by these defendants were almost insurmountable. They were denied legal counsel or the use of law books while they were in court, though they had to face from three to four experienced prosecutors. Before trial they had frequently undergone long periods of exhausting imprisonment. "The conditions under which treason suspects lived in prison varied considerably but in general they were harsh even by the standards of the times. The intention was quite clear to both officials and captive: to weaken the prisoner's body and thus his resolution, so that incriminating evidence and information about fellow conspirators or overt rebels should be forthcoming."³⁹ As if they were not debilitated enough, defendants were generally required to stand during the course of their trial. They were not allowed to take notes during the trial and were given no written copies of the indictment, but were forced to remember the charges; neither were they informed of the particular statute or statutes under which the crown was bringing its charges, which, considering the bewildering array of Tudor treason statutes, made evaluation of the sufficiency of the indictment very difficult. Testimony against the accused was generally in the form of written depositions or confessions, giving the defendant no opportunity to cross-examine the witnesses against him, and at the same time, defendants were often forbidden to produce witnesses in their own behalf. Jurors were often lectured beforehand by the prosecutors and judges about the correct verdict to reach. If, through a miraculous display of stamina, intelligence, memory and pugnacity, the defendant

obtained an acquittal, he was often tried again!

John Bellamy, in The Tudor Law of Treason, cautions against employing a twentieth-century standard of fairness to the treason cases of the sixteenth-century:

As to the fairness of Tudor treason trials, if there can be any value in seeking to judge such a quality four centuries after, we can only say that the procedure was weighted against the accused, but not to such a degree that Tudor trial methods seemed much more onerous to contemporaries than had later medieval treason trials to the men of those centuries.⁴⁰

This statement is more sanguine than it ought to be, leaving open, as it does, the public attitude toward treason trials in the late middle ages. Bellamy notes that from 1532 to 1540, 32 out of 600 defendants were acquitted of treason,⁴¹ but he provides no statistics for the reign of Elizabeth and from the breadth of legislation, the growing experience of prosecutors in how to conduct a treason trial and the power of Edward Coke, the already small acquittal rate could well have been a great deal lower.

Furthermore, censorship, the increase in the scope of treason legislation, the breadth of interpretation of the crime, and the numbers of people accused of treason make it unlikely that much opposition to the treason laws or their enforcement would ever have been printed in England. There was criticism of the procedure in treason trials, but it came from those with little left to lose, i. e., the defendants themselves, or others sufficiently out of harm's way to make a criticism.

The unfairness of the procedure was certainly not lost on those accused. Defendants such as Lord Seymour (1549), the Duke of Somerset (1551), the Duke of Norfolk (1571) and most famously, Sir Walter Raleigh,

fruitlessly demanded that they be brought face to face with the witnesses against them. Though some of the Elizabethan treason laws required that the crown produce at least two witnesses against the accused many other treason laws (such as the statute of 1352) did not. Since the Queen's counsel seldom made it clear to the defendant which statute they were proceeding under, the prosecutors easily evaded witness requirements. In their trials, Udall, Fitzwilliams and Nicholas Throckmorton petitioned the court to hear defense witnesses, but they were refused, eliciting the comment by Throckmorton to the judges: "Why be ye not so well contented to hear truth from me as untruth against me?"⁴² The denial of counsel to those accused of treason "caused more criticism than nearly every other feature of the English criminal trial."⁴³ The elder Thomas Wyatt, Edmund Campion and John Udall all requested and were denied counsel. The Jesuit Robert Persons, writing from the safety of the continent, gave a cogent summation of the disadvantages faced by a layman in court:

How is it possible . . . that such a Man especially if he be bashful and unlearned, in so short a time as there is allotted him for answering for his Life without the help of a Lawyer, Proctor or other Man that may direct counsel, or assist him in such an agony; how can he see all the parts of points that may be alleged for his defence being never so Innocent? ⁴⁴

About half of Shakespeare's trial scenes deal with charges of treason. Most of Shakespeare's trial scenes feature defendants of high social status motivated by personal ambition: courtiers like Bushy, Bagot, Green and Aumerle in Richard II, Cambridge, Scroop and Grey of Henry V, or magnates like Buckingham in Henry VIII, and clerics such as the Bishop of Carlisle or Cardinal Wolsley.

Shakespeare seems to have been less concerned in his plays with the actual basis for treason charges than with the honesty of the accusations and the fairness of the trial. His trial scenes suggest an awareness of the gulf between the ideal of due process and the actuality of Elizabethan and Stuart practice which cannot be adequately consigned to a "political unconsciousness." of the age. Duke Humphrey, in 2 Henry VI, comments on the unfairness of the trial he thinks he will receive, and is murdered in prison before he gets to trial. Bolingbroke begins to execute "traitors," without trial, even before he is crowned. The marriage of Othello and Desdemona is affirmed in a trial, but Othello finds Desdemona guilty and "executes" her outside of any formal process of adjudication. Queen Katherine, in Henry VIII questions the authority of any English Court to hear the divorce action of Henry, but is divorced just the same. Time and again Shakespeare sets before his audience issues of procedural regularity and fairness in adjudication. I do not believe that it is farfetched to argue that the "ill dealings" which could only "be seen in thought" by the scrivener of Richard III have some connection with the ill dealings of Shakespeare's own time, which, particularly in the case of treason trials, could be publicly examined only with caution and at the distance provided by fictionalization and drama.

□ □ □

My initial plan in writing this dissertation was to examine trial scenes in Shakespeare. That project proved to be too ambitious. Therefore, I have limited this study to three plays: 2 Henry VI, Measure for Measure, and The Merchant of Venice. I have selected these plays partly because two of them, The Merchant of Venice and Measure for Measure, contain Shakespeare's two longest, and most intricate, trial scenes, and because 2

Henry VI and Measure for Measure are the two Shakespeare plays which have the most trial scenes. But my main reason for selecting these plays is that they very directly portray a process of central importance to all of Shakespeare's trial scenes: the way in which a political system either succeeds or fails in sustaining itself and society through the way it administers the law. By resolving or failing to resolve the clash of competing ideologies and power groups, trials in Shakespeare's plays are shown to be critical generators of order or disorder in the body politic and of comic closure or tragic reversal in drama. In extending this study, I would plan to include an examination of at least four more plays: Henry VIII, A Winter's Tale, King Lear and Othello. Both Henry VIII and A Winter's Tale deal with the special political situation, and strain on the rule of law, which occurs when a King puts his foreign-born queen on trial. Both King Lear and Othello demonstrate how the absence of a functioning judicial system (in Lear's disintegrating kingdom and in the war zone of Cyprus) is a major ingredient in bringing about a tragic outcome.

A great deal has been written about Shakespeare and the law, and there has been a significant body of work examining the trial scenes, particularly those in Measure for Measure and The Merchant of Venice. Most of this might be labelled "old historical" scholarship. It examined questions such as the extent of Shakespeare's legal background, whether he had his law correct, whether his trial scenes were authentic, Shakespeare's relationship to the Inns of Court, whether he was writing for an audience which included large numbers of lawyers, and the way in which Shakespeare uses legal terminology. Much of this work was done by lawyers who had a genuine passion for Shakespeare. Examples are Sir Dunbar Plunkett Barton's Links Between Shakespeare and the Law, Clarkson and Warren's The Law of

Property in Shakespearian and Elizabethan Drama, William Rushton's Shakespeare a Lawyer and Lord Campbell's response, Shakespeare's Legal Acquirements Considered. More recent attempts to extend this kind of scholarship are Shakespeare's Legal and Political Background by George W. Keeton and Shakespeare and the Lawyers by O. Hood Philips. These works are valuable, however, I will be taking a very different approach in this dissertation.

My main interest is to explore Shakespeare's trial scenes as artistic endeavors that capture significant social concerns and conflicts; more broadly, I am interested in the intersection of Shakespeare's society and his trial scenes. It is only in recent years that the work of social historians -- that of Christopher Hill, E. P. Thompson, Lawrence Stone, and the students they inspired -- has made such a study possible. The usefulness of social history to students of literature has been recognized, and it is no longer correct to say, as Ann Jennalie Cook did in 1981, that "the insights of the historians are, by and large, not known to those working in Renaissance drama."⁴⁵ However, there is still a great deal to be learned about Renaissance society and this work will continue to illuminate Shakespeare's plays. It is still true that "modern researchers often miss obvious levels of meaning because they are insufficiently aware of the society that so closely interpenetrated the stage in Shakespeare's day "⁴⁶ One major aim of this dissertation is to use social history to make the levels of meaning in Shakespeare's trial scenes more obvious.

In addition to the research of social historians, I will rely to some extent on the theoretical work of Frederic Jameson (though I should make it clear that if there is a political unconsciousness to be exhumed, I believe it is mainly our own rather than Shakespeare's or his audience's) and several

writers in the "critical legal studies" movement, such as Mark Kelman, Roberto Mangabeira Ungar and Duncan Kennedy,⁴⁷ who have done fascinating and controversial studies on the interpenetration of law, adjudication and society, and the role of law in legitimating the use of force.

The two most central terms in this discourse are "trial" and "trial scene." Both of these are "loaded" terms and bear some examination. "Trial" is defined in Black's Law Dictionary as:

A judicial examination, in accordance with law of the land, of a cause, either civil or criminal, of the issues between the parties, whether of law or fact, before a court that has proper jurisdiction.⁴⁸

A complete explication of this definition would itself require a long essay. The difficulty with applying such a definition to scenes in Shakespeare's plays is that, whether an examination is "judicial" or whether "the court's" jurisdiction is proper (i.e., whether the court has power to hear the case at all) are often the central issues Shakespeare presents to his audience for consideration. In application to Shakespeare, the Black's definition is not functional and begs several questions. Shakespeare's trial scenes are often set in the context of rebellion or civil war in which the authority and power of the tribunal, the law of the land, and the properness of the procedure are anything but clear. Bolingbroke arraigns Bushy, Green and the Earl of Wiltshire for treason even before he is crowned King. Jack Cade purports to be the law of the land and tries and executes several people. Henry the VIII and Wolsley have a trial to divorce Katherine -- but she contests the jurisdiction of the court. Is the divorce trial of Katherine more "judicial" a proceeding than Cade's trial of Lord Say or Bolingbroke's

sentence of the the three "caterpillars of the commonwealth"? Since these are the kinds of questions I believe Shakespeare wanted his audience to ask, this study calls for a broader, less prescriptive definition of trial than offered by Black's, and I offer the following:

A trial is a formal and public examination of a cause, either civil or criminal, of the issues between the parties, whether of law or fact, in which the tribunal claims to have the authority to conduct the examination and render a verdict.

Though this definition is not without problems, I believe it is broad enough to bring the above three examples within the scope of "trial" while excluding Hamlet's determination of Claudius's guilt or Othello's of Desdemona's. Neither Hamlet nor Othello in those instances proclaimed publicly that they were making a formal inquiry -- indeed, the "defendants," Claudius and Desdemona, did not even know that an examination was in progress. In other words, Othello and Hamlet did not attempt to legitimate their "judgments" by placing them in the context of a formal adjudication. On the other hand, when Jack Cade tries Lord Say, he proclaims that he is conducting a trial, takes testimony and issues a verdict in public. One could characterize Cade's proceedings as those of a "kangaroo court," but it is the very questionable nature of Cade's procedure that Shakespeare uses to raise fundamental issues about what it means to have a trial.

There are few instances in Shakespeare in which an entire trial is dramatized. The fifth act of Measure for Measure and the fourth act of The Merchant of Venice are the most prominent exceptions. More frequently Shakespeare dramatizes a critical part of the judicial process -- an arraignment, a sentencing, the examination of witnesses. In this, of course, a Shakespeare play is little different than an episode of Perry Mason or other

"courtroom drama." The blow by blow depiction of an entire trial would leave most audiences snoring. I will use the term "trial scene" to mean any part of an adjudication, such as Duke Humphrey's arraignment in 2 Henry VI or Angelo's "sentencing hearings" of Claudio in Measure for Measure.

By the definition I propose, there are at least thirty-five trial scenes in Shakespeare's plays. Each provides a glimpse into the social and political complexities of Shakespeare's age and each performance of these scenes marked an intervention in that complexity which molded attitudes as well as reflected them. Shakespeare's effect on the law, of course, has continued as long as his plays have been performed and read. "Know your Shakespeare," a lawyer once told me, "the jury will think you're quoting the Bible." This study will be an attempt to know Shakespeare a little better than that, and in the process, perhaps, illuminate some of the judicial antinomies of our own time.

CHAPTER 1

Political Disintegration and the Rule of Law: Trials and Judges in 2 Henry VI

"... while the one partie sought to destroy the other, all care of the commonwealth was set aside, and justice and equity clearly exiled." Holinshed.

Most of the literary-historical work done on 2 Henry VI could be classified as "old" historicist. The "new" historicists have paid little attention to 2 Henry VI, which is surprising, given the obviousness with which subversion and "class" conflict appear in the play. The most formidable representatives of the "old" historicist approach in application to 2 Henry VI are Tillyard,¹ Campbell,² Brockbank³ and Reese,⁴ who tend to view both of Shakespeare's tetralogies not only as vehicles of continuing moral authority, but as Tudor homilies, dramas which manifest the official Tudor pattern of political sin (disobedience to the monarch, God's deputy on earth) and retribution, i.e., plays which transmit "Tudor polemic into public playhouse."⁵ As I have previously noted in the introduction, and as I believe an inclusive examination of 2 Henry VI will make apparent, the "old historical" method simply does not take sufficient cognizance of competing ideologies and therefore produces readings which tend toward the simplistic and narrow. One can imagine a "new" historicist reading representative of the cultural materialist approach being used by Eagleton, Dollimore, Sinfield and Drakakis,⁶ which would focus attention on the subversive character of the Thump v. Horner trial by combat and on the Cade rebellion of Act IV. In

fact, their influence on my reading of 2 Henry VI will become apparent. But I have pulled back from a full-fledged cultural materialist reading of 2 Henry VI, because I believe this branch of new historicism has, like "old historicism" failed to take into account important discourses which would have influenced Shakespeare and his audience and has marginalized and demonized, under the heading of "bourgeois sentimentalism," vast areas of human experience which poets and dramatists have examined throughout the ages. David Norbrook offers a summary of the cultural materialist approach to Shakespeare, and its weaknesses, which I cannot improve upon:

The very plays that a generation ago were acclaimed as bastions of traditional values in a declining world are now seen as radically subverting all values and authority. Then, when this approach seems inadequate, it may be argued that this subversion in fact subtly reinforced the very power structures that were being challenged. Political options, by this analysis, were polarized between total submission to power, authority, and the state on one hand and radical subversion on the other. This polarization was mirrored in the linguistic realm by the opposition between legitimist discourse, which made its univocal signified appear natural, and the radical subversion involved in the free play of signifiers. One problem with such polarities is that they effectively reduplicate the stark oppositions presented by absolutist propaganda: either monarchy or anarchy. . . . Such a focus fails to do justice to the many Renaissance thinkers who had a conception of political order which involved neither hereditary monarchy nor total anarchy, and a conception of linguistic order which permitted rational communication without reinforcing feudal social relationships.⁷

Tillyard and Campbell, particularly, have tended to "reduplicate" absolutist propaganda by resting their interpretations of the history plays on the Tudor homily "On Obedience," A Mirrour for Magistrates, and Tudor

historians, such as Holinshed, Hall and Camden. In contextualizing the history plays, Tillyard and Campbell placed them in the midst of a discourse (which certainly was influential and widely disseminated) that emphasized the illegitimacy of rebellion under all circumstances, the inevitability of divine retribution against those who did rebel, and the naturalness of the Tudor social hierarchy as a reflection of the Great Chain of Being.

There were other discourses in Elizabethan society in which the Tudor/Stuart rhetoric of royal absolutism was certainly qualified and sometimes directly contradicted. The most influential of these was the discourse of the common lawyers, a group of men at the heart of Tudor and Stuart government. Furthermore, the lawyers voiced and published their anti-absolutist views openly, and (they would have argued) in an unbroken line from Henry de Bracton during the reign of Henry III to Sir John Fortescue, a jurist of the mid-fifteenth-century, to Sir Thomas Smith, an Elizabethan lawyer, to Sir Edward Coke, one of the foremost common lawyers during the reign of James I. John Fortescue's De laudibus legum Angliae (In Praise of the Laws of England), first printed in Latin in 1537, was translated into English thirty years later and sold widely. Fortescue's anti-absolutist views were highly influential, particularly among lawyers, throughout the reigns of Elizabeth I and James I.

Fortescue believed that the purpose of government was the protection of the persons and property of the governed. This purpose was best served by the laws of England, which prohibited the king from legislating or levying taxes without the consent of his subjects. In England, he held, the king ruled as a constitutional monarch. The English system of government was an amalgam of monarchical and populist elements -- a regimen politicum et regale. This implied no slur upon the king, for a monarch who ruled over free and prosperous subjects was

likely to be both wealthier and more powerful than such a ruler as the king of France, who governed downtrodden, impoverished slaves.⁸

In The Commonwealth of England (1565), Sir Thomas Smith used Fortescue's views as a foundation for his claim that "the most high and absolute power of the realm of England consisteth in the Parliament"⁹ -- not the king or queen. The argument of the common lawyers was that the common law was ancient, that even the Norman invasion had not altered it, and that by sheer persistence, as a body of law, it had demonstrated its superiority in fulfilling the needs of the English people. These men argued that there was little distinction between common law, natural law, and the dictates of reason, and generally held that good of the realm lay in the protection of the individual's private property. In the view of Sir John Davies, Attorney General for Ireland (1615) "custom was the best form of law precisely because it was not instituted by a sovereign."¹⁰ Sommerville paraphrases Davies' view:

To obtain the force of law, custom had to win the acceptance of the people, and there could be no stronger proof that it was in fact suited to their needs. "A custome doth never become a Law to bind the people, untill it hath been tried and approved time out of mind, during all which time there did thereby arise no inconvenience." By contrast, the edicts of a sovereign were imposed "upon the Subject before any Triall or Probation made, whether the same be fit and agreeable to the nature and disposition of the people." The enactments of a sovereign might or might not turn out to benefit the commonwealth -- only time would tell. But the common law, being ancient custom, had by definition passed the test of time.¹¹

John Aylmer, Bishop of London, on the occasion of Elizabeth's



ascension, and in refutation of John Knox's views on the regiment of women, asserted that Elizabeth at least could not do much harm to England, simply because her power was limited by law. Aylmer's view is representative of the English common legal thought of his day and therefore, worth quoting in full:

The regiment of England is not a mere monarchy, as some for lack of consideration think, nor a mere oligarchy, nor democracy, but a rule mixed of all these . . . the image whereof, and not the image but the thing indeed, is to be seen in the Parliament House, wherein you shall find these three estates: the king or queen, which representeth the monarch; the noblemen which be the aristocracy; and the burgesses and knights the democracy. . . . If the Parliament use their privileges the King can ordain nothing without them. If he do, it is his fault in usurping it and their folly in permitting it. wherefore in my judgement those that in King Henry VIII's days would not grant him that his proclamations would have the force of a statute were good fathers of the country and worthy commendation in defending their liberty. . . . To declare that it is not in England so dangerous a matter to have a woman ruler as men take it to be. For first it is not she that ruleth but the laws, the executors whereof be her judges, appointed by her, her justices of the peace and such other officers. . . . She maketh no statutes or laws but the honourable court of Parliament. . . . What may she do alone wherein is peril? She may grant pardon to an offender, that is her prerogative wherein if she err it is a tolerable and pitiful error to save life. She may misspend the revenues of the crown wantonly; so can kings do too, and commonly do, and yet they be kings. If on the other part the regiment were such as all hanged upon the king's or queen's will and not upon the laws written; if she might decree and make laws alone, without her senate; if she judged offences according to her wisdom and not by limitation of statutes and laws; if she might dispose alone of war and peace; if, to be short, she were a mere monarch and not a mixed ruler, you might peradventure make me to fear the matter the more. . . ¹² (my

underlining)

Coke held that the royal prerogative was strictly circumscribed by the common law and that judges and to a lesser extent, Parliament, but not the king, had the ultimate right to interpret common law. Magna Carta, according to Coke was a statement of ancient customary law limiting the monarch's power and guaranteeing individual liberty. (And again, this was broadly equated with protecting private property.) Sommerville summarizes the attitude of the lawyers to the idea that royal power was absolute:

The idea that the royal prerogative was derived from and limited by law was orthodox among Tudor lawyers. Moreover, the Tudor monarchs themselves accepted legal limitations upon their powers in practice, whatever high view of their authority they may have held in theory. James and Charles, by contrast, proved far more willing to test their theoretical claims at law, with results that some found catastrophic.¹³

Not all common lawyers held the views of Fortescue, Smith or Coke. But these views would have been common fare at the Inns of Court, the "third university" of England. The intimate involvement of the Inns of Court with Renaissance theater has long been established and it is highly unlikely that Shakespeare would have been unaware of the constitutional views of the common lawyers.¹⁴

This leaves the question of whether common lawyers thought subjects may actively resist a king who disobeys the law. The answer to this question is not as cut and dried as Tillyard and Campbell had thought. Campbell summarizes the official Tudor position as follows:

The king was responsible to God, both as a man, one of God's creatures, and as his vice-regent, the representative of his divine justice. But he was responsible only to God. He was not to be judged by his subjects, and his subjects were not to decide the matter of their obedience upon the basis of the king's merits. A bad king was punishment meted out to the people for their sins, but the king was responsible to God for his sins. Rebellion was the rod of chastisement to the bad king, but the rebels were no less guilty because they were used by God. Such was the Tudor philosophy, nowhere better explained than in the 1559 Mirror for Magistrates:

'For in dede officers be Gods deputies, and it is Gods office which they beare, and it is he whiche ordeyneth thereto suche as himselfe lysteth, good whan he favoereth the people, and evyll whan he wyll punysh them. And therefore whosoever rebelleth agaynst any ruler either good or bad, rebelleth against God, and shalbe sure of a wretched ende: For God cannot but maintein his deputie. Yet this I note by the waye concernyng rebelles and rebellions. Although the devyll rayse them, yet God alwayes useth them to his glory, as a parte of his Justice. For when Kynges and chiefe rulers, suffer thyr under officers to mysuse theyr subjects, and wil not heare nor remedye theyr peoples wronges whan they complayne, than suffreth God the Rebelle to rage, and to execute that parte of his Justice, which the parcyall prince woulde not.¹⁵

The Tudor position had several weaknesses. First, the Tudors had themselves come to the throne by deposing one of God's deputies -- Richard III. In Shakespeare's version of Richard III's fall, there is no indication that the rebels have committed any kind of sin in killing Richard. The Tudor response was that God had decided for Henry VII on the battlefield. Victory was the divine stamp of legitimacy. Camden verbalized official doctrine when he said: "The Crown once possessed, cleareth and purifies all manner of

defaults or imperfections."¹⁶ Of course, this was an argument which could easily be turned against the Tudors by the next successful rebel and elicited James Harrington's famous satirical barb:

Treason doth never prosper, what's the reason?
For if it prosper, none dare call it treason.¹⁷

The second weakness was that an absolute prohibition on resistance would remove all check to the tyrannical exercise of power. The Tudor response was that subjects could refuse to obey an unlawful or immoral order, but that passive resistance -- tears, prayers and supplications¹⁸ -- was the only permissible response to tyranny. Active resistance was sinful. The punishment of kings who seized power by revolt or who exercised power in an arbitrary or unlawful manner was to be left to God. Subjects were not capable of judging whether a king should be deposed or not, there always being some dissatisfied and rebellious people. Furthermore, God's reasons for allowing an evil prince to reign could not be questioned:

God (say the holy Scriptures) maketh a wicked man to raigne for the sinnes of the people. Again, God giveth a Prince in his anger, meaning an evill one, and taketh away a Prince in his displeasure, meaning specially when hee taketh away a good Prince for the sinnes of the people: as in our memorie hee tooke away our good king Edward in his yong and good yeeres for our wickednesse.¹⁹

That the English people would not simply accept the crown's radical lack of accountability is reflected in resistance to the Amicable Grant under Henry VIII, when the people of England refused to pay what in effect was a tax which Henry had imposed without the consent of Parliament, and in their

later resistance to the forced "loans" of Charles I.

The third weakness in the Tudor position was its theoretical inconsistency with the common law; it did not adequately deal with the implications of common-law limitations on the king's power. In practice, the Tudors were very politic about not forcing a constitutional confrontation between kingly prerogative and either the statutes of Parliament or the common law. Thus, there was little need for either the king or common lawyers to directly speculate about any common law ground for resistance theory. But it is implicit in Aylmer's view of Elizabeth's prerogatives that limitations in fact could be enforced, for if they could not be, they would not function as safeguards against misrule. Once the Stuarts came to power, and directly challenged constitutional limitations on prerogative, resistance theories connected to common law rights (particularly those aimed at preserving a distinction between meum and tuum, what belonged to the individual and what belonged to the crown) quickly manifested themselves.

A fourth difficulty with the Tudor position is that it was contradicted by their own house rhetoric against certain European rulers. The major conduit for Tudor absolutist propaganda was the clergy. Since the King was the head of the church, and ultimately in charge of appointments and promotion, it is no surprise that Anglican clerics spent a great deal of energy preaching sermons and writing tracts refuting the notion of legitimate resistance. However, there was even a lack of unanimity on resistance among Anglican divines -- mainly because the arguments they asserted to legitimate the monarchical resistance of French and Dutch protestants could be so easily turned around to justify resistance to Elizabeth! For example:

In 1585 Thomas Bilson, later Bishop of Winchester, published a book entitled *The true difference between Christian subjection*

and unchristian rebellion. His general message was that resistance to Princes is evil. But he admitted that there are certain exceptions to this rule. For kings, Bilson argued, are bound by the fundamental laws of the states over which they rule.²⁰

Thus, in Bilson, there is an example of a right to resist being directly tied into the notion that kings must obey the fundamental law of the land, which in England, would be the common law.

Tillyard and Campbell further over-simplified Tudor political attitudes by failing to consider a third body of discourse, which the Tudors and Stuarts certainly did attempt to marginalize. This was the discourse of Calvinist and Catholic resistance theory, that recognized a legitimate right to resist princes who grievously disobeyed the law:

From the 1570s foreign Presbyterians had produced a series of highly influential books which claimed that violent resistance was justified against kings who ruled tyrannically. . . . These books included the notorious Vindiciae contra tyrannos, published under the name of Stephanus Junius Brutus, and the Scotsman George Buchanan's De jure regni apud Scotos. Both appeared in 1579 and rapidly became bestsellers. Over the decades the Catholics likewise printed many works permitting resistance to heretical or tyrannical rulers.²¹

As David Norbrook has shown, George Buchanan's history of Scotland, which repeatedly asserts the right of the people to depose tyrants, may have been a significant influence on Shakespeare's composition of Macbeth.²²

Buchanan, one of Europe's most eminent humanists, was tutor to both James I and Montaigne. It was Buchanan who was the principle apologist for the Scottish deposition of Mary, by which her son, James, came to the throne. Buchanan took a rationalist approach to politics. Primogeniture was

irrational, according to Buchanan, because it left up to fate the quality of the monarch. Election was far more likely to yield competent rulers. That Buchanan's views were known -- and influential -- is at the very least implied by the fact that James I in the Basilikon Doron felt compelled to condemn them:

I would haue you [Prince Henry] to be well versed in authentick histories, and in the Chronicles of all nations, but specially in our owne histories (Ne sis peregrinnus domi) the example whereof most neerely concernes you: I meane not of such infamous inuectiues, as Buchanans or Knoxes Chronicles: and if any of these infamous libels remaine vntill your dayes, vse the Law vpon the keepers thereof: for in that point I would haue you a Pythagorist, to thinke that the very spirits of these archibellouses of rebellion, haue made transition in them that hoardes their bookes, or maintaines their opinions; punishing them, euen as it were their authours risen againe.²³

No reading of 2 Henry VI which attempts to deal with the full complexity of the play can find in it an endorsement of either absolute monarchy or democracy/anarchy. Rather, 2 Henry VI and the first tetralogy as a whole confronts the discourse of absolutism with the discourse of limited power. There are aspects of 2 Henry VI which even tend toward a judiciously indirect critique of some elements of absolute monarchy (primogeniture, the king's superiority to law, and the doctrine of non-resistance even to tyrannous authority). It is primogeniture which has saddled England with a weak king, Henry VI, whose incapacity to exert strong authority fails to keep the magnates in line and leads directly to civil war. Gloucester, the most admirable and competent character in the play, would make the best king, but his respect for the law acts as a check on that ambition. Gloucester's attempts to subordinate royal conduct and his own

conduct to the rule of law are portrayed as courageous and self-sacrificing acts on behalf of the commonwealth. Only the villains of the play -- particularly Suffolk, Beaufort and Margaret -- indicate that they are prepared to exercise their own wills at the expense of the law. And with regard to the Elizabethan line of non-resistance to royal power, no matter how tyrannous, Shakespeare presents Henry Tudor's own deposition of Richard III as an act which can only be described as justifiable. No tears are shed for Richard III.

On the other hand, there is little evidence in 2 Henry VI that popular revolt is being endorsed. Although the play indicates, in a muted way, some genuine sympathy for popular grievances and tends to shift much of the responsibility for popular rebellion to weak government and the despotic conduct of the nobles, it also exhibits a great deal of fear at the irrational and destructive potential of popular protest and uprising. Since Henry VI is a law abiding king, the issue of resistance to the abuse of kingly power does not arise. However, the play does address the disastrous consequences which result when various people attempt to exercise arbitrary power, and Henry, in his weakness, is unable to stop them. In short, 2 Henry VI does not endorse absolute monarchy, popular radicalism, democracy or republicanism. Rather, it exhibits a cautious and tactful exploration of dangerous and inherently contradictory historical material, and in the process, exposes the weaknesses and inconsistencies of both official and radical political positions. The result is an incredibly shifty piece of drama which is indirect in its criticism and reluctant to take a position itself, but which does affirm the need to maintain and obey the common law. If, as we shall see, 2 Henry VI often seems at odds with itself, this is not due so much to the inherent slipperiness of signification, as to the genuine

treacherousness of Shakespeare's rhetorical situation as a public dramatist operating in a dangerous environment.

The predominant concern of 2 Henry VI, respect for the law on all levels of society, is reflected in the structure of the play, which is mainly composed of a succession of trial scenes. There are five complete criminal adjudications in the Folio version of the play²⁴: the trial by combat of Thump and Horner, Gloucester's impromptu trial of Saunder Simpcox, the inquiry into Gloucester's death which results in Suffolk's banishment, and Cade's trials of the clerk Emmanuel and Lord Say. The Quarto version of the play adds a sixth scene: the trial by Cade of one Sargent-at-law who protests the rape of his wife by one of Cade's men. Both Quarto and Folio contain four other scenes showing part of the judicial process: the destruction of the suitors' pleadings by the Queen and Suffolk, the sentencing and punishment of the Duchess of Gloucester for treason and engaging a witch, the arraignment of Gloucester for treason, and the arraignment of York for treason. In addition, both Quarto and Folio contain Cardinal Beaufort's death-bed scene, in which he imagines himself on trial before God for his part in Duke Humphrey's death. Both versions present the abuse by the nobles of the judicial process, the frantic reaction of the commons to the evident corruption in King Henry's court, and the chaos that results when different power groups rush to fill the vacuum left by Henry's de facto abdication.

Gloucester's murder, however, is the pivotal point of the play and sets England on an irrevocable course to rebellion, anarchy and civil war. It is Gloucester's last long speech which welds the major theme of the play -- the destruction, by the nobles, of law and equity -- to the constantly recurring device of the trial scene, which Shakespeare uses to structure the play:

Foule Subornation is predominant,
 And Equitie exil'd your Highnesse Land. . . .
 I shall not want false Witnesse, to condemn me,
 Nor store of Treasons to augment my guilt:
 (Folio H 131)

Gloucester's speech is an acknowledgement that he cannot receive a fair trial, but more than that, it is an acknowledgment that no one in England can receive a fair trial. Power, unqualified by the enforcement of law, has triumphed, equity is exiled. The subject of 2 Henry VI, broadly, is government; but as Brewer and Styles have noted, government operated through the courts, and it was there that the quality of authority made itself felt on a popular level. The disintegration of Henry's government is charted progressively by the way in which trials are conducted and sentences rendered. The series of trials upon which the play is built illustrates the progressive abuse of the judicial system first by nobles and then by the commons, the displacement of good judges by bad ones and of due process by the arbitrary exercise of power, until finally the pretense of trial dissolves; the magnates go to war and the rule of law is destroyed.

□ □ □

The belief in providence and divine retribution against traitors which is stressed in Elizabeth's official sermons on obedience²⁵ is embodied, though not without ambivalence, in the first trial scene of the play. In Act I. iii. Shakespeare presents the treason accusations of Peter Thump, the apprentice armorer, against his master, Thomas Horner, armorer to the Duke of York. In Shakespeare's hands, even at this early point in his career, the trial scene becomes a dramaturgic device for economically developing character, theme and plot. In short order Shakespeare is able to set before

his audience the effect of court rivalry and dissension on the administration of justice throughout the realm; the use of trial as a political tool; an example of the divine retribution that traitors can expect; an ironic foreshadowing of Suffolk's execution; and characterization through contrast of Duke Humphrey and King Henry. In the process Shakespeare entertains his audience with large doses of violence and comedy.

The scene opens with "three of four petitioners, Peter Thump, the Armorer's man, being one," waiting to present their "supplications" to Gloucester, the Protector. They are intercepted by Suffolk and the Queen, however. Suffolk reads the petitions, finding that the first is against the servant of his ally Cardinal Beaufort, as the petitioner says "for keeping my house, and lands, and wife and all, from me." The second petition is against Suffolk himself, by the petitioner on behalf of his entire township, for "enclosing the commons of Melford." The charge of enclosure would be particularly calculated to raise audience hackles against Suffolk, enclosure being condemned by the clergy and legislated against by Parliament throughout the 16th century. The third petition is Peter Thump's:

Against my master
Thomas Horner, for saying that the Duke of York
Was rightful heir to the crown. (Folio H 123)

In merely showing the presentation of the first two petitions, Shakespeare is making a statement about the political condition of the realm and the people's perceptions of who can be trusted. First, the petitioners are seeking Duke Humphrey, the Protector. In other words, they are seeking to present their petitions to the King's Council (out of which the later conciliar courts of Star Chamber and Chancery developed), the strongest member of

which is Humphrey, rather than to several other courts which could also claim jurisdiction, such as local manorial courts, courts of assize or Common Pleas. The obvious implication is that Suffolk controls the administration of justice in his own dukedom, and that the petitioner for Melford has been forced to bring his suit to Westminster, where, as a last resort, he hopes to get an impartial hearing from Gloucester. The petition against the Cardinal's man again stresses that England is in the grip of a few men who exercise power with no regard to law. In this short scene, Shakespeare ties the infighting of the nobles at court, which is certainly his central concern, to the broader effects of faction and ambition on the English people; the vicious pursuit of power at court is just an example of how the nobles govern throughout the country. Shakespeare may have had to be circumspect about presenting the grievances of the commons; he puts their problems before his audience quickly -- but suggestively. This reticence is also evident in Holinshed, who has little to say about the plight of the English people as whole, and yet, in brief moments, provides a glimpse (and sometimes more than a glimpse) into vast areas of repressed (or suppressed) history:

For whilest the French thus triumphed in Normandie, thrée cruell enimies among manie (as by ciuill warre and sedition insuing appeared) sore vrged the vtter ruin of this realme at home. One was presumption in governance, by some that were most vnmeet to rule, as the queene with her priuie counsellors and minions; then the deale malice and pride, with insatiable couetise in the states both spirituall and temporall: and lastlie the generall grudge of the people, for the universal smart that through misgouernment euerie where they suffered; who thus forweiried with the peise of burthens too heauie for them anie longer to bear. ²⁶ [underlining added]

In The End of the House of Lancaster, R. L. Storey describes in detail what Holinshed, perhaps, could not comfortably or safely describe: just how that "insatiable couetise," the manifestation of what Rene Girard calls "mimetic desire,"²⁷ affected law in the English countryside in the years preceeding The Wars of the Roses:

The Yorkist manifesto of 1461 was not exaggerating when it said that riot, murder, robbery and the like had flourished in the time of Henry VI. And offenders were to be found in all ranks of society, even among those responsible for upholding the law in their own countryside. The feuds of the nobility in the more outlying parts of the kingdom attained the proportions of private wars. The quarrels of gentry led to the movements of large companies of armed men, with seizure of property or manslaughter and sack as their ostensible objectives. . . .

The semi-military operations of nobility and gentry were undertaken without any fear of intervention by the crown, for it had no standing army available for police duties, and its orders to keep the peace were contemptuously ignored. Known offenders were sooner or later subjected to the formal procedures of the judicial system, but there was apparently little danger of conviction and punishment. Juries of country gentry would not convict their own kind. Instead of keeping order and protecting the weak, the law was more commonly misapplied to the advantage of those able to control it. The corruption and oppression of local government was the main burden of the Kentish rebels [i.e., Jack Cade's Rebellion] of 1450.²⁸

Neither Holinshed nor Stow dwells on how the infighting of the nobles affected the commons and yet, unlike Hall, they both include in their histories the articles of grievance presented by Cade and his followers to King Henry. Of the fifteen articles of complaint presented by Cade, seven directly criticize the courts. Although Shakespeare portrays the Cade rebels

as illiterate louts, their articulate complaints (the first written grievances of any "peasant rebellion") provide a subtext which illuminates the entire play:

The complaint of the commons of Kent, and causes of their
assemblie on the Blackheath. . .

5 Item, the kings meniall seruants of houshold, and other persons, asken dailie goods and lands, of impeached or indicted of treason, the which the king granteth anon, yer they so indangered be conuicted. The which causeth the receiuers thereof to inforge labours and meanes applied to the death of such people, so appeached or indicted, by subtill meanes, for couetise of the said grants: and the people so impeached or indicted, though it be vntrue, maie not be committed to the law for their deliuerance, but held still in prison, to their vttermost vndoing & destruction, for couetise of goods.

6 Item, though diuerse of the poore people and commons of the realme, haue neuer so great right, truth, and perfect title to their land: yet by vnture claim of infeoffement made vnto diuerse states, gentles, and the kings meniall seruants in maintenances against the right, the true owners dare not hold, claime, nor pursue their right. . . .

9 Item, the shiriffes and vndershiriffs let to farme their offices and bailiwickes, taking great suertie therefore, the which causeth extortions doone by them and by their bailiffes to the people.

10 Item, simple and poor people that use not hunting, be greatlie oppressed by indictments feined & doone by the saide shiriffes, vndershiriffs, bailiffes, and other of their assent, to cause their increase for paieing of their said farme.

11 Item, they retorne in names of inquests in writing into diuerse courts of the king not summoned nor warned, where through the people dailie léese great summes of monie, well nigh to the vttermost of their vndoing: and make leuie of amercements called the gréene wax, more in summers of monie than can be found due of record in the kings books.

12 Item, the ministers of the court of Douer in Kent vex and arrest diuerse people thorough all the shire out of Castle ward, passing their bounds and libertie vsed of old time, by diuerse subtill and vntrue meanes and actions falselie feined, taking

great fees at their lust in great hurt of the people on all the shire of Kent. . . .

15 Item, the people be sore vexed in costs and labour, called to the sessions of peace in the said shire, appearing from the furthest and vttermost part of the west vnto the east; the which causeth to some mean fiue daies iournie: wherevpon they desire the said appearance to be diuided into two parts; the which one part, to appeare in one place; an other part, in an other place; in reléeuing of the gréeuances and intollerable labours & vexations of the said people.²⁹

This is quite a catalog of judicial misconduct: the selling of the goods and property of those who are accused of treason before they are even convicted (thus ensuring that they will be convicted); the lease ('farme') of judicial offices to people who can make them pay through extortion and false accusations; the taking of default judgments against defendants who have been neither summoned nor notified of suits pending against them; the lack of convenient access to the courts, and item six, the illegal eviction of people from their property, which is precisely the complaint, in this scene (Act I. iii.), of the first petitioner. The picture the complaint of the commons draws is that of a court system used daily for plundering the people. The articles do not reflect a rebellion aimed at anarchy; rather, they display acceptance of the laws in place and a desire to see the law enforced fairly. The reactions of Holinshed and Stow to this complaint are instructive in their divergence. Holinshed does not attack the articles of grievance for being inaccurate; rather he proceeds ad hominem, and calls into question Cade's motivation for presenting the complaint, asserting that the articles "shadowed vnder a cloke of good meaning" Cade's bid for mere power. Holinshed then apologetically sets forth the articles:

bicause a full report of this insurrection maie passe to the

knowledge of the readers; it is necessarie to set downe the articles of the commons complaints touching the premisses, whereof a copie was sent to the parlement then holden at Westminster, with their bill of requests concerning abuses to be reformed. ³⁰ (underlining added)

Holinshed's phrasing -- that "a full report . . . maie passe to . . . the readers" is itself quite suggestive of the chilling effect of Elizabethan censorship. Holinshed was able to present the articles as a document, but that document had to speak for itself. It is doubtful that Holinshed would have been discouraged from disagreeing with the accuracy or justness of Cade's charges. But he does not disagree.

Stow, on the other hand, gives a fleeting and somewhat ambiguous endorsement of the document:

. . . the king sent notable men to the said Captaine [Cade] and his fellowship, to know their purpose and the cause of their insurrection: unto whom the Captain answered, that he and his company were assembled there to redresse and reforme the wrongs that were done in the realme, and to withstand the malice of them that were destroyers of the common-weale, and to amend the defaultes of them that were chiefe counsellors to the king, and shewed unto them the Articles of complaints touching the misgouernment of the Realme, wherein was nothing contayned but seemed reasonable, whereof a copie was sent to the Parliament holden that at Westminster. . .³¹ (underlining added)

In this amphibolous statement, it is ambiguous whether the articles seemed reasonable to the "notable men" whom the King sent to Cade, or whether this is an editorial interpolation by Stow, or perhaps an editorial comment which Stow could conveniently attribute to "the notable men." But the effect on the reader is the same: the justness of the grievances is being affirmed by someone with "authority." In discussing the rejection of the

articles and the attack on the Kentishmen, neither Stow nor Holinshed indicate that the nobles disagreed with the complaint. Rather, the articles were disallowed and condemned "as proud and presumptuous." Then Cade was attacked.

In 2 Henry VI Shakespeare never directly sets the content of these articles before his audience, but he does remind his audience that the articles were written and submitted to Henry. In the middle of the Cade Rebellion, in a scene which modern editors mark Act IV. iv., the Folio gives the following stage direction: "Enter the King with a Supplication, and the Queene with Suffolkes head, the Duke of Buckingham, and the Lord Say." At this point, the Quarto contains the direction, "Enter the King reading of a Letter . . ." Both Quarto and Folio indicate that the King is reading a communication from the rebels and that he will send a reply:

Buc. What answer makes your Grace to the Rebells
Supplication?
King. Ile send some holy Bishop to intreat:
For God forbid, so many simple soules
Should perish by the Sword. And I my selfe,
Rather than bloody Warre shall cut them short,
Will parley with Iacke Cade their Generall,
But stay, Ile read it ouer once againe. (Folio H. 140)

Anyone in Shakespeare's audience who had read Holinshed or Stow would have had the articles in mind, and would have realized what King Henry held in his hand. There are several other instances in the play which suggest that Shakespeare had these grievances in mind, particularly in Act I. iii. where the suitors to Gloucester encounter Margaret and Suffolk and in the entirety of Act IV, where Cade and his rebels put the legal system on trial.

The Quarto (1594) often emphasizes the thematic concerns of judicial

lawlessness more heavily than the Folio, and it is instructive to consider some of the differences between the two versions. Both Quarto and Folio versions of Act I. iii. stress the bad luck of the petitioners in meeting Suffolk before Gloucester. In the Quarto, the scene begins when both of the nameless petitioners mistake Suffolk for Gloucester, and give Suffolk their petitions. The first petitioner, realizing the error, cries "Oh we are undone, this is the Duke of Suffolk." (Quarto B2 r) In the Folio, the scene begins with a conversation, between the petitioners, contrasting Duke Humphrey with Suffolk:

1st Petitioner: My Masters, let's stand close, my Lord Protector will come this way by and by, and then wee may deliver our Supplications in the Quill.

2nd Petitioner: Marry the Lord protect him, for hee's a good man, Jesu bless him.

Enter Suffolke, and Queene

Peter: Here a comes me thinkes, and the Queene with him: Ile be the first sure.

2nd Petitioner: Come backe foole, this is the Duke of Suffolk, and not my Lord Protector. (Folio H 123)

Both versions stress that there is really only one judge who can be relied upon to give a disinterested verdict, and that is Humphrey. The Folio emphasizes that Humphrey is the protector of the realm in more than title. By inverting "Lord Protector" with "Lord protect him," stress is placed on the indispensability of Humphrey to England and underscores popular anxiety that Humphrey may be in danger. "My Lord Protector" is not just a manner of formal address for these people -- it is the literal truth.

In the Folio, the Queen tears up the first two petitions after making the following speech:

And as for you that loue to be protected
 Vnder the Wings of our Protectors Grace,
 Begin your Suites anew and sue to him. (Folio H 123)

In Quarto, it is Suffolk who tears the petitions, ending the encounter with a threat:

He teares the papers.
 So now show your petitions to Duke Humphrey.
 Villaines get you gone and come not neare the Court,
 Dare these pesants write against me thus. (Quarto B2 v)

In the Folio version, the Queen at least acknowledges the possibility that the petitioners will be able to bring their suits again. She has merely slowed them down, since they will have to recopy the petitions and submit them to Humphrey. Suffolk's act in the Quarto is more dangerous and violent. He clearly desires to close the courts permanently to these petitioners and reveals his attitude that the lower classes simply should not be able to sue the nobles. His invitation to the suitors to "now show your Petitions to Duke Humphrey" can be taken as an insult, a move toward direct confrontation with Humphrey, or both.

After blocking the suits of the other petitioners, Suffolk and Margaret are able to emphasize Thump's accusation that his master made the treasonous statement that York "was rightful heir to the crown." The political implications of Thump's charge against York's armorer are great, for York and Somerset are competing for the Regency of France. Suffolk, who backs Somerset, sees this accusation of treason as a way of discrediting York, and throwing the regency to Somerset. In Folio and Quarto, the act of destroying the petitions not only displays vindictiveness and a strong indication of the despotism Suffolk and the Queen would like to establish in

England, but also allows them to present Thump's suit so that it will receive all of the council's attention, focusing suspicion on York. The action of Suffolk and the Queen combines utter disrespect for the rule of law with real political astuteness as to the way in which a seemingly minor judicial detail, such as the management of the court calendar through the selection of cases, can be used to manipulate politics. Since the value of a dramatic presentation is not lost on Suffolk, and since Thump has displayed little competence with the English language, Suffolk begins the trial by presenting Thump's accusation himself:

Suff. Please it your Majestie, this is the man
That doth accuse his master of High Treason;
His words were these: That Richard Duke of Yorke,
Was rightfull Heir unto the English Crowne
And that your Majestie was an Usurper.

King. Say man, were these thy words?

Armorer. And't shall please your Majestie, I never sayd
nor thought any such matter. God is my witnesse, I am
falsely accus'd by the Villaine.

Peter. By these tenne bones, my Lords, hee did speake
them to me in the Garret one Night, as wee were scou-
ring my Lord of Yorke's Armor.

Yorke. Base Dunghill Villaine, and Mechanicall,
He haue thy Head for this thy Traytors speech:
I doe beseech your Royall Majestie,
Let him haue all the rigor of the Law.

Armorer: Alas, my Lord, hang me if euer I spake the
words; My accuser is my Prentice, and when I did cor-
rect him for his fault the other day, he did vow upon his
knees he would be euen with me. I have good witnesse
of this; therefore I beseech your Majestie, do not cast
away an honest man for a Villaines accusation.
(Folio H 124)

Henry's ineffectualness as a ruler is emphasized throughout the play,

and in this scene it is displayed in his inability to judge the case. The King's reliance on The Protector, Gloucester, is a bit more emphatic in Quarto than in Folio. In Quarto, Henry asks Gloucester: "Uncle Gloucester, what do you think of this [case]?" (Quarto B3 v) In Folio, Henry asks, "Uncle, what shall we say to this in law?" (Folio H 124) The Quarto version emphasizes Henry's desire that Gloucester decide the issue, while the second mutes that dependency and indicates a partnership between Henry and Gloucester in which Henry retains authority but seeks Gloucester's advice. Both versions share one important element -- the determination of Henry and Gloucester to judge according to previously established rules of law.

That Humphrey's decision is based on established law rather than his own proclivities is explicit in both Quarto and Folio, though perhaps more so in Quarto. Humphrey replies in the Quarto:

The law my Lord is this by case, it rests suspitious
That a day of combat be appointed,
And there to trie each others right or wrong, . . . (Q [B4] r)

In the Folio, Henry asks for Gloucester's opinion "in law." Gloucester then renders a verdict, but he does not obviously appear to be working his way through the law toward that verdict. Rather, after giving the verdict he states: "This is the law, and this Duke Humphrey's doom." (Folio H 124). The difference is that in Quarto, Gloucester begins by declaring he is proceeding on the basis of legal precedent -- "the law by case" -- and then renders the verdict. This sequence comes closer to displaying the mental process that judges would like to believe (or at least would like others to believe) they use in deciding cases. In the Folio, there is a slight hint that Humphrey is reasoning backwards from a conclusion. The Folio, however, contains a very

important incident in the characterization of Humphrey which is lacking in the Quarto. In the Folio, between Thump's initial meeting with Suffolk and Thump's presentation to the court, Gloucester leaves in a rage after being accused of many derelictions and crimes by the Queen, Somerset, Suffolk, Cardinal Beaufort and Buckingham. But Humphrey shortly returns to the council, displaying the sagacity and loyalty which make him the model subject and servant of the commonwealth:

Now Lords, my Choller being over-blowne,
 With walking once about the Quadrangle,
 I come to talke of common-wealth Affayres.
 As for your spightfull false Objections,
 Prove them, and I lye open to the Law:
 But God in mercie so deale with my Soule,
 As I in dutie Love my King and Countrey. (Folio H 124)

Gloucester's determination to decide cases on the basis of reason rather than temper, his willingness to put the good of the commonwealth ahead of his own, and his belief in the rule of law as a rational and fair instrument of government establish him as the bulwark of order and good judgment in 2 Henry VI.

York, of course, is a traitor and Gloucester's judgment with regard to the regency, though a victory of Gloucester's enemy Suffolk, is reasonable:

Let Somerset be Regent o'er the French,
 Because in Yorke this breeds suspicion;
 And let these [Thump and Horner] haue a day appointed them
 For single Combat in conuenient place, . . . (Folio H 124)

Suffolk accomplishes his political purpose, and the Thump-Horner suit is adjourned until Act II. iii., in which Shakespeare presents the trial by battle.

In theory, trial by battle was born of the same medieval notion of divine intervention in judicial affairs that provided the basis for trial by ordeal. Where proof of guilt was often impossible to obtain, or when the only proof a judge had to consider was the word of accuser against accused, judicial despair arose over the lack of evidence; the judge abdicated as trier of fact and turned the proceedings over to God. Judicial duels and ordeals are often said to form the beginnings of the law of evidence, if only as an acknowledgment of how inadequate human investigation can be. The theological basis for trial by battle and ordeal are substantially the same and the invocation which was spoken at the beginning of an ordeal, as set forth in the Formulae Merovingici et Karolini aevi provides a good theoretical statement for the justification of trial by battle:

O God, the just judge, who are the author of peace and give fair judgment, we humbly pray you to deign to bless and sanctify this fiery iron, which is used in the examination of doubtful issues. If this man is innocent of the charge from which he seeks to clear himself, he will take this fiery iron in his hand and appear unharmed; if he is guilty, let your most just power declare that truth in him, so that wickedness may not conquer justice but falsehood always be overcome by truth.³²

Political expedience probably had more to do with maintaining the institution of trial by combat than did evidentiary or theological justifications. The above invocation illustrates how powerfully trial by combat yoked the concept of divine retribution to adjudication, and therefore, to the state; God, in effect, was placed in a position as servant to a human court, demonstrating His support for the established power by rooting out traitors. Trial by battle was decreed by Parliament not only in cases where there was little proof except one man's word against the other's,

but also in cases involving treasonous accusations, perhaps because the proof in such instances also generally came down to the word of accuser against accused. In the confrontation between Thump and Horner, Shakespeare presents the historically strongest case for trial by battle -- one in which the issue is treason and there is no way to determine which party is lying. Since the loser of the battle by definition had to be guilty of treason, trial by battle always had the effect of legitimating the status quo, God having seen to it that a threat to those in power was eliminated. Also, if government policy was to eliminate traitors, trial by battle was not a bad solution. Given the fact that at least one of the combatants would be killed, there was at least a 50% chance of eliminating the guilty party and even a better chance than that of maiming him.

Of course, such pragmatic arguments in favor of trial by combat were never made openly, and from the very beginning, trial by combat came under attack by the church. Though the theory of judicial duel was that "a weak, just man would defeat a strong, unjust man,"³³ several medieval authors argued, on the basis of results, that God generally seemed to be on the side of the bigger, stronger, better trained warrior. The biblical story of David and Goliath was often cited in rebuttal as evidence of divine sanction, but Pope Nicholas I, as early as the mid-ninth century attacked trial by battle, noting that "divine authority never sanctioned it as law. . . and those who practice it are only tempting God."³⁴ Though trial by ordeal, which had long been opposed by the church, was effectively destroyed by the Fourth Lateran Council in 1215 when clergy were forbidden to participate in the process, trial by battle, which had never been dependent on the participation of clergy, continued throughout the middle ages. The last judicial duel to be fought in England occurred in 1492, although trial by battle was still

technically available until 1819.

Peter Thump may be cited as one of those participants who shared Nicholas I's doubts about divine intervention in judicially declared combats:

Alas, my Lord, I cannot fight; for Gods sake
pitty my case: The spight of man preuaileth against me.
O Lord, haue mercy upon me, I shall never be able to
fight a blow: O Lord, my heart. (Folio H 125)

Gloucester's reply to this is "Sirrah, or you must fight, or else be hang'd," a speech which is given to Suffolk in the Quarto, and which is presumptuous (and therefore in character) coming from his mouth, since Henry has asked Gloucester to judge. The dilemma faced by Peter between fighting or hanging is historically accurate. Those who were doomed to participate in a judicial duel but refused to fight were hung, as were the defeated who clung to life long enough to be dragged to the gallows erected beside the field of combat. After the loser was killed -- or finished off on the gallows -- he suffered the usual fate of traitors and was drawn and quartered.

One can only speculate about how Shakespeare's company produced the combat between Horner and Thump, but it is probable, from the tone of the scene, that it was milked for full comic effect. The scene begins with the entourages of Peter and Horner entering at opposite doors, drinking heavily to the combatants. Horner himself is drunk, and though Peter wisely declines more drink, he might well have been played as somewhat inebriated, though certainly not as drunk as Horner. The weapons are not the swords of chivalrous combatants, but staves with sand-bags fastened at the ends, suggesting that the combat resembled a Punch and Judy contest, or a pillow fight, rather than, for instance, the chivalrous duel Bolingbroke and

Mowbray are prepared to fight in Richard II. The entertainment value is not lost on the court, and Shakespeare provides a ghastly and quick piece of characterization by having the Queen comment she has purposely left court "to see this quarrel tried." Peter is described by York as "more afraid to fight" than any fellow he has ever seen. Peter, however, makes a better beginning than Horner. He prepares for death, giving away his worldly possessions and invoking the name of God, while Horner continues to drink and invokes the name of Bevis of Southhampton.

The "class"³⁵ character of the Thump v. Horner battle is immediately apparent in both Quarto and Folio. Horner and Thump enter from opposite sides of the stage, Thump surrounded by apprentices and Horner surrounded by "neighbors," i.e., social equals. In the Quarto, with a minor variation in the Folio, Peter is urged by another apprentice to "fight for the credit of the Prentises." (Quarto D v). Horner, on the other hand, is repeatedly called "neighbor" by his neighbors, emphasizing that they are part of a distinct group in opposition to the apprentices:

1. Neighbor: Here neighbor Hornor, I drink to you in a cup of Sacke.
And fear not neighbor, you shall do well inough.
2. Neighbor: And here neighbor, heres a cup of Charneco.
3. Neighbor: Heres a pot of good double beere, neighbor drinke
And be merry, and feare not your man. (Quarto D v)

Peter strikes the drunken Horner down and in both Quarto and Folio Horner confesses his treason before he dies. Though York may have praised God had Horner won, his comment to Peter on the defeat of his armorer is an attempt to cast doubt on providential intervention: "Fellow, thanke God, and the good wine in thy master's way." (Folio H 129). This bit of skepticism is not contained in the Quarto, and in Folio it underscores York's refusal to

accept the outcome of the trial as a divine judgment which also attaches to himself. Those bent on finding divine causation, of course, could easily attribute Horner's drunkenness to divine intervention, and Peter and the King, following true to theory and their own temperaments, take Horner's defeat as an act of God:

Peter. O God, haue I overcome mine Enemies in this
presence? O Peter, thou hast preuaiyled in right!
King: Goe, take hence that Traytor [Horner] from our sight,
For by his death we doe perceiue his guilt,
And God in justice hath reueal'd to us
The truth and innocence of this poore fellow,
Which he had thought to have murther'd wrongfully.
(Folio H 129)

The King, of course, fails to read the malice between the lines of York's comment to Peter, and apparently confirmed in the belief that God will protect him, does nothing to protect himself. He is more interested in divinity than politics, a trait which is emphasized again and again throughout the play.

After Peter's victory, the apprentices have a significant line which does not appear in the Folio. As a chorus they shout: "Ho well done Peter, God saue the King," (Q D r) affirming the primacy of this group's loyalty to the King, rather than to the group represented by Horner and his neighbors. Thus Shakespeare, both in Quarto and Folio, but particularly in Quarto, emphasizes (as his sources do not) the class character of the conflict between Peter Thump and Horner, and, in a way which is especially flattering to the loyalty and bravery of apprentices, makes Peter the surrogate victor of the entire group of apprentices.

For Shakespeare's audience, perhaps the most provocative aspect of

the Thump v. Horner trial would have been the status of the parties -- an apprentice challenging his master. Considering the subordinate relation of apprentices to masters in the patriarchal society of Elizabethan England, the situation itself would have been controversial. The "Ho well done," that the apprentices shout (in Quarto) is, after all, in response to a kind of patricide, Peter's killing of his own master -- the Oedipal desire at least partly fulfilled. One wonders how many apprentices in Shakespeare's audience would have vicariously enjoyed that fantasy, how much repressed anger would have been galvanized by that scene -- and how many masters may have secretly shuddered. Also, considering the numbers of apprentices in London, the thought of group insubordination, as suggested by Peter's supporters, would have been more than disquieting.

Such uneasy thoughts had led in 1563 to the major piece of Elizabethan legislation governing apprentices, the Statute of Artificers. This broad piece of Elizabethan social legislation not only regulated apprenticeships in all guilds and crafts, but attempted to exert control over that unruly group of people -- male adolescents. A major purpose of the act was to inhibit "vagabondage" by limiting the geographic mobility of labour. Under the act, local officials had the power to place into apprenticeships: orphans, children from poor households, and vagrants. Each year thousands of boys came to London to be apprentices³⁶ and apprenticeships generally lasted seven years, as was required by statute.

Once apprenticed, the boy became part of an extended "family" possibly including the master's wife, children, and other servants and apprentices. "Relying on his master for instruction as well as food, clothing and shelter, the apprentice became a part of his master's household, and ideally lived under him as he would have under his own father."³⁷

The importance of the family unit was fundamental and the power of the father within the unit, supreme:

At the heart of [the] conception of order was the patriarchal family. The authority of husbands over wives, of parents over children, of the patriarchal head over subordinate members of the household -- servants and apprentices as well as blood-relations -- was the central axiom on which all else depended. Its divine origin justified, by analogy, the authority of clergy over laity, of gentry over dependents, of kings over subjects. The sonorous message of the Elizabethan Homily on Obedience, incessantly reiterated in the teaching and catechizing of the young and in sermons to their elders, was sustained by the whole majesty of church, law, and government.³⁸

The patriarchal nature of the master-servant relationship was set forth in several guidebooks³⁹ which recognized "the master's responsibility for disciplining his apprentices, and the apprentice's obligation to render complete obedience and faithful service,"⁴⁰ In addition, the duty of the apprentice was spelled out in his articles of indenture, which usually stated that the apprentice would serve seven years "during which term the said apprentice his said master well and truly shall serve, his secrets keep close, his commandments lawful and honest everywhere he shall willingly do: hurt nor damage to his said master he shall none do."⁴¹

Within this context, the dis-ease which the Thump v. Horner scene might cause becomes apparent, and is further emphasized by three factors. First, apprentices had a sense of group identity and solidarity which was a potential threat to the patriarchal social structure and made group political action on their part a genuine possibility. Their potential for disruptive conduct made the central government, and perhaps to a lesser extent the city government, uneasy. Second, in the early 1590's, when the play was in

all probability being written and performed (The Quarto version was registered in 1594.) apprentices did take part in several disturbances which sometimes brought about violent reactions from city officials and the crown. The government had genuine reason to beware of the capacity of apprentices to make trouble, and worse, to take political action as a group. Third, Shakespeare's apparent inversion of the patriarchal social order directly contradicts all historical sources dealing with the Thump v. Horner incident.

First, let us consider the status of apprentices as a separate and cohesive category of persons. According to Steven R. Smith, "apprentices thought of themselves and were thought of as a separate order or subculture."⁴² They took pride in their identity. As Smith explains, they had their own heroes (Dick Worthington, Simon Eyre, George Barnwell, for example), their own literature, and their own sense of social purpose:

They saw themselves as moral agents, defending the right, whether it were the "right" Protestant religion, or the "right" behavior of London's prostitutes, who were frequent targets of apprentice riots throughout the [seventeenth] century. But perhaps their greatest value was "fraternal affection", something not unlike the class solidarity urged by labour leaders of a later age and the youth solidarity urged by student leaders in the twentieth century.⁴³

The "fraternal affection" which Shakespeare captures in the hearty and loyal group of apprentices who cheer on Peter Thump may have been as threatening to some parts of Shakespeare's audience as it was inspiring to others. "Adolescents and youths were seen by many as the primary instigators of disorder. Youthful illicit sex, and other aspects of personal misbehaviour that could produce a breach of the peace, were regarded as a sign of the failure of household discipline."⁴⁴ More significant than this

general attitude toward adolescence is the part apprentices took in some serious public demonstrations and disturbances. Penry Williams provides a long sample of the tensions involved and contemporary attitudes toward the conduct of apprentices. I quote at length from Williams' description so that apprentice disorder in the early 1590s can be appreciated as a developing and growing phenomenon:

London, which had been quiet and orderly since the Evil May Day of 1517, began in the late 1580s to take on a more violent aspect. At first the main threat to the composure of the city fathers and the central government came . . . from a combination of disbanded soldiers and sailors with masterless men and vagabonds. But early in the 1590s the serving-men and apprentices of London itself began to add their discontented voices to the protests of unpaid troops. In 1590 some apprentices broke into a lawyer's office in Lincoln's Inn. The following year saw a riot set off by Hackett, the sectary, which ended in his torture and execution. More serious was the 'tumult' which broke out in Southwark during June 1592. According to the Lord Mayor it was caused by the unnecessarily provocative behaviour of the Knight Marshal's men in serving warrants. But discontent seems also to have been stimulated by resentment against foreign artisans. The Privy Council, apprehensive of further outbreaks, ordered that all servants be kept indoors on Midsummer Eve and Midsummer Night, and that no play nor public pastimes be allowed which might 'draw together the baser sort of people.' The Lord Mayor, while promising that he and his colleagues would punish offenders as an example, 'with such caution as is meet to be used in proceeding against multitudes', asked that justice be even-handed and that some disciplinary action be taken also against the men of the Knight Marshal. In the following October there was a riot in Holborn after the execution of a man who had killed an officer. The Privy Council's comments suggest some tension between the central government and the city fathers, whom the council criticized for giving bail to offenders.

The most serious troubles occurred in June 1595. When a

silk-weaver went to the Lord Mayor's house and criticized his government, the Mayor, evidently astounded at such presumption, decided that he was mad and ordered him to be committed to Bedlam. On the way he was rescued by a crowd of two or three hundred apprentices. In the next week there were riots about butter and fish, followed by another rescue of a prisoner. On this occasion, a serving-man, angered by his brother's ill treatment by his master, attacked the master and broke open his head. After he had been arrested and sent to the Counter, he was forcibly released by a crowd of apprentices. The man was again arrested together with some of his rescuers and put in irons. After the Mayor had gone to the prison to order their close confinement, he was passed on his return by an apprentice who refused to take off his cap; he too was sent to the Counter for insubordination. Next day a report came in that some apprentices had conspired with disbanded soldiers, who said to them 'you know not your own strength'. Trouble seems to have rumbled on for some years, although in the end no disaster occurred.

The tensions and dissatisfactions underlying these disturbances have yet to be revealed. There was certainly some resentment against foreign artisans. By 1595 this had been accentuated by hostility among the apprentices towards the city government, especially towards John Spencer, then Lord Mayor. High prices of foodstuffs can hardly have been relevant in the early stages, since the cost of living was relatively low in 1592, but had certainly become a major grievance by 1595.⁴⁵

The actions of Thump and his supportive band of apprentices not only represent the potential threat of mass political action, but also of betrayal. Dispersed through the households of the realm, possessed of an officious moralism and patriotism, the apprentices could have served as a frighteningly accessible source of information about their masters. No one has yet fully examined the psychological and sociological effect of the mass of treason legislation enacted under the Tudors and the crown's great willingness to use it as a means of destroying its enemies. But it certainly

must have contributed to the lack of trust between people which Lacey Baldwin Smith describes as one of the period's most characteristic features. Failure to report treason was itself treason, and against the Tudor craving for order and stability must be set the Tudor fear of betrayal by members of one's household:

In the Mirror of Magistrates, the fate of the second Duke of Buckingham is presented as a lesson in misplaced trust. By trusting his servant and his King, the Duke was betrayed and executed. . . .

Secrecy was a social and political obsession which was regarded as one of the basic laws of nature, for the whole world knew that 'wild beasts dwell in dens, fishes bed in mud, and birds in nests; and a wise man is wrapped up in secrecy'. Sir Thomas Elyot warned his noble reader to take great care 'whom he may use as his familiars and safely commit to them his secrets',

In such an atmosphere the advice offered by the three most ruthlessly pessimistic fathers of late Elizabethan society -- Sir William Wentworth, Sir Walter Raleigh, and Henry Percy, ninth Earl of Northumberland -- can no longer be regarded as deplorable oddities of the age, but must be accepted as highly quotable confirmation of the paranoid climate of opinion held by all parents, educators, and moralists. The three men not only shared a devastatingly low view of human nature but they also urged a common theme upon their offspring: 'Ever fear the worst.' Wentworth advised his son to 'be very careful to govern your tongue, and never speak in open places all you think' and 'in matters of great importance trust none'. . . . Raleigh was in agreement. 'Be advised', he told his heir, 'what thou doest discourse of, what thou maintainest whether touching religion, state, or vanity; for if thou err in the first, thou shalt be accounted profane; if in the second, dangerous; in the third, indiscreet and foolish.'⁴⁶

Thus, to the Elizabethans, the most disquieting suggestion of 2 Henry VI

may well have been that one was not safe to speak his mind even in his own house, that loyalty to the family and loyalty to the state were in fact at odds, and that, while a state could not exist without stability in the family, the state's very efforts to purge itself of treason were undermining the harmony of family life, and in the long run, the state itself.

The Thump v. Horner episode demonstrates how Tudor treason legislation created a situation in which state security could only be maintained at great expense to the family. Anyone could prosecute a family grudge under the mere color of a treason accusation. Anyone could be an informer. Peter not only does reveal his master's secrets (in conformity to the treason laws but against the articles of the typical indenture), but he kills the man who figures as his father -- again breaching the typical articles of indenture: "hurt nor damage against his master he shall none do." Despite the treason laws, which made it treason not to report treasonous sayings, one would doubt that Shakespeare's audience greeted this conduct with unqualified approbation. The histories which deal with the incident accuse the apprentice of falsely accusing his master, though one can speculate that this is a bit of calumny arising from outrage at the apprentice's disloyalty. Whatever really happened between the armorer and his apprentice, the outrage at this challenge to the social structure is evident in Shakespeare's sources.

The battle between the armorer and his apprentice appears in the histories of Holinshed, Stow, and Hall. In all three histories, the apprentice indeed vanquishes his master, but that is where the similarity between the sources and the play ends, for in all of the histories, the apprentice is a lying scoundrel. Stow gives the most detailed account:

John David appeached his master William Catur, an armorer dwelling in S. Dunstons parish in Fleetstreet of treason, a day being assigned them to fight in Smithfield, & master being welbeloved, was so cherished by his friends & plied so with wine, that being therewith overcome was also unluckely slaine by his seruant: but that false seruant (for he falsely accused his master) lived not long unpunished, for he was after hanged at Tyborne for felony.⁴⁷

Hall also notes that the apprentice was hanged at Tyburne, and describes him as "a coward and a wretch,"⁴⁸ but does not indicate that the apprentice had falsely accused his master. Holinshed's comment is that the master "was slaine without guilt. As for the false servant, he liued not long unpunished, for being conuict of felonie in court of assize, he was iudged to be hanged, and so was, at Tiburne."⁴⁹ But the most vitriolic and personal moral lesson to be derived from this incident is set forth by Stow:

Let such false accusers note this example & looke for no better end without speedie repentance. Myself have had y like servant y likewise accused me of many articles. He liveth yet, but hath hardly escaped hanging since. God make him penitent.⁵⁰

It is evident that Shakespeare's sources provide from the beginning a situation which is highly problematic. Not only does the servant in challenging his master also challenge that basic building block of Elizabethan society, the family, but he also makes a mockery of the trial process. God does not give the innocent party victory -- rather it goes to the liar. One can always argue, as do Stow and Holinshed, that God will not be denied, and that the apprentice was punished later at Tyburne, but this still leaves the problem of dead Mr. Catur, the master -- where was justice there? What happens to the master's now fatherless family? And how does the servant's

eventual execution redress the abuse of judicial process, in which the master, though innocent, is legally killed and then, in all probability, drawn and quartered with his head set upon London Bridge as an example? The gloating of Stow and Holinshed over the apprentice's execution seems a rather ragged attempt to extract some kind of order out of an incident which threatens the foundations of Elizabethan cosmology and social structure.

The main issue here is whether Shakespeare's revision of his sources removes these contradictions or makes the incident any more palatable. Would it have been more comfortable for Shakespeare's audience to see (1) a "true" servant who informs on and kills his treasonous master, or (2) a false servant who informs on and kills his loyal master, but who is later hanged? Allowing Peter to triumph is more effective dramatically. It capitalizes on the popular David v. Goliath situation and resolves the incident in one short scene. Making Peter the villain would necessitate either another scene, in which he gets his just desserts, or at least a report of such an incident. Either would impede the play's progress. Second, Shakespeare's version seems to affirm (1) that God is in charge and that traitors will be punished and (2) that one's primary loyalty is to the King -- not one's immediate master. Since the law in Shakespeare's time was that failure to report treasonous speech was itself treason, Peter is merely obeying the law, at the risk of his own life and at the cost of his position as apprentice. However, the price which Shakespeare pays for affirming loyalties to God and King comes at the expense of the immediate family and Peter's indentures. After all, Peter's master has merely made a private comment -- how much danger does this armorer really present to the crown? In the end Horner confesses treason and Peter's victory appears to be a miracle, but the implications of the scene remain: given the broad scope of treason legislation any servant or

apprentice, rightly or wrongly, could accuse his master, and any son his father, of treason, and be supported by the government in forcing the issue to a life and death struggle. Treason legislation, ostensibly a crucial tool for preserving social order, could be used as a wedge to destroy the family, the fundamental unit of political order. Simply by putting this scene on stage, Shakespeare shows the capacity for self-destruction which was built into the society of Henry VI -- and Elizabeth.

Given the contemporary climate of apprentice class "disorder," the government's general attitude of dis-ease toward apprentices as a group, and the contrary thrust of Shakespeare's sources, what could Shakespeare, particularly in the Quarto version, have been aiming at in this scene glorifying an apprentice's killing of his master? Was the Quarto version written for an audience in which there were large numbers of apprentices or people favorable to apprentices? (This is less likely if Anne Jennalie Cook is correct about the composition of Shakespeare's "privileged" audience.⁵¹) Was the Quarto scene an apology for apprentices directed toward a privileged audience? (One doubts that Henry VI would have been so popular had Shakespeare served his audience didactic lessons with unpalatable political implications.) Was the scene written for an audience of quite mixed social standing which would have reacted to it in various ways?

These questions may be impossible to answer, but the very difficulty of linking audience composition to dramatic content may be the most important clue to the social dynamics of Shakespeare's theatre and demonstrates how hopelessly inadequate it is to label Shakespeare or his audience "conservative." For what is it that Shakespeare and his audience are conserving? If loyalty to the crown is conserved, it is only at the expense of loyalty to the family, and if the actions of Peter are odious to

some portion of the audience, is it not because they would conserve family loyalty at the expense of the crown? More importantly, if loyalty to the crown and to the family were both required to make Elizabethan society work, is not the impossibility of satisfying both requirements the most radical conjecture Shakespeare could have set before his audience? The Thump v. Horner trial scene indeed seems to be the "fictional realization of a question,"⁵² and a disquieting one. The very popularity of Henry VI suggests that the Elizabethans were not put off by the difficulty of such questions. Side by side with a penchant for order, Shakespeare's audience apparently had a large capacity to appreciate and endure the tension posed by the contradictions of their own culture.



Interposed between Gloucester's order that Horner and Thump settle their dispute through a judicial duel (Act I. iii.) and the actual combat (Act II. iii.) are two critical events: the trial of Saunder Simpcox, which demonstrates the absolute indispensability of Duke Humphrey to King Henry; and the first step in Duke Humphrey's fall -- the arrest and conviction of his wife Eleanor Cobham for treason and consorting with witches. The later is a variation on the theme established by the Thump v. Horner trial, in which various factions exploit criminal charges to further their political ends. The Simpcox trial, in contrast, provides a comic interlude and a model of judicial conduct.

A great deal of audience pleasure in watching a dramatized trial comes from the battle of wits between lawyers, witnesses and judges. Shakespeare's love of "a set of wit" finds expression in several of his trial scenes, but the first instance in which Shakespeare portrays trial as a game of wit occurs in Act II. i. of 2 Henry VI with Gloucester's cross-examination

of Saunder Simpcox. John Henry Wigmore,⁵³ asserted that cross-examination was "beyond any doubt the greatest legal engine ever invented for the discovery of truth." Gloucester demonstrates the engine at full power. His examination of Simpcox illustrates the importance of rationality in adjudication, providing a foil for the loss of rationality which is to follow his murder.

The aspect of trial as game, and of cross-examination particularly as the stalking of evasive quarry, is emphasized by situating the Simpcox trial in the midst of a hunting expedition. While the Royal party -- the King, Queen, Gloucester, Cardinal Beaufort and Suffolk -- are hawking near St. Albans, a messenger enters, proclaiming a miracle. Saunder Simpcox, "... a blinde man at Saint Albones Shrine,/Within this halfe houre hath receiu'd his sight,/ A man that ne're saw in his life before." (Folio H 126)

King Henry displays the credulous piety that characterizes him throughout the play: "Now God be prays'd, that to beleeuing Soules/Giues Light in Darknesse, Comfort in Despaire" (Folio H 126) The King, like the commoners of St. Albans, wants to believe in the miracle. The platitudinous language that he uses throughout the scene demonstrates his mode of operation in the world, searching for the religious meaning of experience, though not in a penetrating way, reflexively applying moral captions to the scenes in which he does not participate. Gloucester takes a skeptical and probing approach to Simpcox from the very beginning; the proclamation of the miracle is a signal to Gloucester to begin the hunt, his first impulse being to test the truth of Simpcox's claim. As soon as Simpcox enters, born on a chair by the commoners, Shakespeare provides the audience with the different responses of King and Protector. The King, whose first impulse is to draw a moral from the event, refers to John 9: 41:

Great is his comfort in this Earthly Vale,
Although by sight his sinne be multiplyed. (Folio H 126)

Henry proceeds to play into Simpcor's hand by feeding Simpcor leading questions which can only elicit answers in support of Simpcor's claim:

Good-fellow, tell vs here the circumstance,
That we for thee may glorifie the Lord.
What, hast thou beene long blinde, and now restor'd?
(Folio H 126)

Even the little jingle between "Lord" and "restored" suggests that Henry's elation. Henry is always looking for an occasion to glorify God and he wants Simpcor to provide it.

Gloucester, on the other hand, skeptically evaluates the testimony as it comes in:

Simpcor:	[I was] Borne blinde, and't please your Grace
Wife:	Ay, indeede was he.
Suffolk:	What Woman is this?
Wife:	His Wife, and't like your Worship
Gloucester:	Hadst thou been his Mother, thou could'st haue better told. (Folio H 126)

Gloucester learns immediately that Simpcor's wife wants to prove that he was blind from birth -- wants to prove it badly enough that she will not let her husband's words speak for themselves, but like a chorus, intensifies his testimony with her own. This, together with the improbability of the miracle, elicits Gloucester's sardonic comment that Simpcor's mother "could have told better" whether he was blind at birth. The wife's testimony is hearsay, a form of evidence mistrusted though not excluded in the courts of

Tudor England.

As the scene continues, Simpcox reveals that he is from Berwick in the north -- far enough away so that witnesses to Simpcox's childhood blindness are conveniently unavailable. Though the King still attempts to make a sermon out of the "miracle," Simpcox's story is continually undermined by the improbability of his wife's embellishments; she even hears the same voices that Simpcox hears in his sleep:

King:	Poore Soule, Gods goodnesse hath beene great to thee: Let neuer Day nor Night vnhalloved passe, But still remember what the Lord hath done.
Queen:	Tell me, good-fellow, Cam'st thou here by Chance, or of Deuotion To this holy Shrine?
Simpcox:	God knowes, of pure Deuotion, Being call'd a hundred times, and oftner In my sleepe, by good Saint Albon: Who said; Symon, come, come, offer at my Shrine, And I will helpe thee.
Wife:	Most true, forsooth: And many time and oft myself haue heard aVoyce, To call him so. (Folio H 126)

In The Institutio Oratio, a popular Renaissance book on trial practice, Quintillian notes that, in the examination of witnesses, "the first essential is to know your witness. . . for a timid witness may be terrorized, a fool outwitted, an irascible man provoked and vanity flattered."⁵⁴ Gloucester takes Simpcox for a fool, but finds that he is a cagey one, for while Gloucester seeks to rend the fabric of Simpcox's testimony by attacking its inconsistencies, Simpcox as quickly patches the story back together again:

Cardinal: What, art thou lame?

- Simpcox: I, God Almightye helpe me.
 Suffolk: How cam'st thou so?
 Simpcox: A fall off of a Tree.
 Wife: A Plum-tree, Master.
 Gloucester: How long has thou beene blinde?
 Simpcox: O, borne so Master.
 Gloucester: What, and would'st climb a Tree?
 Simpcox: But that in all my life, when I was a youth.
 Wife: Too true, and bought his climbing very deare.
 Gloucester: 'Mass, thou lou'dst Plummes well, that would'st venture so.
 Simpcox: Alas, good Master, my Wife desired some Damsons, and made me climbe, with danger of my Life.
 Gloucester: A subtill Knaue, but yet it shall not serue:
 (Folio H 126)

The above speech is missing from Quarto (as is the character, Simpcox's wife) and it increases the suspense by making Gloucester's first attempt to trip Saunder a failure. Gloucester at this point is engaged in the most difficult task of any cross-examiner: getting a witness to prove out of his own mouth that he is perjuring himself. Gloucester's first attack is not completely successful because, though Simpcox testimony is farfetched, there is still a possibility that it could be true. Since the King is obviously attracted to the farfetched and miraculous, to convince the King of Simpcox's perjury, Gloucester has to meet an absolute standard of proof. He has to show that Simpcox statements are logically impossible, because even the King will not believe that contradictory propositions can be true at the same time. Gloucester lays a trap that capitalizes on Simpcox's tendency to gild the lily. Feigning doubt about Simpcox ability to see even after the miracle, Gloucester elicits Simpcox objection that now he can see just fine, and Simpcox forgets there are certain things which a man who has just received his sight could not possibly know:

Gloucester: Let me see thine Eyes; winck now, now open them,
In my opinion, yet thou seest not well.

Simpcox: Yet, Master, cleare as day, I thank God and St. Albones.

Gloucester: Say'st thou me so: what Colour is this Cloake of?

Simpcox: Red Master, Red as Blood.

Gloucester: Why that's well said: what Colour is my
Gowne of?

Simpcox: Black, forsooth, Coale-Black, as Iet.

King: Why then, thou know'st what Colour Iet is
of?

Suffolk: And yet I thinke, Iet did he neuer see.

Gloucester: But Cloaks and Gownes, before this day, a
many.

Wife: Neuer before this day, in all his life!

Gloucester: Tell me Sirrah, what's my Name?

Simpcox: Alas Master, I know not.

Gloucester: What's his Name?

Simpcox: I know not.

Gloucester: Nor his?

Simpcox: No, indeede, Master.

Gloucester: What's thine owne Name?

Simpcox: Saunder Simpcox, and if it please you, Master.

Gloucester: Then, Saunder, sit there,
The lying'st Knaue in Christendome.
If thou hadst beene born blinde,
Thou might'st as well haue knowne all our Names,
As thus to name the seuerall Colours we doe weare.
Sight may distinguish of Colours:
But suddenly to nominate them all,
It is impossible. (Folio H 126-7)

Gloucester has used Simpcox to construct a valid syllogism which disproves Simpcox's own testimony and has concealed his attack by working inside out, from the minor premise, which Simpcox supplies, to conclusion and major premise, which Gloucester supplies. The minor premise is that Simpcox can associate colors with their names -- a bit of information

Simpcox provides because Gloucester has led him to believe it will support Simpcox's claims. The major premise, which is clear to everyone in the royal party, is that a person who has just received his sight could not associate the names of colors with colors. The conclusion, of course, is that Simpcox has not recently received his sight, and the implication is that there is no miracle. The scene exemplifies one of Abraham Fraunces's conclusions in The Lawiers Logike, Exemplifying the Praecepts of Logike by the Practicse of the Common Lawe (1588): "Neither let any man thinke, that because in common meetings and assemblies the wordes and tearmes of Logike bee not named, therefore, the force and operation of Logike is not there used and apparent."⁵⁵ Gloucester's examination is brilliant; he sees where he wants to take Simpcox and leads him there -- a difficult feat to accomplish in so little time.

Gloucester's shrewdness does not end in disproving Simpcox's blindness. He orders Simpcox whipped, and when Simpcox pleads that he cannot stand, Gloucester notes: "Well sir, we will have you find your legs." Whether Simpcox is actually lame has not been strictly disproved, but Gloucester plays the odds. Since Simpcox has lied about being blind, he has probably lied about his lameness. Of course, when the first lash falls, Simpcox jumps out of his chair and runs off the stage.

Gloucester's order that Simpcox be whipped through every village between St. Alban and Berwick invites consideration. In Quarto, Simpcox is simply designated "Poore Man," and in the Folio, in a bid for mercy, Simpcox's wife tells Humphrey, "Alas Sir, we did it for pure need." Gloucester does not respond to this at all; he simply issues the order that Simpcox be whipped and that "this Drab" be taken away. The order accomplishes two things: it certainly punishes Simpcox, but it also widely publicizes, in a

society with poor communications, that Simpcox is a fraud, making it more likely that he will not be able to work the "miracle" scheme in a different area. By modern standards the deterrent seems extreme, but it did not to John Foxe, who commented, "By this it may be seen how Duke Humphrey had not only an head to discern and disserver truth from forged and feigned hypocrisy, but study also and diligence likewise was in him to reform that which was amiss."⁵⁶ Apparently, Humphrey's actions are also approved by the commoners on stage, for a direction indicates that as Simpcox runnes away, he is pursued by the others, who cry "A Miracle."

The King (in Folio) rounds off the episode with another platitude: "O God, seest Thou this and bearest so long?" (Folio H 127) In Quarto, the King simply remains silent, which may be a more eloquent statement of disappointment. King Henry does not reflect on the quality of Gloucester's cross-examination, as do Gloucester's wiser enemies, the Cardinal and Suffolk. Nor does he learn anything about the analysis of men or situations. The scene demonstrates Humphrey's indispensability to Henry because of Henry's incapacity to find the truth and take appropriate action. In Quarto and slightly different form in Folio, the following exchange appears:

Suffolke: My Lord Protector hath done wonders to day,
He hath made the blinde to see, and the halt to go.
Humphrey: I but you did greater wonders, when you made whole
Dukedoms flie in a day. (Quarto C2 v)

After this, Henry has a line which appears in Quarto but not Folio: "Haue done I say, and let me here no more of that." (Quarto C2 v). The Quarto line may indicate Henry's irascibility after being denied his miracle, his anger at Humphrey for hinting that Henry was at fault in marrying Margaret (for whom those Dukedoms were exchanged), his simple exhaustion with keeping

the bickering members of his court under control, or all three. The absence of the command in Folio is more consistent with Henry's weakness as a leader. But either through silence, or his stated unwillingness to consider past mistakes, Henry demonstrates his lack of capacity for rational thought or leadership.



Shakespeare uses the apprehension (I. iv.) and punishment (II. iv.) of Eleanor Cobham, Duchess of Gloucester on charges of witchcraft and treason for several dramatic purposes. Eleanor, whose ambition to place Gloucester on the throne is made clear from the beginning of the play, is essentially entrapped by Suffolk, who tempts her to witchcraft and treason through the provocateur Hume, and then sets spies to catch her in the act. Eleanor's conviction is the first step in Suffolk's play to discredit Gloucester and remove him as Protector. After Eleanor's conviction, the nobles do their best to raise suspicion against Gloucester, and immediately after Eleanor's sentencing, Henry asks Gloucester to step down as Protector, thus removing the last prop that holds up his throne. The Folio and Quarto versions of Eleanor's sentencing are significantly different. The Folio emphasizes Henry's mercy to Eleanor, who could have been executed for both treason and witchcraft:

King: Stand forth Dame Elianor Cobham,
 Glosters Wife:
 In sight of God, and vs, your guilt is great,
 Receiue the Sentence of the Law for sinne,
 Such as by Gods booke are adiudg'd to death.
 You foure from hence to Prison, back againe;
 From thence, vnto the place of Execution:
 The Witch in Smithfield shall be burnt to ashes,
 And you three shall be strangled on the Gallowes.

You Madame, for you are more Nobly borne,
 Despoyled of your Honor in your Life,
 Shall, after three dayes open Penance done,
 Liue in your Countrey here, in Banishment,
 With Sir John Stanly, in the Ile of Man.
 (Folio H 128)

In Quarto, Eleanor alone is addressed. Her punishment is not contrasted with that of her confederates, and so Henry's mercy is not so apparent -- and neither is the way in which the criminal law incorporates arbitrary class distinctions, sending some to a horrible death and reprieving others, merely on the basis of birth.⁵⁷ However, for a Duchess to be so humiliated was, at the time, quite shocking.⁵⁸ While in Folio, Henry speaks politely, even apologetically to Eleanor, in Quarto Henry's language is heavier, almost brutal:

Stand forth Dame Elnor Cobham Duches of Gloster,
 and here the sentence pronounced against thee for these Treasons,
 that thou hast committed gainst vs, our States and Peeres.
 First for thy hainous crimes, thou shalt two daies in London do
 penance barefoote in the streetes, with a white sheete about thy
 bodie, and a waxe Taper burning in thy hand. That done, thou
 shalt be banished for euer into the Ile of Man, there to ende thy
 wretched daies, and this is our sentence erreuocable. Away with
 her. (Quarto D r)

The Quarto and Folio emphasize different reactions to Eleanor's banishment. In the Quarto, the King has the first speech after Eleanor exits, and it is similar in orientation to the speech Henry will give after Peter Thump's victory: he dwells on the connection between divine and human justice, noting that Henry is lucky Eleanor was apprehended, for God's retribution sometimes falls on innocent bystanders as well as the guilty:

Greeue not noble vnckle, but be thou glad,
 In that these Treasons thus are come to light,
 Least God had pourde his vengeance on thy head,
 For her offenses that thou held so deare. (Quarto D r)

The King's acknowledgement of Gloucester's love for Eleanor increases the pathos of the scene, but it also ties Eleanor to Gloucester so closely that it may indicate the King has some unease about Gloucester's loyalty. This impression is avoided in Folio by giving Gloucester the first speech after Eleanor's exit, a speech which does not occur in Quarto:

Elinor, the Law thou seest hath judged thee,
 I cannot iustifie whom the Law condemnes:
 Mine eyes are full of teares, my heart of grieve.
 Ah Humfrey, this dishonor in thine age
 Will bring thy head with sorrow to the ground. (Folio H 128)

In this speech Humphrey affirms his loyalty not to Henry, though that is implied, but to the Law as a supra-human entity which has its own, independent existence and to which Humphrey feels his foremost obligation. This is the entity to which common lawyers felt all government officials, and the king himself, were subject. Once again, the law of treason forces a character into the dilemma of choosing between family or national loyalties. But in Humphrey's case the choice is more complicated, for he is not just choosing between his sovereign and his family, but between his family and more abstract ethical obligations. Humphrey's self-sacrifice demonstrates his willingness to apply the laws indifferently, even when the consequences to himself and those he loves are tragic. Humphrey's decision to let the law take its course with Eleanor, putting the good of the realm ahead of personal happiness, defines the essence of political ethics in this play and creates a standard which Henry (in his marriage to Margaret) and the other nobles fail

to meet.

The histories which deal with Eleanor's crimes make little mention of her relationship with Humphrey. Stow, apparently in an attempt to save Humphrey's good name from the tarnish of association states that Eleanor had used witchcraft to get Humphrey to marry her.⁵⁹ Shakespeare, however, needs a Humphrey who has a choice to make and the free will to make it with. Thus from the beginning Shakespeare emphasizes Humphrey's love for Eleanor. In Act I. ii., when Eleanor tells Humphrey her treasonous dream, he becomes angry, but when she assures him that it is but a dream, he is ready enough to forgive her, and when he sees her doing penance, walking barefoot through the flinty streets on her way to exile, she is still his duchess and her pain is his:

Tenne is the houre that was appointed me,
To watch the comming of my punished Duchesse.
Vneath may shee endure the Flintie Streets
To treade them with her tender-feeling feet.
Sweet Nell, ill can thy Noble Minde abrooke
The abject People, gazing on thy face,
With enuious Lookes laughing at thy shame,
That erst did follow thy prowde Chariot-Wheelles,
When thou didst ride in triumph through the streets.
But, soft, I thinke she comes, and Ile prepare
My teare-stayn'd eyes, to see her Miseries. (Folio H 129)

Humphrey is tempted by his men and by Eleanor to use force or influence to free her, and the way he meets this temptation actualizes the thematic core of the play. When Humphrey's servant offers, "So please your grace, we'll take her from the sheriff," once again, Humphrey demonstrates his commitment to legal process rather than private justice by replying: "No, stirre not for your liues. Let her passe by." Eleanor tries to use shame to

force action by Humphrey:

Ah, Gloucester, teach me to forget my selfe.
 For, whilst I think I am thy married Wife
 And thou a prince, Protector of this Land,
 Methinks I should not thus be led along,
 Mayl'd vp in shame, with Papers on my back,
 And follow'd with a Rabble, that reioyce
 To see my teares, and heare my deepe-fet groanes. . . .
 Sometime Ile say, I am Duke Humphrey's Wife,
 And he a Prince, and Ruler of the Land:
 Yet so he rul'd, and such a Prince he was,
 As he stood by whilst I, his forlorn Duchesse,
 Was made a wonder and a pointing-stock
 To euery idle Rascall follower. . . . (Folio H 129)

Both Eleanor and his men encourage Humphrey to adopt the tactics of the worst characters in the play, but Humphrey's refusal to exercise illegal power provides a pattern for ethical political behavior. Humphrey replies that if he were to rescue her, she would yet be guilty and then he also would be "in danger for the breach of Law." (Folio H 130); This phrase has two senses. The most obvious is that if Humphrey rescues his wife, he will have broken the law, and he will be in danger of punishment. The comparable line in Quarto ["Should I attempt to rescue thee from hence,/I should incur the danger of the law." (Quarto D2 v)] also allows that meaning. The Folio line, however, can be given an additional twist: that Gloucester would be in danger of breaching the idea of law, the rule of law, causing fundamental damage to the body politic. The breach of Law as an entity and the consequences of that breach is the subject of the 2 Henry VI and certainly a major concern of both Shakespeare's tetralogies, Measure for Measure, and The Merchant of Venice. Mixed with Humphrey's admirable self-restraint, however, is a fundamental misconception about the power of innocence:

Cranmer: Most dread liege,
The good I stand on is my truth and honesty. . . .
I fear nothing
What can be said against me.

King: Know you not
 How your state stands i' th' world, with the whole
 world?
 Your enemies are many, and not small; their practices
 Must bear the same proportion, and not ever
 The justice and the truth o' th' question carries
 The due o' th' verdict with it. At what ease
 Might corrupt minds procure knaves as corrupt
 To swear against you? Such things have been done.
 You are potently oppos'd and with a malice
 Of as great size. Ween you of better luck,
 I mean in perjur'd witness, than your Master,
 Whose minister you are, whiles here he liv'd
 Upon this naughty earth? Go to, go to!
 You take a precipit for no leap of danger,
 And woo your own destruction. (V. i. 121-40)

Humphrey, as an experienced judge, should know more of "this naughty earth" than anyone in the play. Yet he goes, with little struggle, toward his destruction, exhibiting a passivity which seems out of character. Of course Humphrey's belief in the law is never completely contradicted, for he is murdered before he gets to trial. But the point is that Humphrey's innocence will help him only in a fair trial, and in England, fair trial has become extinct.



The arraignment of Gloucester, in Act III, scene 1, is the turning point of the play. The King's failure to immediately dismiss proceedings against Gloucester, despite his confidence in Gloucester's innocence, proves that he is too weak to rule. In Folio, there are 92 lines before Gloucester enters and is accused by Suffolk of treason. Those lines, which begin Gloucester's arraignment, consist of arguments by the Queen, Suffolk, the Cardinal, York and Buckingham against Gloucester's loyalty. The persuasive strategies adopted by the speakers reveal their skill in rhetoric, their knowledge of the

king's weaknesses, and their disregard for the truth. Their main aim is to establish the probability that Gloucester is seeking the throne by developing the topics of Motive and Manner of Life, which Pseudo-Cicero sets forth in Ad Herrenium. The motive, that Gloucester has "the hope . . . of winning advantages" ⁶⁰ is assumed and then "every effort [is made] to relate the defendant's manner of life to the motive." ⁶¹

Although previously the Queen had accused Gloucester of ambition (II. i. 32) and described him as "surly" and "haughty" (I. ii. 49 and 69), now that it serves her turn, she emphasizes the humility of his manner before his wife's trial, urging that "the change" in Gloucester's character indicates treason is brewing in his mind:

Can you not see? Or will ye not obserue
The strangenesse of his alter'd Countenance?
With what a Majestie he beares himselfe,
How insolent of late he is become,
How prowd, how peremptorie, and vnlike himselfe?
We know the time since he was mild and affable. (Folio H 130)

Her following arguments are that Gloucester is dangerous ("Humfrey is no little Man in England") partly because "by flatterie he hath wonne the Commons hearts"; that he is next in line for the crown, "And should you fall, he is the next will mount." The inference the Queen wishes the King to draw, of course, is that anyone next in line of succession is probably plotting treason -- that ambition is a natural law which cannot be suspended by the exercise of reason or restraint. In making this argument, the Queen simply projects her own passions onto Gloucester. Suffolk supports the argument with reference to Eleanor's "devilish practices" -- Gloucester must either have encouraged her or known of the practices because he had a crown to

gain if they worked. It's not a bad argument -- quite similar to Gloucester's argument that Horner's treason breeds fear of suspicion in York. The difference is in the response being sought. Gloucester merely disqualified York for a particularly sensitive public office, making no attempt to indite him merely on the basis of association. Suffolk seeks Gloucester's life.

At this point, Suffolk's argument takes a completely illogical turn. While the Queen premised Gloucester's treason on his current insolence and proud, peremptory behavior, Suffolk premises it on Gloucester's current submissiveness:

Smooth runnes the Water where the Brooke is deepe
And in his simple shew he harbours Treason.
The Fox barks not, when he would steale the Lambe.
(Folio H 130)

Thus, the Queen and Suffolk argue from opposite and contradictory premises to the same conclusion, grabbing at any possible interpretation of the facts to support their argument. This inconsistency, however, is not easy to spot, since several arguments intervene between the Queen's assertion of Humphrey's change from humility to haughtiness and Suffolk's assertion of Humphrey's continuing, but false, humility. The Cardinal, York and Buckingham add nothing to the argument against Humphrey but rhetorical questions and unsupported predictions:

Cardinal:	Did he not, contrary to forme of Law, Deuise strange deaths for small offenses done?
Yorke:	And did he not, in his Protectorship Leuie great summes of Money thorough the Realme, For Souldiers pay in France, and neuer sent it? By meanes whereof, the Townes each day reuolted.

Buckingham: Tut, these are pretty faults to faults vnknowne
Which time will bring to light in smooth Duke Humfrey.
(Folio H 130)

The King is less convinced by these arguments than overpowered by the solid wave of opposition to Humphrey. His reaction to Somerset's news of the loss of France, which preceeds Humphrey's entrance, typifies the fatalistic attitude he will take to Gloucester: "Cold Newes, Lord Somerset: but God's will be done." (Folio H 131)

With Gloucester present to defend himself, the weakness of the case against him becomes obvious. The accusations against him are based on mere speculation, which Gloucester points out in reply to York:

York: 'Tis thought, my Lord,
 That you tooke Bribes of France.
 And being Protector, stay'd the Souldiers pay,
 By meanes whereof, his Highnesse hath lost France.
Gloucester: Is it but thought so?
 What are they that think it?
 (Folio H 131)

As Gloucester implies, anything can be thought. "What are they that think it" has a double meaning: Why don't you produce these witnesses and what is the quality of their loyalty? Gloucester simply destroys the case against him by demanding that proof be brought forth:

So helpe me God, as I have watcht the Night
I, Night by Night, in studying good for England.
That Doyt that ere I wrested from the King
Or any Groat I hoorded to my vse,
Be brought against me at my Tryall day. (Folio H 131)

Like many treason defendants, Gloucester wants witnesses and proof

produced so that he may at least have a chance to refute the charges -- to confront the case against him, but York implies in his next charge that Gloucester does not deserve procedural fairness, for he himself did not treat criminal defendants fairly, but "did devise/Strange Tortures for Offendors, never heard of,/That England was defam'd by Tyranny." (Folio H 131) Of course, York is assuming the very point at issue, Gloucester's guilt, for the purpose of denying him procedural fairness -- not an unfamiliar argument for Tudor prosecutors of treason to use, and one which, as we shall see in chapter three, Coke used against Raleigh during Raleigh's treason trial.

While Gloucester refutes, one by one, the charges against him, the King stands helplessly by. Henry abdicates authority in this scene. He does not respond to Gloucester's greeting and remains silent for forty-three lines while the nobles make accusations against Gloucester. Though he should be in command, he has only three lines during the whole proceeding:

My Lord of Gloster, 'tis my speciall hope
That you will cleare your selfe from all suspense.
My Conscience tells me you are innocent. (Folio H 131)

Gloucester seems to realize that at this point, England is on an irrevocable course toward disaster. In Gloucester's parting speech to Henry there is no evidence of the idealism Gloucester had displayed in leaving Eleanor:

Ah gracious Lord, these dayes are dangerous:
Vertue is chokt with foule Ambition,
And Charitie chas'd hence by Rancours hand;
Foule Subornation is predominant,
And Equitie exil'd your Highnesse Land. . . .
I, all of you haue lay'd your heads together,
My selfe had notice of your Conuenticles,

And all to make away my guiltlesse Life.
 I shall not want false Witnesse, to condemne me,
 Nor store of Treasons, to augment my guilt:
 The ancient Prouerbe will be well effected,
 A staff is quickly found to beat a Dogge. (Folio H 131)

Beaufort's response is again typical of treason prosecutors. The defendant should not be listened to since, if he were innocent, he would not be a defendant:

My Liege, his rayling is intolerable.
 If those that care to keepe your Royall Person
 From Treasons secret Knife, and Traytor's Rage
 Be thus vpbraided, chid, and rated at,
 And the Offender graunted scope of speech,
 'Twill make them coole in zeale unto your Grace. (Folio H 131)

The argument is obviously circular, but Henry does not come to Gloucester's defense as Henry VIII, a strong king, comes to the defense of the innocent Cranmer. Henry VI's passivity, his incapability of protecting the administration of law or filling the role of judge, guarantees that Gloucester will come to a bad end, with disastrous results for the kingdom, and for Henry personally. As Gloucester predicts:

Ah, thus King Henry throwes away his Crutch
 Before his Legges be firm to beare his Body. (Folio H 131)

Henry gave up his crutch, ironically, when he first accepted the staff from Gloucester. In De Republica Anglorum (1583), Thomas Smith defined a King as a person who "by succession or election commeth with the good will of the people to that government, and doth administer the common wealth by the lawes of the same and equitie. . ." ⁶² While Richard II and Richard III go

wrong through their own assertion of arbitrary power, Henry VI goes wrong through his failure to administer the laws of the commonwealth, and hence, to prevent the assertion of arbitrary power. The two Richard's become tyrannts, but Henry VI fails as guardian.

At this point, Humphrey's doom is not quite sealed. The plotters have a dilemma. It would look better if Humphrey were condemned under the color of legality. The problem is, their case is weak, Humphrey is a dangerous opponent, and Henry VI is not convinced of his guilt:

Cardinal: That he should dye is worthie pollicie;
 But yet we want a Colour for his death:
 'Tis meet he be condemn'd by course of Law.
 Suffolk: But, in my minde, that were no pollicie.
 The King will labour still to saue his Life,
 The Commons haply rise, to saue his Life;
 And yet we haue but triuiall argument,
 More than mistrust, that shewes him worthy death.
 (Folio H 132)

The conspirators recognize the danger to them of rational inquiry into the indictment, and Suffolk's anxiety over their "trivial argument" emphasizes the argument, which pervades the play, that the rule of law can work, but only if the king exercises power to preserve the laws and procedural fairness.

□ □ □

Under the direction of Suffolk and Beaufort, and with the complicity of Margaret, and York, Gloucester is murdered just before his trial. The discovery of the murder by a pale Suffolk (who demonstrates the utility of acting talent in politics) begins an informal inquest into Humphrey's death which soon turns into a more formal legal proceeding in which the King, acting as judge, banishes Suffolk. The episode once again demonstrates

Henry's inability to rule as he is bombarded with competing interpretations of Humphrey's death by power groups that would like to exercise the office of judge: Margaret and Suffolk, Salisbury and Warwick, and the commons.

Margaret's "interpretation" is mainly aimed at protecting herself and Suffolk and raising enough red herrings to distract Henry from the real issue at hand, which is the guilt of Suffolk, Gloucester's avowed enemy. First, Margaret directs Henry's attention to the most easily falsified evidence in favor of her own and Suffolk's innocence -- their innocent demeanors; then she asserts how she would act if only it could bring Gloucester back, a statement about her own capacity to play a part which is suspicious in itself:

Why do you rate my Lord of Suffolke thus?
 Although the Duke was enemie to him,
 Yet he, most Christian-like, laments his death:
 And for myselfe, Foe as he was to me,
 Might liquid teares or heart-offending groanes
 Or blood-consuming sighes recall his Life;
 I would be blinde with weeping, sicke with groanes,
 Looke pale as Prim-rose with blood-drinking sighes,
 And all to haue the Noble Duke alive. (Folio H 133-4)

Margaret then attempts to anticipate arguments that she herself is guilty of the murder. Margaret's probable guilt, like Suffolk's, lies in her motivation to kill Gloucester, so Margaret, superb rhetorician that she is, makes the very obviousness of her motive her defense. Why would she want to endure the public suspicion and calumny that will be sure to fall on her as a result of Gloucester's death? The very public knowledge of her hatred of Gloucester makes it improbable that she is involved in his death:

What know I how the world may deeme of me?
 For it is knowne we were but hollow Friends:

It may be iudg'd I made the Duke away:
 So shall my name with Slanders tongue be wounded,
 And Princes Courts be fill'd with my reproach:
 This get I by his death: Ay me, vnhappy.
 To be a Queene and Crown'd with infamie (Folio H 134)

The second wing of Margaret's strategy is that noted by Rosalind in As You Like It: "that woman who cannot make her fault her husband's occasion, let her never nurse her child herself, for she will breed it like a fool!" (Act IV. i. 173-6) Once Margaret proclaims that she will be blamed for Gloucester's death, and gets no response from Henry, who is focusing all his attention on the loss of Gloucester, she has an opportunity to berate him for disloyalty to her and for not sympathizing with her wronged innocence. It is not a reasoned argument, but it is shrewdly calculated to cloud Henry's mind with guilt and to immobilize him:

Is all thy comfort shut in Glosters Tombe?
 Why, then, Dame [Margaret] was neere thy ioy.
 Erect his Statue, and worship it,
 And make my image but an Ale-house signe.
 Was I for this nye wrack'd vpon the Sea,
 And twice by aukward winde from England's banke
 Droue back againe vnto my Native Clime. . . .
 Aye me, I can no more: Dye [Margaret]
 For Henry weeps that thou dost live so long.
 (Folio H 134)

The second interpretation of Duke Humphrey's death comes from the commons, who, apparently on the basis of the well-known antagonism of Suffolk and Beaufort for Gloucester, have already made up their minds -- correctly -- that Suffolk and Beaufort are guilty and that no one has made any strenuous inquiry into Humphrey's death. Warwick sums up the interpretation of the commons:

It is reported, mighty Souereigne,
 That good Duke Humfrey Traitorously is mured
 By Suffolke and the Cardinall Beaufords meanes:
 The Commons like an angry Hiue of Bees
 That want their Leader, scatter up and downe,
 And care not who they sting in his reuenge.
 My selfe haue calm'd their spleenfull mutinie,
 Vntill they hear the order of this death. (Folio H 134)

The interpretation of the commons is supported by that of Warwick, who at King Henry's request, views the body of Gloucester. Gloucester's corpse becomes a text in which Warwick, as coroner, reads murder:

... his face is blacke, and full of blood:
 His eye-balles further out, than when he liu'd,
 Staring full gastly, like a strangled man:
 His hayre vprear'd, his nostrils stretcht with struggling:
 His hands abroad display'd as one that graspt
 And tugg'd for Life, and was by strength subdude.
 Looke, on the sheets his haire (you see) is sticking,
 His well-proportion'd Beard, made ruffe and rugged,
 Like to the Summers Corne by Tempest lodged:
 It cannot be but he was mured heere,
 The least of these signes were probable. (Folio H 134)

Warwick's choice of words -- that the least of the signs on Gloucester "were probable" evidence of his murder is important, because certainty is never available to any fact finder. The actions of judges, and kings, can only be based on probability. Yet Henry makes no decision. He is only comfortable with the "certainty" of his religious beliefs, not the probabilities of government. It is only the commons' threat to lynch Suffolk that forces Henry to act by finally banishing Suffolk. The willingness of the commons to exert extreme pressure on their king indicates the widespread awareness of

how Henry's government has broken down. This perception sets the stage for the Cade Rebellion. With no power to support the law, the realm becomes lawless.

Act III ends with a standard Tudor reminder of the ultimate consequences of plotting against the King. Cardinal Beaufort, stricken with guilt, despairs and takes poison. He dies a suicide, sure of damnation. "And therefore whosoever rebelleth agaynst any ruler either good or bad, rebelleth against God, and shalbe sure of a wretched ende: For God cannot but maintein his deputie." On his deathbed, in his final moment, Beaufort imagines himself on trial, as a defendant before God. The presence of Henry, God's deputy on earth, the fountain of justice, and therefore, the ultimate judge, seems to conjure in Beaufort's brain the final accounting he will have to make after death. Even under these circumstances, the Cardinal, in his delerium, tries to lie his way out of trouble:

Bring me vnto my Triall when you will.
 Dy'de he not in his bed? Where should he dye?
 Can I make men liue where they will or no?
 O Torture me no more, I will confesse.
 Aliue againe? Then shew me where he is,
 Ile giue a thousand pound to looke vpon him.
 He [Gloucester] hath no eyes, the dust hath blinded them.
 Combe downe his haire; looke, looke, it stands vpright,
 Like Lime-twigs, set to catch my winged soule:
 Giue me some drinke, and bid the Apothecarie
 Bring the strong poyson that I bought of him. (Folio H 136-6)

Beaufort's death, and his damned soul, caught on the lime twigs of murdered Gloucester's hair, provided Shakespeare's audience with the standard Tudor emblem for the fate of traitors. It is no doubt satisfying to watch Cardinal Beaufort get his just desserts and perhaps Shakespeare and

his audience found it necessary to pay homage to the Tudor government's position on treason before proceeding to the blackly comic treatment of Cade's Rebellion.



In Act IV of 2 Henry VI, which encompasses the Cade Rebellion, three trials occur in Folio: there is an inquiry into Cade's paternity, and Cade himself twice puts humanism and law on the dock, first in the trial of the clerk, Emmanuel, and then in the trial of the judge, Lord Say. In Quarto, the law and lawyers are additionally put on trial in the person of one Sargeant-at-Law. To appreciate the significance of these trials, we need to understand the responses of Shakespeare's audience to the Rebellion as a whole. Arriving at a Tudor interpretation of the Cade Rebellion, however, is no easy task. Shakespeare's portrayal of the Cade Rebellion is complex, and from the very beginning invites multiple, sometimes conflicting, interpretations. The ideology which Cade offers in support of his rebellion is at times so patently absurd and at odds with itself and Cade's own actions, that many critics have viewed Shakespeare's presentation of the rebellion as a straight forward piece of Elizabethan propaganda, holding up to ridicule those of the lower orders who would presume to rise above their assigned places and challenge the government.⁶³ However, although Shakespeare's portrait of Cade is very black indeed, and far less charitable than that of Hall or Holinshed, Shakespeare's treatment of Cade's followers, and the grievances which Cade articulates, are far more complicated than can be explained by a theory that Shakespeare merely followed the official line against rebellion.

Cade's followers display such a volatile mix of sagacity and stupidity, radical egalitarianism and habitual subservience, that one often does not

quite know what to make of them. In addition, though the rebels articulate their grievances only in the most absurd ways, it would have been evident to Shakespeare's audience that they have legitimate grievances. Abuses of the legal system such as benefit of clergy, the granting of licenses and patents to royal favorites, and the oppressiveness of social stratification galled not only Cade's rebels but many Elizabethans. Any interpretation that the Cade Rebellion functions simply as a conservative lampoon of plebeian ignorance and manners founders on two obvious points: First, the Cade Rebellion is presented as a product of the aristocracy, the abuses of the nobles having generated the anger which powers the rebellion and the Duke of York having commissioned Cade to foment the uprising. Second, the nobles offer no superior standard of conduct by which the rebels can be judged. Like children picking up on their parents' mannerisms, Jack Cade and his rebels reflect in more grotesque and obvious behavior, the actions and ideological posturing of their feuding Yorkist and Lancastrian rulers.⁶⁴

On the other hand, it is also impossible to read the Cade Rebellion as a mere subversion of aristocracy, since Cade seems intent on setting up his own aristocracy in the same speeches in which he proclaims that all shall be held in common. The incoherence of Cade's program of political reformation is perhaps its most obvious characteristic. The main planks in Cade's platform are egalitarianism, democracy, and communism -- hierarchy, tyranny and monopoly :

Be braue then; for your Captaine is Braue, and
 Vowes Reformation. There shall be in England seuen
 halfe peny Loaues sold for a peny: the three-hoop'd pot,
 shall haue ten hoopes; and I wil make it Fellony to drink
 small Beere. All the Realme shall be in Common, and in
 Cheapside shall my Palfrey go to grasse. (Folio H 138)

Despite his pledge that everything will be held in common, Cade himself wants to be king, and at the conclusion of the above speech, Cade's followers shout "God save your Majesty!" Cade concludes that he will abolish distinctions in rank supported by sumptuary laws, but again, contradicts his ideology of egalitarianism in one breath: "There shall bee no/ mony, all shall eate and drinke on my score, and I will/ apparrell them all in one Liury, that they may agree like/ Brothers, and worship me their Lord." (Folio H 138; underlining added). Cade plays on the legitimate grievances of the commons while at the same time promising to perpetuate those grievances himself. Though the aristocracy which Cade promises to abolish is supported by licences and monopolies, Cade begins to establish his own aristocracy by granting Dick the butcher a monopoly for his valiant actions in behalf of the revolution, going so far as to rearrange the calendar on Dick's behalf.

Cade: Where's Dicke, the Butcher of Ashford?

Butcher: Heere, sir.

Cade: They fell before thee like Sheepe and Oxen, &
thou behaued'st thy selfe as if thou hadst beene in
thine own Slaughter-house: Therefore thus will I
reward thee, the Lent shall be as long againe as it is, thou
shalt have License to kill for a hundred lacking one.

Butcher: I desire no more.

Cade: And, to speake truth, thou deseru'st no lesse.
(Folio H 139)

The edge of this satire cuts in two directions. The Cade rebellion becomes a running satirical commentary on itself, as it progresses, but it also satirically undermines the conduct of the nobles by mirroring it in a social order to which the nobility thinks itself superior. Most immediately, Cade demonstrates the duplicity and venality of his own rebellion. That monopoly

is inconsistent with an economy that lacks currency -- or in which all people eat and drink on the government's score -- does not apparently arouse any sense of unease in Cade's followers. Furthermore, in Elizabethan terms, Cade is attempting to do the twentieth century equivalent of repealing the law of gravity. He is subordinating divine law, which would determine the length and character of Lent, to a human positive law, manipulating church seasons at will. Yet divine law was universally recognized in Europe as being superior to any human decree. At the same time, however, that Cade in his ignoble manner makes these mistakes blatant and ridiculous, he merely recapitulates the actions of artistocracies which reward their own generals (or "butchers") with titles and monopolies, and devise church calendars and create saints with political advantage in mind. When Cade performs it, the granting of monopolies can be seen not only as the act of an ignoble person, but as an ignoble act. In this light, Cade's grant becomes a critique of Elizabeth's increasing unpopular economic policy:

... hostility to patents mounted towards the end of the [sixteenth-] century. Robert Bell had protested against them in the Parliament of 1571; but at that time his seems to have been an isolated voice. In the 1580s and 1590s objections were made by J.P.s, town corporations, the Grocers' Company, and the City of London. Strong protests were lodged in the parliamentary session of 1597. The Crown promised reform and a few patents were withdrawn. It was not enough. Monopolies became the main issue in the Parliament of 1601, occupying four full sessions and two meetings of committee. One member said that the grievance of monopoly 'bringeth the general profit into a private hand; and the end of all is beggary and bondage to the subject'. Monopolies were thought odious because they raised prices and brought unemployment. No member tried to defend them on principle.⁶⁵

Elizabeth's granting of monopolies, as monarch, may have lacked the comical inconsistency of Cade's economic policy, but on the basis of venality, there is little to distinguish them.

The Cade rebellion could more easily be interpreted as a simple piece of artistocratic propaganda if there were a virtuous aristocracy to serve as a foil to Cade and his men. But there is none, and the result is that Cade's rebellion collectivizes and democratizes only one thing: the responsibility for English civil war. Greed, ambition and stupidity know no class boundaries in 2 Henry VI. The Cade rebellion has a leveling effect, collapsing the moral basis of the Tudor hierarchical scheme and placing everyone on the same animalistic level where reason is overcome by appetite, but appetite knows no bounds. The difference between Suffolk, Somerset, Margaret, York and Cade is one of style only.

Of course, Cade does go farther than anyone else in the play in attempting to set up an absolute monarchy. He even kills one of his own men for failing to address him as king. In fact, Dick the Butcher's suit to Cade is that Cade assume the powers of a tyrant:

Butcher: I haue a suite unto your Lordship.

Cade: Bee it a Lordshippe, thou shalt have it for that word.

Butcher: Onely that the Lawes of England may come out of your mouth. (Folio H 140)

Cade's claim to royalty discredits the sincerity of his rhetoric from the very beginning, and the play seems to demonstrate that the craving for status and wealth will assert itself despite human rhetoric or effort to the contrary -- that although social difference breeds strife, the desire for the status based on difference is as indelible a part of human nature as original sin, dooming

the human beings to rebel against systems which it is their destiny to perpetuate. The Cade Rebellion, like the Wars of the Roses, is in many ways just another manifestation of the "mimetic desire,"⁶⁶ to get what someone else has, simply because someone else has it.

Given their own tendencies toward social stratification, the rebels attempt to wipe clean the social slate so that a new Utopia can be erected becomes all the more ironic. The first step in the process is the destruction of all printed records, especially laws. Thus Cade issues the order: "So, sirs: now go some and pull down the Sauoy:/Others to'th Innes of Court: downe with them all." (Folio H 140) But merely erasing the written memory of the law is not enough, since there are lawyers alive who possess unwritten memories. Dick's suggestion, "The first thing we do, let's kill all the Lawyers," and Cade's response, "Nay, that I meane to do," indicate that the the erasure of human memory is also part of their program to clear a discursive space for whatever law Cade wants to impose. In this instance, what Shakespeare is putting on stage resembles much more closely the John Ball rising of 1381 and suggests that Shakespeare was not merely relying on historical accounts of the Cade rebellion, but was conflating the rebellions of 1381 and 1450 to create a paradigmatic rebellion of the type which still threatened Elizabeth, but failed to occur on a large scale during her reign. Rodney Hilton's description of how the 1381 rebels treated lawyers furnishes a subtext for Shakespeare's portrayal of Cade:

When the rebels in London attacked the Temple. . . it was already tenanted by lawyers, whose records they burnt. They attacked not only the lawyers themselves -- attorney, pleaders, clerks of the court -- but others closely associated with the judicial processes. . . . This hostility to lawyers and jurors and to legal records was not of course peculiar to the Londoners. The

widespread destruction of manorial court records is well known. The Essex rebels beheaded jurors acting on . . . inquests. . . . [T]here was a general threat against all involved in the processes of the law 'not only apprentices [that is barristers below the rank of serjeant] but also old justices and all the kingdom's jurors'.⁶⁷

The supposed confession of Jack Straw. . . contains a statement that having eliminated (among others) the learned, that is the lawyers, the rebels would make law at their own will by which everybody would be ruled. Many of the other chroniclers noted the rebels' hostility to lawyers. The Evesham author of the life of Richard II took the view that the killing of the men of law was intended to guarantee that no one would survive who would have knowledge of either the old or the new. These indications of rebel opinion, insofar as the reports of the hostile chroniclers are not to be dismissed as mere hysteria, suggest an unusually radical attitude to existing law, which as we have seen, was sometimes thought by the peasants to be a shield rather than a weapon turned against them. But the rebels' actions in 1381 fit in with these suggestions that some of them were thinking of creating a new law, and that even more of them wanted to destroy all relics of the old. There was widespread destruction of manorial records from Norfolk to Kent; the books and records of the lawyers in the Temple were burnt; lawyers and juror were killed or their houses pillaged wherever they could be found.⁶⁸

Superficially, the rebels seem blissfully unaware that they are beginning the cycle of law making once more, and will inevitably end in the same or worse position after the revolution. Perhaps the knottiest mystery in Shakespeare's dramatization of the Cade Rebellion, however, is not the inconsistencies of Cade's egalitarian rhetoric, nor the failure of some of Cade's followers to see those inconsistencies, but rather the willingness of several men to participate in the rebellion, even though they do see the contradictions. From the very beginning of the Rebellion, Dick the Butcher and Smith are not taken in by Cade's speeches. They know too much of the

truth, as they reveal in their asides:

Cade: My Father was a Mortimer.
 But: He was an honest man, and a good Bricklayer.
 Cade: My mother a Plantagenet.
 But: I knew her well, she was a Midwife
 Cade: My wife descended of the Lacies.
 But: She was indeed a Pedlar's daughter, & sold many
 Laces. . . .
 Cade: Therefore am I of an honorable house.
 But: I by my faith, the field is honourable, and there
 was he borne, vnder a hedge: for his Father had
 neuer a house but the Cage. . . .
 Cade: I fear neither sword nor fire.
 Smith: He neede not feare the sword, for his Coate is of
 prooffe.
 Dick: But me thinks he should stand in feare of fire, be-
 ing burnt i' th' hand for stealing of Sheepe.
 (Folio H 138)

When the Butcher proposes that the laws of England only come out of Cade's mouth, the response of the rebels to Cade is anything but unified. John and Smith, two other rebels, completely undermine the the notion that the rebels are blind, uncritical followers of Cade:

John: Masse 'twill be sore Law then, for he was thrust
 in the mouth with a Speare, and 'tis not whole yet.
 Smith: Nay John, it wil be stinking Law, for his breath
 stinkes with eating toasted cheese.
 Cade: I haue thought vpon it, it shall be so. Away,
 burne all the Records of the Realme, my mouth shall be
 the Parliament of England.
 John: Then we are like to haue biting Statutes,
 Vnlesse his teeth be pull'd out. (Folio H 140)

The very incoherence of Cade's rhetoric and the contradictory

response of the rebels makes a simple interpretation of the Rebellion impossible. Weimann succinctly describes the structure of "Jack Cade's political Saturnalia" as "a case of the mocker mocked, the inversion of the inverter." ⁶⁹ That Cade the inverter is himself inverted, however, does not render invalid everything he has to say. Because of this complexity, the "meaning" of the rebellion can be interpreted in many ways. Indeed, Shakespeare presents some of these interpretations on stage, as several characters (nobles, such as Clifford and the Staffords, Lord Say, the rebels, as we have seen) comment on the action. Each of these interpretations is inadequate as a complete explanation of the rebellion, but as each interpretation is set in tension with the others, a fuller understanding of rebellion and its consequences is made available to the audience. It seems likely that contemporary audiences could have seen Shakespeare's Cade Rebellion as:

(1) A send-up of uneducated commoners comically but dangerously out of place in their presumption to govern England better than the nobility and to set up a democratic government;

(2) A satire of the nobles themselves in the form of a comic anti-masque, in which the actions of feuding magnates are reflected in the rebellion of the common rabble;

(3) A violent display of plebean anger and retribution, fueled by legitimate grievances, which operates (consciously or unconsciously) for at least part of Shakespeare's audience as dramatic wish fulfillment;

(4) A serious examination of what happens to a political body when central government fails and appetite, in the form of ambition and greed, triumphs over reason, and

(5) An examination of law, language and dress as instruments and

markers of social differentiation whose value as signifiers is utterly dependent on political power.

This last interpretation sounds like a modish capitalization on deconstructive theory. However, it is a historical commonplace, barely worth repeating, that Shakespeare's society placed tremendous emphasis on hierarchy and status -- on fine gradations of social "difference," and that threats to the system of differences which defined the structure of society (such as actors who donned "royal" garments in seeming disregard of the sumptuary laws, revellers who went too far in poking fun at the nobility, or at a later time, Quakers who would not doff their hats) were often put down brutally. The paradoxical theme which most consistently runs through the Cade Rebellion is that it is an attack on social difference, not merely when Cade is belting out communist and egalitarian dogma, but even when Cade is demanding that he be called Lord, asserting his own ancestral claim to the throne via the Mortimers, and granting monopolies.

Given the recognized potential of drama for making political statements, and the desire of playwrights and actors to protect themselves from the consequences of politically dangerous interpretations (even when such interpretations may have been intended) there is a genuine possibility that all of these multiple and perhaps contradictory interpretations of 2 Henry VI were available to its audiences. It is not improbable that Shakespeare intended this range of meanings or that the audience recognized them in whole or in part. That Shakespeare and his audience were conscious of multi-layered meaning, and particularly political meaning, is amply demonstrated by the topical readings which Shakespeare's contemporaries often gave to plays,⁷⁰ and also by Shakespeare's own examination of the uses and dangers of drama in such instances as the

Mechanicals' production of "Pyramus and Thisbe" and Hamlet's production of "The Murder of Gonzago." Hamlet's "Murder of Gonzago" demonstrates the use of drama as a way of making indirect accusations and political statements, and Claudius, as audience, demonstrates a willingness to "read" the play as political "allegory," recognizing himself either in the murderer (who pours poison in the ear of a king), or the murdered (who is killed by his nephew) or both. The Mechanicals recognize the danger to an acting company of such readings, and employ various dramaturgic devices to deflect interpretations which could offend their royal audience and result in their own executions.

The Mechanicals make the lion in "Pyramus and Thisbe" less mimetic, because "a lion among ladies is a most dreadful thing. For there is not a more fearful wildfowl than your lion living." (III. i. 27-9) The solution is that Snug the joiner will let his face show, growl meekly, and assure the ladies that he is only an actor. The parody which "Pyramus and Thisbe" unintentionally becomes (at least, from the Mechanicals standpoint) protects the Mechanicals from a potentially fatal audience response. Parody can also intentionally be used for the same purpose, for what more dangerous wildfowl was there to set on stage before the Tudor censors than that of popular rebellion? In the first scene of the Cade rebellion, the Lord Chamberlain's men appear to be employing the same strategy as the Mechanicals, for as Cade puts on the mask of Mortimer, George Bevis and John Holland continually remove the mask, assuring the audience that Cade is not really Mortimer, undermining the credibility of Cade's rhetoric through comic asides, assuring the audience that after all, this is not a real rebellion. In this way, the continuation in Shakespearean drama of the medieval platea and locus dialectic, as described by Weimann, becomes a way of protecting

drama itself.⁷¹ According to Weimann, the platea section of the medieval stage was the area in which "expressive" acting took place. It was the realm of clowns and commoners who commented on the representational action taking place on the elevated portion of the play area, which Weimann refers to as the locus. Although the architectural distinction between platea and locus does not necessarily carry over into Shakesperean theater, Weimann argues that it still operates as a functional distinction between different kinds of onstage characters, speeches and actions. The platea aspect of the Cade scenes, in which characters comment on the rebellion almost as if it were a game, sets the tone of parody, ridicule and lack of reality which may have been the necessary requirement for putting the more mimetic aspects of the Cade rebellion (i. e., those Weimann would associate with the locus) on stage at all.

Since Bevis and Holland, actors in the Lord Chamberlain's men, are not even given fictional names in Folio or Quarto, but are referred to under their real names, one can speculate that perhaps on stage their character as actors was directly revealed in some way, as Snug the Lion revealed his identity as Snug the actor. This, of course, would further emphasize the "make-believe" qualities of the "rebellion." But if this kind of comedy is understood to be at least partially a mask itself -- a dramaturgic defense against the censor -- then other levels of the play can be reached, and this requires no more effort than that of Duke Theseus, who is willing to amend the Mechanicals' production through imagination.

Having established the "playfulness" of this Rebellion, the Lord Chamberlain's Men render rebellion a safe (or at least, safer) topic for examination, and other levels of interpretation become available. Most obviously, the asides of Holland and Bevis act to deflate the fictionalized

ancestry upon which Cade bases his claim to the throne. Cade's followers do not swallow his claim to noble ancestry.

Cade's claim to the throne can also be taken as a comic inversion of York's claim. Earlier in the play, for Salisbury and Warwick, York had traced his claim to the throne as ancestor of Edward III's third son, the Duke of Clarence. Henry VI claimed through John of Gaunt, Edward III's fourth son. York had concluded "So, if the Issue of the elder Sonne/Succeed before the younger, I am King." (Folio H 128) The trouble with York's argument is that in the fifteenth-century it had not been established that those claiming the crown through the bloodline of the elder brother would necessarily have precedence in right to the crown. (The deposition of six kings, from Edward II to Richard III made it difficult to establish, by precedent, that the crown passed by primogeniture.) The point simply had not been established. And in order to prosecute his claim, which is shaky to begin with, York must throw the whole kingdom into civil war. Considering the cost to the kingdom of this legal dispute, and considering that John of Gaunt's line has been on the throne for three generations, York's claim has little more validity than Cade's. Thus the moral difference between York the aristocrat and Cade the Kentish boor is greatly narrowed -- their arguments are equally specious and have similarly disastrous consequences for England.

The difference between the aristocracy and the plebeians is further narrowed by the scene in which Cade knights himself to encounter Sir Humphrey Stafford as an equal -- once again tracing his ancestry as a "Mortimer," and again deflating claims to the throne based on ancestry:

Micheal: Fly, fly, fly! Sir Humfrey Stafford and his brother
are hard by, with the Kings Forces.

Cade: Stand, villaine, stand, or Ile fell thee downe: he

shall be encountred with a man as good as himselfe. He
is but a Knight, is 'a?

Messenger: No.

Cade: To equall him, I will make my selfe a knight pre-
sently; Rise vp Sir John Mortimer. Now have at him.

Enter Sir Humfrey Stafford and his Brother,
with Drum and Soldiers.

Stafford: Rebellious Hinds, the filth and scum of Kent,
Mark'd for the Gallowes: Lay your Weapons downe;
Home to your Cottages, forsake this Groome.
The King is mercifull, if you reuolt.

Brother: But angry, wrathfull, and inclin'd to blood,
If you go forward: Therefore yeeld, or dye.

Cade: As for these silken-coated slaues I pass not.
It is to you good people, that I speake,
Ouer whom (in time to come) I hope to raigne,
For I am rightfull heyre unto the Crowne.

Stafford: Villaine, thy Father was a Playsterer,
And thou thy selfe a Shearman, art thou not?

Cade: And Adam was a Gardiner. (Folio H 139)

The production of Adam as proof of ultimate equality of ancestry -- and of the nobility of manual labor -- was a rhetorical commonplace among dissident craftsman and labourers. "When Adam delved and Eve span, Who was then the gentleman?" was a popular question in the 1640s, but has an ancestry which goes back at least into the fourteenth-century.⁷² Cade's comment calls into question any claim based on inheritance and when Cade defeats the King's forces and kills Stafford, he demonstrates that one can create himself a knight, and hold on to that title, at least for a short period of time, simply through the exertion of power. What Cade does is after all what Bolingbroke did for himself in assuming the crown, and what Bolingbroke's son and grandson are also able to sustain for only a limited period of time. The Elizabethan line was that against such evanescent glory, the cost to the

kingdom of asserting any claim to kingship, no matter how valid, was prohibitive. Shakespeare sometimes seems to be following that line. But in order to follow it, 2 Henry VI simultaneously undermines claims of hereditary right that are also fundamental to the Elizabethan system. Cade's hereditary claims function as a parodic deflation of York's hereditary claims, supporting Tudor propaganda that no challenge to the status quo -- even if based on hereditary right -- was justifiable. But this undermining of hereditary right threatens to collapse class differences -- a contradiction which Elizabethan society and Shakespeare, whether consciously aware of it or not, cannot seem to escape. On one side of the dilemma lies civil war generated by the competition for status among the nobles, on the other, popular uprising supported by the rhetoric of equality. Each threatens to destroy the system of hierarchy in place.

Despite Cade's continual gestures to egalitarianism, he is always asserting his own nobility, which rests on a family tree of his own manufacture, the validity of which is as impossible to disprove as to establish. The family tree becomes merely the necessary boilerplate to Cade's bid for leadership. No one seems to believe in it -- but it also seems that no one would follow Cade unless he made the claim. Cade once again asserts his family tree when he confronts Stafford. This, in effect, amounts to a legal proceeding -- an inquiry into Cade's claim to nobility:

Cade: . . . Edmund Mortimer Earle of March
 married the Duke of Clarence daughter, did he not?

Stafford: I sir.

Cade: By her he had two children at one birth.

Brother: That's false.

Cade: I, there's the question; But I say 'tis true:
 The elder of them, being put to nurse,
 Was by a beggar-woman stolne away

And ignorant of his birth and parentage,
 Became a Bricklayer, when he came to age.
 His sonne am I, deny it if you can. (Folio H 139)

The ramifications of this proceeding are manifold. Most obviously, Cade's rascality is being portrayed. But the butts of the joke are also the Staffords, lesser aristocrats who are helplessly confronted with the ultimate impossibility of disproving Cade's claims to nobility, and by implication, of proving their own. Cade's argument is a threat to the whole concept of nobility and hierarchy, and by presenting the argument, Shakespeare puts before his audience a threat to the Tudor status quo with which they would have been quite familiar. The breakdown of "difference" which sustained the hierarchical society of Shakespeare's day accelerated most notably during the reign of James I, when knighthoods were granted by the hundreds and the title of baronet was created partly in response to the debased status of knighthood. However, the collapse of social difference, which Cade demonstrates when he knights himself and claims noble ancestry, had begun early in the reign of Elizabeth. The manufacture of bogus genealogies was a booming business throughout the 1580s and 90s.⁷³ The fictional lineage which Cade asserts on stage was probably no different qualitatively from the genealogies that many of the new gentry in Shakespeare's audience had themselves purchased from the imaginative College of Heralds. While the nouveux riche gentry of the day valued and wanted to maintain the status of the class they were moving into, the rapid increase of "gentlemen" debased the value of the station. Thus Cade undermines the concept of hierarchy not only by his egalitarian rhetoric but by his own debased claims to gentle status, and it is paradoxically the widespread assertion of bogus claims to gentle status that in 1595 was going farther to undermine the social

structure than any direct attack on privilege. Ironically, those status seekers most intent on creating a lineage, and ultimately, most responsible for undermining the system, would have been most strident in their defense of privilege:

In illiterate societies, changes in the composition of the higher ranks of society are made respectable, and indeed are concealed from public view, by altering the genealogies handed down by oral tradition. The growth of written records, however, makes such a process much more difficult, since more is required than a conveniently feeble memory; fraud, and even forgery, have now to be employed. This thankless task had in 1417 been placed in the hands of the College of Heralds, whose duty it was to smother new wealth beneath a coat of arms and a respectable pedigree. Since the heralds made their living by the issue of these certificates of gentility, and since the number of aspirants was increasing at a tremendous pace, it is hardly surprising if a large element of venality soon crept in. . . . The result of rapid changes in land ownership was an unprecedented torrent of claims for arms in the early Elizabethan period. In the thirty years between 1560 and 1589, over 2,000 grants were made, followed by at least another 1,760 from 1590 to 1639.⁷⁴

Cade's fictionalization of royal ancestry, and his knighting of himself, demonstrate the forces at work in Elizabethan society, which, in a half century more, would weaken respect for the aristocracy to such an extent that civil war became possible.⁷⁵ Status only has meaning in a system in which differences are preserved, but the very desire for that status threatens to destroy the system, through factional strife when difference is maintained, and through collapse of difference itself when the ranks of the noble (gentlemen or better) are allowed to swell. In 2 Henry VI the system is shown to be under attack from both sides, magnates struggling for

preeminence and commoners rebelling under an inconsistently asserted banner of egalitarianism. These are the poles of destruction inherent in the English system of hierarchy, and between which England oscillated from the Wars of the Roses in the fifteenth-century to the Civil War in the seventeenth.



The Cade Rebellion not only shows the collapse of "difference" on a social level, but a collapse of the differentiating faculty -- reason. Act IV of 2 Henry VI is bracketed by two beheadings: those of Suffolk and Cade. Aside from emphasizing the divine justice that traitors can expect to meet, the symmetrical beheadings of Act IV function as graphic metaphors for the severance of mind from body, and of reason from the English body politic. What happens to several characters on a microcosmic level happens macrocosmically to the whole kingdom. Once Gloucester is removed as Protector and then murdered, the government, and hence the realm, is left largely without the capacity for reason. With reason all but extinguished, there is little check on mere appetite, and men prey on each other like "monsters of the deep." That Suffolk has helped to bring about the demise of reason, and that Cade has capitalized on the situation makes the justice of their own endings all the more appropriate; having maimed reason in England, they lose their own "reason" in a poetically just and emblematic manner. However, it is not only the villains who are beheaded, but also those few who represent the remainder of England's capacity for reason. Lord Say, a judge and educator, is beheaded along with his son-in-law James Cromer. The clerk of Chartham, Emmanuel, is hung on the charge of literacy, a "crime" of reason which figures largely in the execution of Lord Say. The wounding of reason in the form of Gloucester's murder speeds the event of

civil war, and the gathering momentum of civil war sweeps away what is left of reason. The destruction of reasoned judgment is most obviously portrayed in the trial scenes of Act IV, in which Cade acts as judge.

The trial of the clerk Emmanuel presents an implicit attack on the legal defense of benefit of clergy with an explicit attack on literacy in general. As Shakespeare does throughout Act IV., he shows the rebels making faulty generalizations which lead them to blanket condemnations of entire classes, professions, and bodies of knowledge. Thus, literacy as a whole is condemned because writing is used in the creation of unfair contracts and reading allows guilty clergymen, and anyone else who could read Latin, one free crime.

The first indication of how Emmanuel will be judged is Dick's statement, "The first thing we do lets kill all the Lawyers." (Folio H 138) The Kentish rebels and the people of England in general, had good cause to hate the legal profession and the courts. Judicial extortion and maintenance, as I have noted, were notorious during the time of Henry VI. The idea that a nation can live without lawyers or a legal system demonstrates the ignorance of the rebels and guarantees that their government will be no less arbitrary and unjust than what has come before. The anger directed toward the lawyers, however, has legitimate roots in the foul practices of the day.

The second statement which sets the stage for Emmanuel's trial is Cade's attack on written contracts, which will be extended, in Emmanuel's case, to writing in general:

Is not this a lament-
ble thing, that of the skin of an innocent Lambe should
be made Parchment; That Parchment, being scribeld ore,
should vndoe a man? Some say the Bee stings; but I say,
'tis the Bee's waxe: for I did but seale once to a thing, and

I was never mine own man since. (Folio H 138)

As a blanket condemnation of contract, this appears ridiculous, but as a popular expression of anger at sharp dealing and unfair contracts, it undoubtedly still strikes a chord. (Shakespeare's portrayal of the rebels attitude toward writing indeed distorts historical fact, since the Cade rebellion was the first popular uprising in which written petitions of grievance were sent to the King and circulated by the rebels for propaganda purposes.)

In this context Emmanuel the clerk is hauled into the court of Jack Cade. Emmanuel's trial becomes a dramatic reversal of benefit of clergy -- a fact which Emmanuel perhaps does not realize until sentence is passed and he is hung with his pen and ink horn about his neck. As a whole, however, the trial is staged as an attack on the entire humanist program of education:

Cade: How now? who's there?

Weaver: The Clerke of Chartam: hee can write and
reade and cast accompt.

Cade: O monstrous!

Weaver: We tooke him setting of boyes Copies

Cade: Here's a Villaine.

Weaver: He's a Booke in his pocket with red Letters in't

Cade: Nay then he is a Coniurer

Butcher: Nay, he can make Obligatons and write Court
hand.

Cade: I am sorry for't: The man is a proper man of
mine Honour: vnlesse I finde him guilty, he shall not die.
(Folio H 139)

Emmanuel's trial demonstrates that the rebels are no less arbitrary in their adjudications than the royal government. When Dick tells Cade that Emmanuel 'can make obligation and write court-hand,' and Cade extends the illusory

safeguard "Unless I find him guilty he shall not die" -- arbitrariness is rhetorically inflated to sound like due process. Emmanuel, who quickly proclaims that he can read and write, simply does not realize that he has now entered a jurisdiction in which the law of benefit of clergy has been inverted:

Cade: Come hither sirrah, I must examime thee: What is thy name?

Clearke: Emanuell.

Butcher: They vse to writ it on the top of Letters: 'Twill go hard with you.

Cade: Let me alone: Dost thou vse to write thy name?
Or hast thou a marke to thy selfe, like a honest plain dealing man?

Clearke: Sir I thanke God, I haue bin so well brought vp, that I can write my name.

All. He hath confest: away with him: he's a Villaine and a Traitor. (Folio H 139)

The rebels anger at the institution of benefit of clergy is well founded. It often allowed the guilty to escape, and the innocent illiterate to be executed. It was invoked with a regularity that continually displayed the unfairness of the system to the people:

Stone has suggested that 47% of the criminal classes of Jacobean London could read', since they successfully pleaded benefit of clergy. The Middlesex records in fact show 32% of the capital felons in the reign of Elizabeth and 39% in the reign of James successfully claiming clergy, a somewhat lower percentage than cited by Stone.⁷⁶

That Emmanuel should have to pay for the sins of the system, of course, is unfair and his trial dramatizes humanism's worst nightmare. Implicit in the humanist commitment to recover knowledge which had been

suppressed or lost after the fall of Rome is the fear that another such disaster could occur, that literacy and learning themselves would be directly attacked and once again, the course of civilization set back. Emmanuel's name, meaning "God be with us" is especially pregnant in an age when the printed English bible was becoming the presence and authority of God in the homes of England. The hanging of Emmanuel becomes an emblematic execution of literacy and religion, religion for the English protestants being largely impossible without literacy. The rebels, however, are not portrayed as the only element working to the dissolution of religion and civilization. In the context of the whole play, it is the lawlessness of the nobles, portrayed in the first three acts, that has inexorably led the realm to the brink of ignorance and barbarism. In Richard II, royal despotism which will not recognize legal limitations on its power poses the threat to the commonwealth, but in 2 Henry VI it is the inability of central government to restrain the despotism of local warlords which results in rebellion and anarchy and poses the threat to civilization.



Cade's trial (occurring in Quarto only) of one Sargeant-at-law is a comic inversion of Suffolk's and Margarets treatment of the suitors in Act I. iii. and continues to develop the theme of rebel animosity to lawyers and the law. In Quarto the first suitor had complained that the Cardinal's man "hath stole away my wife,/And th'are gone together, and I know not where to finde them." (Quarto B2 r) In Folio, the complaint is more inclusive: "against John Goodman, my Lord Cardinals Man, for keeping my House, and Lands, and Wife and all from me." (Folio H 123) As I have previously noted, the suitor's charge is an example of the general complaint made by the historical Cade and his followers of various ways in which the courts were used to

dispossess true owners of their holdings. (See pages 48-9 for the grievances of the Commons of Kent, items six and twelve.) The situation is inverted when a Sargeant-at-law, certainly one whom the Kentish rebels would have seen as being most deeply implicated in abuse of the judicial system, complains to Cade of his own "dispossession":

Sargiant: Iustice, iustice, I pray you sir, let me haue iustice of
this fellow here.

Cade: Why, what has he done?

Sarg: Alasse sir, he has rauisht my wife.

Dicke: Why my Lord he would haue rested me,
And I went and entred my Action in his wiues paper house.

Cade: Dicke follow thy sute in her common place.

You horson villaine, you are a Sargiant youle,
Take any man by the throate for twelue pence,
And rest a man when hees at dinner,
And haue him to prison ere the meate be out of his mouth.
Go Dicke take him hence, cut out his toong for cogging,
Hough him for running and to conclude
Brave him with his own mace
(Quarto G2 v)

This brief scene emblemizes law as rape and again, inverts the actions of the nobility. The courts, under the control of Suffolk, have failed to provide a remedy for the abduction of the first suitor's wife, countenancing adultery and possibly rape. Under these circumstances, it is metaphorically appropriate that Cade's man "Dicke" likens rape to the serving of legal papers, entering his "Action," in the Sargeant's wife's "paper house." The law has become what it has been used to legitimate, and this being widely recognized, there is no longer any need to cloak rape with a veneer of legality -- one simply proceeds directly to the rape, rape having become the law. The way in which Cade picks up on Dick's metaphor

emphasizes his intense hatred and vindictiveness toward the judicial system and his sentence of the Sargeant is a kind of castration. The Sargeant is to be deprived of that piece of anatomical equipment which he most relies upon to commit legal "rapes" -- his tongue. He is to be "houghed" to keep from "running," which also has a double sense. "Houghing" is the clearing of one's throat a lawyer might be expected to do before making a long speech -- "running" on. But it is also the cutting of the "hough-sinew," the tendons behind the knee, an operation which was performed on cattle to keep them from running off. Thus, the threat to the established order is quite graphic, and it is leavened with none of the remorse which Cade admits (in Folio only) when he sentences Lord Say. Rather, the joys of metaphoricity are connected to the joys of mutilation in a manner which may have been quite hilarious to the audience, and quite gratifying for some of them as political wish fulfillment. In this context of mutilation, Cade's final order that the Sargeant be braved with his own mace carries the implication of real castration. But metaphorically the Sargeant has already received poetic justice, for he has been braved with his own mace -- the law as Cade's Dicke.



The trial of Lord Say amplifies many of the issues raised by the trial of Emmanuel and utterly destroys audience sympathy for the rebels. Say is accused of giving up Maine and Normandy, speaking French, promulgating literacy, hanging those who cannot read, enforcing the criminal and tax laws, and putting an elegant footcloth on his horse. Again, the rebels' charges mix anger at legitimate grievances with large doses of comic -- but dangerous -- ignorance. The rebels are particularly concerned with the loss of France, and they have legitimate reason to be angry, as Englishmen in general, and more

personally, since many of them appear to be veterans of French campaigns. (I have in mind Clifford's reminder to the rebels of "The fearful French, whom you late vanquished," and several references to the rebels, by Cade, Clifford, and Henry VI, as "soldiers." Of course, one could speak of the English nation as a whole vanquishing the French, and since the rebels have fought and defeated Stafford, that might account for calling them soldiers. Yet, the numinous conjuration of Henry V by which Clifford ends the rebellion seems to be based on a very strong appeal to the military service of the Kentishmen.) Dick the Butcher says, "We'll haue the Lord Sayes head for selling the Dukedome of Maine." (Folio H 139), and when the messenger arrives shouting that Lord Say has been captured, he says "heere's the Lord Say which sold the Townes in France." (Folio H 140). In Cade's extemporaneous indictment of Say, the first charge involves France: "What canst thou answer to my Majesty for giuing up of Normandie unto Mounsieur Basimecu, the Dolphine of France?" (Folio H 141) Yet, it is evident from the very beginning of the play that if anyone is to be credited with the loss of Maine, it is Suffolk, who has traded Maine and Anjou to bring Margaret to England. Somerset's ineffective government has cost the English Normandy. There is no indication in the play of any involvement by Say. The rebels simply assume, with no proof at all, that Say is responsible and the simple ignorance of the rebels with regard to the true political situation subverts their claims to rule.

The displacement of the rational by the irrational, and learning by ignorance is further emphasized by rebel errors in logic. The accusation against Say for speaking French forms the major premise of an erroneous syllogism which is set forth in this exchange between Cade and Stafford:

Cade: . . . he [Say] can speake French, and therefore hee is
a Traitor.

Stafford: O grosse and miserable ignorance!

Cade: Nay, answer if you can: the Frenchmen are our
enemies; go to then, I ask but this: Can he that speaks
with the tongue of an enemy be a good Councillour, or
no? (Folio H 139)

Of course, Cade uses speaking "with the tongue of an enemy" in a double sense -- an example of "the four terms fallacy" which in much of Shakespearean word play would simply be good fun, but which in this instance prefaces a grave political and judicial error. This exchange can also be analyzed in terms of another elementary error in syllogistic logic, that of the excluded middle: Say speaks French; Our enemies speak French; Therefore, Say is our enemy. Either way, Stafford's comment, "O grosse and miserable ignorance," (Folio H 139) is an accurate evaluation of the formal errors in Cade's reasoning, and is perhaps inserted to make sure the audience gets the point. Cade's ignorance and illogic seem to be a straightforward exemplification of the Elizabethan line that the great herd of people are incapable of political participation -- that democracy is indeed the worst form of government.

But there is complicating factor. Cade seems to know exactly what he is doing. His use of fallacies may be a willful rhetorical strategy which Cade uses to manipulate his followers, and yet, the effect of fallacious argument on his men is questionable. As I've indicated, the play clearly shows that many of Cade's followers -- including Dick -- know that Cade is a fraud and that he is speaking garbage. But they do not seem to care. It is not that the rebels are duped by illogical arguments. Logic or illogic, truth or falsity, often do not seem to matter to them. Whatever the reasons for the deflationary comments of Cade's own men, their continual deconstruction of

Cade also has the effect of deconstructing the general argument that the commons are too stupid to govern the country. All of the asides made to the audience work at cross purposes with what seems to be a simultaneous demonstration of the people's ignorance and gullibility. A pure deconstructionist might conclude that this is simply another instance of the way discourses inevitably unravel and contradict themselves. But if the asides were included to appease censors who were afraid that the audience would take Cade seriously, then we have the ironic situation of having to demonstrate the perspicacity of Cade's people in order to demonstrate their stupidity. From the perspective of the audience, there must have been those who felt the play indeed demonstrated once again the evil of the "many headed monster," the multitude. But there must have also been those who noticed the civil war within the form of the discourse itself and who received a very ambivalent message about the people's capacity to govern. And that ambivalence -- that measure of doubt in relation to the Elizabethan line -- would itself have been radical.

Cade's next charge against Say, for promulgating literacy, recapitulates the main charge against Emmanuel, and thus doubly emphasizes the rebels' attack on literacy and learning:

Thou hast most traiterously corrupted the youth of
the Realme in erecting a Grammar Schoole: and where-
as before, our Fore-fathers had no other Bookes but the
Score and the Tally, thou hast caus'd printing to be vs'd,
and contrary to the King, his Crowne, and dignity, thou
hast built a Paper-Mill. It will be prov'd to thy Face,
that thou hast men about thee that usually talke of a
Nowne, and a Verbe, and such abominable words as
no Christian eare can endure to heare. (Folio H 141)

The direct attack on literacy, of course, continues the personification of the rebels as Ignorance attacking Learning. It is doubtful that this could have been received by Shakespeare's audience with any sense of approbation. Perhaps as much as 50% of the population of London was literate at this time, and valued the printed word in religion and for practical purposes.⁷⁷ Though Shakespeare's audience may have been mixed, it seems likely that they had some appreciation of language, or they simply would not have purchased a ticket. However the scene may have had two additional significations for Shakespeare's audience. The first is satirical. Cade's comic use of the inflated legal style to bring literacy to the bar not only shows his failure to appreciate the inconsistencies of his own rhetoric, but underscores the way legal language is often used to elevate and legitimate the most sordid actions -- in this instance, legal language being used to abolish written communication (an occurrence not unfamiliar to anyone who has tried to read an insurance policy or the tax code). Shakespeare is able to burlesque Cade while at the same time taking a swipe at the misuse of legal language -- a factor which again points to legitimate grievances. Even if the "remedial" action the rebels intend to take -- wiping out grammar schools -- is absurd, they still have legitimate grounds for complaint. The second signification is that the scene articulates real humanist fears of how learning would suffer at the hands of a popular rebellion which associated literacy with oppression. Erasmus had early voiced the fear that education, man's best hope for civilization and enlightenment, would be swept away in violent rebellion and nationalism.⁷⁸ This possibility haunted English humanists from the beginning of the sixteenth century through to the civil war. Christopher Hill describes Bruno Ryve's summary of lower class opinion in Chelmsford on the eve of civil war as "slanted," but basically accurate:

Cade continues to emphasize the way in which the judicial system has abused language and particularly the way in which language has been used as a tool by the courts to oppress the poor:

... Thou hast appointed Iustices of Peace, to call poore men before them about matters they were not able to answer. Moreouer, thou hast put them in prison; and because they could not reade, thou hast hang'd them; when (indeede), onely for that cause they haue beene most worthy to liue. (Folio H 141)

The comic edge to Cade's charge is, of course, that the poor men were not able to answer because indeed, they were guilty. But as I have set forth in the introduction of this dissertation, the procedural handicaps which criminal defendants labored under were formidable. Ignorance of the law and the simple incapacity to provide a coherent answer to the judge could easily result in conviction of the innocent. And releasing those accused because they could read (benefit of clergy) is, in effect, not very much different from hanging people because they cannot read. Cade's preoccupation with benefit of clergy once again emphasizes the misuses of learning which threaten learning itself.

The final charge against Say puts at issue the great disparity in wealth between the nobility and the lower echelons of English society by examining another widely unpopular Tudor policy -- the sumptuary law. The statute 24 Henry VIII. An Act for the Reformation of Excess in Apparel. which

Elizabeth had attempted to enforce numerous times, was aimed at "excess" and "pride" -- but only of those people below a certain level of income:

[F]or the necessary repressing . . . of the inordinate excess daily more and more used in the sumptuous and costly array and apparel accustomedly worn in this realm, whereof hath ensued . . . such sundry high and notable inconveniences as be to the great manifest and notorious detriment of the commonweal, the subversion of good and politic order in knowledge and distinction of people according to their estates preeminences dignities and degrees, and to the utter improverishment and undoing of many inexpert and light persons inclined to pride mother of of all vices. . . [no person worth less than £100 a year may wear] any satin damask silk chamlet or taffeta in his gown coat with sleeves or other outermost apparel.⁸⁰

As they did in the case of benefit of clergy, the rebels once again challenge a law because it is used to enforce class distinctions, and once again Cade inverts the law to convict those people it was designed to protect:

Cade: Thou
doest ride in a foot-cloth, dost thou not?

Say: What of that?

Cade: Marry, thou ought'st not to let thy horse weare
a Cloake, when honester men than thou go in their Hose
and Doublets.

But: And worke in their shirt too; as my selfe, for ex-
ample, that am a butcher. (Folio H 141)

The gentry have targeted themselves by the very distinctions in dress they have attempted to impose on the rest of the population. Say can afford to dress his horse better than the rebels can afford to dress themselves. In the Arden edition of 2 Henry VI the editor notes that a foot-cloth was "often made of velvet, and embroidered with gold lace, and thus specially

obnoxious to Cade and his followers." ⁸¹ The reference to the quality of the cloth worn by Say's horse picks up a "thread" of imagery first displayed in the speeches of Bevis and Holland at the beginning of the rebellion:

- Bevis: I tell thee, Iacke Cade the Clothier meanes to dresse the Common-wealth, and turne it, and set a new nap vpon it.
- Holland: So he had need, for 'tis threadbare. Well, I say, it was neuer merry world in England since Gentlemen came up.
- Bevis: O miserable Age: Vertue is not regarded in Handy-crafts men. (Folio H 138)

Say's arraignment makes it clear that setting a "new nap" on the commonwealth is not merely metaphorical. Cade promises to dress everyone "in the same livery," thus repealing the sumptuary laws of the realm. Bevis complaint that virtue is not regarded in handicraftsmen vocalizes the outrage of artisans that they, the producers of the realm, have less status and money than gentlemen, who essentially produce nothing. To the rebels, the sumptuary laws invert the true value of subjects to the commonwealth, the drones being given the privilege to dress better than the workers. The handicraftsmen have more chance of their value being recognized if the sumptuary laws are destroyed completely.

Holland's line, "It was neuer merry world in England since Gentlemen came up," accurately states the attitudes of many poor Englishmen. The rebels anger at class distinction and economic disparity closely resembles that expressed in the only major Tudor rebellion, Kett's Rebellion of 1549, another uprising of rural "handycraftsmen":

In 1549 Protector Somerset faced more determined and widespread popular opposition than any other Tudor

government, caused by exasperation at his failure to combine good intentions to relieve want and poverty with effective action. . . . In this situation the harmony of Tudor society collapsed and class hostility flared up in several areas. 'All have conceived a wonderful hate against gentlement and taketh them all as their enemies', wrote Somerset. Alexander Neville recounted that in Norfolk 'so hated at this time was the name of worship or gentleman that the basest of the people, burning with more than hostile hatred, desired to extinguish and utterly cut off the gentry.'⁸²

Though there were no great popular uprisings against Elizabeth, the threat of such uprisings was a constant source of anxiety to the government, particularly in the 1590s, when large numbers of returning soldiers and poor artisans were perceived by the government as a significant threat. The composition of Cade's "troops," artisans and disillusioned soldiers who had received little support during the wars against France, thus matches the composition of the group that gave Elizabeth's government the most disquiet -- artisans, and disillusioned soldiers who had received little support during England's war with Spain.

In his defense, Say becomes a spokesman for humanism. He denies having sold Maine or lost Normandy and asserts his dedication to political service, judicial integrity and learning:

Iustice with fauour haue I alwayes done;
 Prayres and Teares haue mou'd me, Gifts could neuer.
 When haue I ought exacted at your hands,
 Kent to maintaine, the King, the Realme, and you?
 Large gifts haue I bestow'd on learned Clearkes,
 Because my Booke preferr'd me to the King,
 And seeing Ignorance is the curse of God,
 Knowledge the Wing wherewith we flye to heaven,
 Unlesse you be possess'd with diuelish spirits,
 You cannot but forbear to murther me. . . (Folio H 141)

In this exchange, the dominant motif of the revolution, ignorance and chaos versus humanism, becomes evident. Say makes the same mistake as Gloucester, who had asserted to Eleanor that his innocence would defend him: "I must offend before I be attainted." Earlier, Say had been urged by the King to leave London, but he had decided to stay, albeit secretly, and had proclaimed, "The trust I haue is in mine innocence,/And therefore am I bold and resolute." (Folio H 140) But innocence only has a chance of prevailing when trial is based on rational inquiry, and Cade's trial of Say is the antithesis of rationality, guided only by the desire to vent rebel anger on Say as scapegoat. Say's first handicap is that he attempts to defend himself with elevated forensic rhetoric that the rebels simply do not understand, because they have little capacity for abstract thinking:

Say:	You cannot but forbear to murder me: This Tongue hath parlied vnto Forraigne Kings For your behoofe.
Cade:	Tut, when struck'st thou one blow in the field?
Say:	Great men haue reaching hands: oft haue I struck Those that I never saw, and stricke them dead.
George:	O monstrous Coward! What, to come behinde Folkes? (Folio H 141)

This exchange with Say inverts the usual situation facing a criminal defendant. Say the judge is put in the position of the typical uneducated criminal defendant who has no counsel, no knowledge of Cade's law, no copy of the indictment against him, and no grasp of judicial language, as employed in Cade's "court." Say, ineffect, does not know the rules of the game, and must grope his way blindly through his own defense, trying to learn the language of the tribunal and the rules of procedure as he goes. But Say

proves his adaptibility, and in his last speech, where he finally abandons abstract language for the more literal and denotative language of the rebels, he nearly saves himself:

Say: Tell me: wherein haue I offended most?
 Haue I affected wealth or honour? Speake.
 Are my Chests fill'd up with extorted Gold?
 Is my Apparrell sumptuous to behold?
 Whom haue I injur'd that ye seeke my death?
 These hands are free from guiltlesse bloodshedding,
 This breast from harbouring foule deceitful thoughts.
 O! let me liue.

Cade: I feele remorse in my selfe with his words: but
 Ile bridle it: he shall dye, and it bee but for pleading so
 well for his life. (Folio H 141)

The rebels treatment of Say finally puts them into the same league with Beaufort, Suffolk, and the other murders of Gloucester. In their taunting and physical abuse of Say, the rebels demonstrate a heartlessness which seems calculated to extinguish any audience sympathy in their behalf:

Say: These cheekes are pale with watching for your good.

Cade: Giue him a box o' th' eare, and that wil make 'em
 red againe.

Say: Long sitting, to determine poore men's causes,
 Hath made me full of sicknesse and diseases.

Cade: Ye shall haue a hempen Candle then, & the help
 of hatchet.

Butcher: Why dost thou quiuer, man?

Say: The Palsie, and not feare, prouokes me.

Cade: Nay, he noddles at vs; as who should say, Ile be
 euen with you: Ile see if his head will stand steadier
 on a pole or no. (Folio H 141)

Like Gloucester, Say functions as a representative of measured,

reasonable judgment, and when the rebels behead Say the loss of reason in England is once again emblemized. But the rebels go even farther than the nobles, and revel in this triumph of brutality over reason. They take sadistic pleasure in baiting an old, palsy stricken man and monumentalize their contempt for reason by beheading Say, putting his head, and the head of his son-in-law Cromer on poles, bringing the heads along, in parade, and dipping the poles so the heads can "kiss" at every corner. For the humanists, rebellions of the Cade type represented an even greater threat than civil war among the nobles, for they saw in popular uprising a threat to the entire humanist endeavor -- the sacking of the libraries and a new dark age.



Given the legitimate grievances of Cade and his men about the partisan nature of English law, one well could ask whether the rule of law valued and represented by Duke Humphrey was worth trying to preserve. If 2 Henry VI (and, for that matter, the other plays in Shakespeare's two tetralogies) does display, as I have argued, a high regard for the rule of law, and concomitantly, a monarchy strong enough to enforce the law but also limited by the law, does this make the play simply another apology for the ruling class? If one follows certain Marxist lines, such as the one described by E. P. Thompson as "schematic Marxism," the answer would seem to be "yes":

From this standpoint the law is, perhaps more clearly than any other cultural or institutional artifact, by definition a part of a 'superstructure' adapting itself to the necessities of an infrastructure of productive forces and productive relations. As such, it is clearly an instrument of the de facto ruling class: it both defines and defends these rulers' claims upon resources

and labour-power -- it says what shall be property and what shall be crime -- and it mediates class relations with a set of appropriate rules and sanctions, all of which, ultimately, confirm and consolidate existing class power. Hence the rule of law is only another mask for the rule of a class. The revolutionary can have no interest in law, unless as a phenomenon of ruling-class power and hypocrisy; it should be his aim simply to overthrow it.⁸³

In other words, Cade was right, and the purpose of modern Shakespeare criticism, from a Marxist perspective, might be to exploit the legitimate grievances of Cade's followers as a way of deconstructing Gloucester's position in the play as exponent of the rule of law. On the other hand, if one is not convinced that destroying the rule of law will precipitate the millennium -- or that 2 Henry VI, as a whole, can be reasonably interpreted or utilized to support that position -- then a middle ground of interpretation, between absolute monarchy and popular revolution becomes possible. This is my reading, which views the play as being grounded in the discourse of the common law, which, with all its warts and class bias, presented the most durable obstacle to tyranny in English history. In support of the last half of that conclusion, I can find no better authority than E. P. Thompson:

It is inherent in the especial character of law, as a body of rules and procedures, that it shall apply logical criteria with reference to standards of universality and equity. It is true that certain categories of person may be excluded from this logic (as children or slaves), that other categories may be debarred from access to parts of the logic (as women or, for many forms of eighteenth-century [and sixteenth] law, those without certain kinds of property), and that the poor may often be excluded, through penury, from the law's costly procedures. All this, and more is true. But if too much of this is true, then the

consequences are plainly counterproductive. Most men have a strong sense of justice, at least with regard to their own interests. If the law is evidently partial and unjust, then it will mask nothing, legitimize nothing, contribute nothing to any class's hegemony. The essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just. It cannot seem to be so without upholding its own logic and criteria of equity; indeed, on occasion, by actually being just. And furthermore it is not often the case that a ruling ideology can be dismissed as a mere hypocrisy; even rulers find a need to legitimize their power, to moralize their functions, to feel themselves to be useful and just. In the case of an ancient historical formation like the law, a discipline which requires years of exacting study to master, there will always be some men who actively believe in their own procedures and in the logic of justice. The law may be rhetoric, but it need not be empty rhetoric. Blackstone's Commentaries represent an intellectual exercise far more rigorous than could have come from an apologist's pen. . . .

. . . rulers were, in serious senses, whether willingly or unwillingly, the prisoners of their own rhetoric; they played the games of power according to rules which suited them, but they could not break those rules or the whole game would be thrown away.⁸⁴

In 2 Henry VI, Shakespeare portrays a period in which the whole game very nearly was thrown away. But 2 Henry VI does not prove that the rule of law ought to be destroyed. It merely shows that the rule of law can be destroyed, and Shakespeare quite graphically depicts the result of that destruction throughout his first tetralogy. Though Gloucester displays the arrogance of his position in his treatment of Peter Thump, and perhaps an unfeeling severity in his punishment of Saunder Simpcox, he does not bend the law in favor of himself or those he loves and he does not resist the law when it works against him. Gloucester's own imperfections mirror the

imperfections of human justice in a "naughty world," but they are balanced against real strengths. Considering the alternatives to the rule of law, we may find it, even with its imperfections, the more endurable option.

The two plays which I will next discuss, The Merchant of Venice and Measure for Measure, set forth threats to the rule of law which arise from the clash of competing values within the legal system itself. Since these plays are comedies, it will come as no surprise that they provide a better resolution of the forces which threaten law and society than does a history such as 2 Henry VI. Yet, the victories achieved by the rule of law in The Merchant of Venice and Measure for Measure are tentative, imperfect, and temporary. They demonstrate how difficult it is to preserve the rule of law, even in the theoretical exercise provided by ideal comedy.⁸⁵

CHAPTER 2

Contexts of Play and Earnest: Construing Shylock's Bond

The flesh-bond story of the Merchant of Venice as far as scholars know, begins in the ancient Mahabharata of India, in which King Usinara "saves a dove from a hawk by giving its weight from his own flesh instead."¹ The story continues through many variations in the Middle Ages, the most famous being the Gesta Romanorum and the Cursor Mundi, both of the 13th century, and into the sixteenth-century Italian story, Il Pecorone.² The Merchant of Venice, therefore, has roots sunk deep in the realm of folklore and allegory. But despite the timelessness of the story, it provided a vehicle for addressing some of the most pressing economic and legal issues of Shakespeare's day: the place of usury in a Christian society (or from another point of view, the place of Christian ethics in an economy that was hungry for capital); the inadequacy of a legal system that had grown excessively rigid and formal; and the slippery position of the aristocracy and aristocratic values in a society where the ignoble began to amass fortunes and the noble began to lose them. The struggle in the play, among money-lenders, merchants and aristocrats and between the values of law and equity, commerce and charity, is fought with language over the control of language. The victors, however temporary, are those who can control the meaning given to words, and the power which that meaning can release. Though the trial of Shylock's action against Antonio provides the play's most intense struggle over the signification of words, contests over the meaning and effect of language take place throughout the play. The trial scene can best be understood as but one instance of a motif that continues throughout the play: the struggle of characters to control events by controlling the signification of

language. Most of these struggles to control meaning fall into two often overlapping categories: (1) playful interpretations of language are pitted against earnest interpretations and (2) commercial interpretations against interpretations governed by love in its various manifestations as eros, friendship and Christian charity.

The language of commerce and the language of love come into immediate collision in the first act of The Merchant of Venice. Venice is portrayed as a society in which commercial language and concerns have all but displaced the language of love. Antonio's depression is interpreted immediately by Salerio and Solanio as concern for his trading ventures. Salerio proclaims that if he were in Antonio's position, every object, every normal human action, "my wind cooling my broth," "the sandy hour glass," "the holy edifice of stone," would conjure up images of shipwreck and loss. The second possibility, that Antonio is in love, is given faint consideration by Solanio, who is easily put off by Antonio's "Fie fie," and concludes, "Not in love neither." This opening dialogue sets the foundation for one of the main themes of the play, which is the relationship between love and commerce: the place of love in a commercial society and the place of money in a loving relationship.³

The tension between the language of love and money becomes readily apparent in Bassanio's first conversation with Antonio. As Bassanio begins his request for a loan, he mixes the language of love and commerce in such a way that love becomes commodified. Love is given an exchange value, and Bassanio, perhaps only half-consciously, implies that the love he owes Antonio is, like the monetary debt he also owes, a burden he would like to be rid of:

To you, Antonio,
I owe the most in money and in love.
 And from your love I have a warranty
 To unburden all my plots and purposes
 How to get clear of all the debts I owe.⁴
 (I. i. 130-4; underlining added)

Antonio's response seems to integrate love, honor and commerce as complementary features of a unified social consciousness, but it is so magnanimous, it suggests Antonio's fear of losing his relationship with Bassanio. Antonio, apparently, does not want Bassanio out of his debt:

I pray you good Bassanio let me know it,
 And if it stand as you yourself still do,
 Within the eye of honour, be assur'd
 My purse, my person, my extremest means
 Lie all unlock'd to your occasions. (I. i. 135-9)

Antonio's response is an invitation for Bassanio to answer in the language of love. After all, Antonio has offered everything. Bassanio, however, answers in the language of commerce. If Antonio will but risk one more loan of 3000 ducats, then he will stand a chance of recovering all the money he has previously lent to Bassanio, for Portia is rich. Bassanio simply wants capital to regain the loss of capital:

In my school days, when I had lost one shaft,
 I shot his fellow of the self-same flight
 The self-same way, with more advised watch,
 To find the other forth; and by adventuring both
 I oft found both. I urge this childhood proof
 Because what follows is pure innocence.
 I owe you much, and like a wilful youth,
 That which I owe is lost; but if you please
 To shoot another arrow that self way

Which you did shoot the first, I do not doubt,
 As I will watch the aim, or to find both
 Or bring your latter hazard back again
 And thankfully rest debtor for the first. (I. i. 140-52)

Though this is a picturesque way of asking for a loan, the request is not couched in the language Antonio had hoped to hear. Whether Bassanio makes a conscious choice to thwart Antonio's expectations and to use the language of commerce rather than love cannot be decided finally by reference to the language of the play. If Bassanio intentionally chooses not to give Antonio the kind of speech Antonio wants, then what will appear on stage is a covert struggle between Bassanio and Antonio to control the language of the conversation, with Bassanio deliberately distancing himself from Antonio through the impersonal language of commerce. But even if Bassanio is portrayed as being merely unperceptive about Antonio's signal to respond in the language of love, there is still remains a one-sided attempt by Antonio to force the conversation out of a commercial mode and into a loving one:

Antonio: You know me well, and herein spend but time
 To wind about my love with circumstance,
 And out of doubt you do me now more wrong
 In making question of my uttermost
 Than if you had made waste of all I have (I. i. 153-7)

Antonio's speech is fairly coercive, and in his next reply, Bassanio comes around, but only a bit, by verbally linking himself to Antonio ("O my Antonio") and by emphasizing the economic motivations of his suit to Portia rather than the erotic. Bassanio describes Portia in the language of the market place, likening her hair to the golden fleece, noting her value in comparative terms and acknowledging the demand she evokes as a

commodity:

Her name is Portia, nothing undervalu'd
To Cato's daughter, Brutus' Portia,
Nor is the wide world ignorant of her worth (I. i. 165-6)

Wooing Portia has its own attractions, but Bassanio emphasizes that competing with Portia's suitors is also a good business venture:

O my Antonio, had I but the means
To hold a rival place with one of them,
I have a mind presages me such thrift
That I should questionless be fortunate. (I. i. 173-7)

Thus, although the topics of the conversation are Portia, and Bassanio's request of a loan for courtship expenses, the subtext reveals a conflict about the choice of language Bassanio and Antonio will use with each other: the language of love, appropriate to close friends, or the language of commerce, appropriate to arm's length dealing. There is no clear cut victor in this contest because each of the participants has leverage against the other. Antonio has the money (or at least the credit rating) that Bassanio needs, and Bassanio's love is something that Antonio needs. Neither, it seems, gets completely what he wants. Antonio does not get an unequivocal statement of love or devotion from Bassanio and Bassanio, though he gets Antonio as a surety, increases his obligation in terms of love. Yet, by demanding that Bassanio use a particular kind of discourse in order to get the loan, Antonio does at least get one loving reply: "O my Antonio."

In Act I. iii. a second instance of conflict between rival discourses occurs. Bassanio asks Shylock for the loan of 3000 ducats, and the following exchange about Antonio, as surety, occurs:

- Shylock: Three thousand ducats for three months, and Antonio bound.
- Bassanio: Your answer to that.
- Shylock: Antonio is a good man.
- Bassanio: Have you heard any imputation to the contrary?
- Shylock: Ho no, no, no, no: my meaning in saying he is a good man, is to have you understand me that he is sufficient. . . (I. iii. 9-15)

There is a temporary breach in communication between Shylock and Bassanio, which Shylock recognizes immediately and corrects. The breach occurs when Shylock says that "Antonio is a good man," and Bassanio responds indignantly, "Have you heard any imputation to the contrary?" The problem, as Shylock points out, is that he and Bassanio have attached different meanings to the word "good," Bassanio interpreting Shylock's comment as an ethical statement and Shylock intending it merely as a commercial evaluation. The misunderstanding demonstrates the habitual modes of operation of both Shylock and Bassanio. Shylock, the man of commerce, the usurer, immediately consults the balance book before making a decision on whether a man is "good"; Bassanio, the aristocrat, attaches to the word "good" a whole complex of ethical standards including generosity, hospitality, reputation, keeping one's word, noblesse oblige -- the complex of virtues contemporary Englishmen associated with Philip Sidney and which composed the aristocratic concept of honor.⁵ But the issues raised by this miscommunication are not fully resolved by the fact that Shylock and Bassanio are used to dealing in different worlds and in different languages. Although Bassanio may be unfamiliar with commercial diction, he certainly realizes that he is involved in a commercial transaction. Why does he

assume that Shylock is making an ethical evaluation of Antonio? The answer, I believe, is that Bassanio (naively, from Shylock's point of view) assumes that the honor of the borrower is a criterion which the lender would find relevant in deciding whether to make the loan. Bassanio is not a complete stranger to commercial speech, as his preceeding conversation with Antonio demonstrates. But Bassanio is not fluent in the language of commerce, so he misunderstands "good." Shylock finds Bassanio's mistake so absurd that he is moved to an explosion of laughter and correction: "Ho no, no, no: my meaning in saying he is a good man, is to have you understand me that he is sufficient." Shylock thus empties the word "good" of its ethical content, and since he has the upper hand in this transaction, seizes control of the language in which the loan will be negotiated, displaces the language of honor with the language of commerce, and returns immediately to an evaluation of Antonio's business ventures:

... he hath an argosy bound to Tripolis, another to the Indies, I understand moreover upon the Rialto, he hath a third at Mexico, a fourth for England, and other ventures he hath squand'red abroad, -- but ships are but boards, sailors but men, there be land-rats, and water-rats, water-thieves, and land-thieves, (I mean pirates), and then there is the peril of waters, winds, and rocks: the man is notwithstanding sufficient, -- three thousands ducats, -- I think I may take his bond. (I. iii. 16-25)

At this point, a quibble occurs which Shylock uses to once again impress upon Bassanio who is in control of the language, and therefore, the negotiation. Bassanio replies "Be assured you may [take Antonio's bond]," using assured in the sense of "satisfied, told for certain." Shylock replies, "I will be assur'd I may: and that I may be assured, I/will bethink me." (I. iii.

27-7).

Bassanio's use of the imperative, "Be assured," puts a subtle pressure on Shylock to stop quibbling and accept Antonio's bond. It also may indicate Bassanio's impatience and frustration at being in a less powerful position than Shylock. Shylock, who in this negotiation is very sensitive to language, immediately senses the pressure that Bassanio would like to exert, letting Bassanio know that he will not "be assured" simply because Bassanio says he should, but also changing the sense of assured to a commercial one, "assurance" being Antonio's sufficient guarantee of the loan. Shylock will not be diverted from the meaning that he will attach to words and to a remarkable degree, he forces Bassanio to accept commercial meanings and to negotiate in a language system informed by values that are largely unfamiliar to Bassanio. Shylock's superior commercial position gives him the power, initially, to impose a language on Bassanio.

Languages of love and commerce, play and earnest, also clash significantly in the casket game set up by Portia's father. In the game for Portia's hand, the "will of a living daughter" seems to be "curb'd by the will of a dead father," for it is the father's interpretation of the gold, silver and lead caskets, and the inscriptions on the caskets, which will determine who gets Portia's hand. Even from the grave, Portia's father exerts an interpretive force that works to control events. Morocco and Arragon approach the game with languages of interpretation which are unsuited to decode the meaning of the caskets and their inscriptions. Morocco's first mistake is that he he wants to exclude the language and dynamics of play from the process of interpretation. He initially complains to Portia:

If Hercules and Lichas play at dice
Which is the better man, the greater throw

May turn by fortune from the weaker hand. (II. i. 32-4)

Morocco's complaint already indicates that he lacks the spirit necessary to pick the correct casket, which bears the inscription, "Who chooseth me must give and hazard all he hath." Morocco does not want to give or to "hazard," and Portia, knowing this, may be mockingly dropping a hint that she knows Morocco will not perceive when she responds: "First forward to the temple, after dinner/Your hazard shall be made." When Morocco picks the gold casket, which promises "what many men desire," the language of commerce and superficial appearance wins over the language of love. As Frank Kermode notes, "Morocco supposes that Portia cannot be got by any casket save the golden one, tacitly confusing her living worth with that of gold, the value of gentleness with that of the best breeding metal."⁶ Arragon chooses the language of commerce, the quid pro quo of fair dealing, over the language of love, by choosing the silver casket, which promises him "as much as he deserves." His presumption, in assuming that he deserves Portia, and that he should get what he is entitled to, is mere arrogance (One wonders whether Shakespeare intended such a play on Arragon's name.) Arragon's long speech to himself about what he deserves also demonstrates a defensiveness born of insecurity; Arragon erects his arrogance against the uncertainty of life, but that uncertainty requires a playful rather than fearful attitude. Only Bassanio, who in this instance is able to combine the qualities of play and love, is able to choose the right casket. To be able "to hazard" is to be able to play -- to participate in the gambles and uncertainties of life with a lightness that Morocco and Arragon lack. To be able to "give and hazard" is to possess the ability to sacrifice which is a component of the ability to love. Thus, the ability to love and play are married in the inscription of the lead casket, and the game of interpretation,

created by Portia's father for the earnest purpose of getting her a good husband, filters out those suitors whose lives are governed by attitudes of acquisitiveness, and insecurity.

One more example, perhaps, will confirm the importance in The Merchant of Venice of the contest between playful and earnest interpretations of language. This is the scene, significantly preceding the trial of Act IV., in which Lorenzo, against all odds, tries to give a command to Launcelot to serve dinner. Launcelot refuses to interpret Lorenzo's request -- or his assertion that Launcelot has gotten one of the household servants pregnant -- in anything but a playful manner:

Lorenzo: . . . the Moor is with child by you Launcelot!

Launcelot: It is much that the Moor should be more than reason: but if she be less than an honest woman, she is indeed more than I took her for.

Lorenzo: How every fool can play upon the word! I think the best grace of wit will shortly turn into silence, and discourse grow commendable in none only but parrots: go in sirrah, bid them prepare for dinner!

Launcelot: That is done sir, they have all stomachs!

Lorenzo: Goodly Lord, what a wit-snapper are you! then bid them all prepare dinner!

Launcelot: That is done too sir, only "cover" is the word.

Lorenzo: Will you cover then sir?

Launcelot: Not so sir neither, I know my duty.

Lorenzo: Yet more quarrelling with occasion! wilt thou show the whole wealth of thy wit in an instant? I prathee. understand a plain man in his plain meaning: go to thy fellows, bid them cover the table, serve in the meat, and we will come in to dinner.

Launcelot: For the table sir, it shall be serv'd in, -- for the meat sir, it shall be cover'd, -- for your coming in to dinner sir, why let it be as humours and conceits shall govern. (III. v. 35-57)

Humors and conceits indeed seem to be governing here, and we never find out whether Lorenzo and Jessica get their dinner. Lorenzo contends that Laucelot is merely an example of a more general social malady in which communication is intentionally frustrated or diverted by turning earnest communication into joking word play. In the trial of Act IV, the process is also demonstrated to work in reverse. While Launcelot stubbornly perverts the meaning of an earnest request for dinner with a playful interpretation, Shylock seeks to give a playful agreement a deadly earnest interpretation.

□ □ □

Shylock sows the seeds of his own destruction when he attempts to wrest the legal/commercial system of Venice to extra commercial purposes. In Venice, all ducats are created equal. So long as a person has money, his status as the member of a minority religion or as an alien will be tolerated. So long as a person does not break the law (which would interfere with commercial activity) and gears his actions to the making of money, his conduct and motives will be accepted by the state as "reasonable," though some may judge him as morally odious. Shylock, however, in taking Antonio's bond, is not motivated by the desire to make money, and in fact, creates a bond which makes a monetary profit from the transaction impossible. Both the circumstances of the bond's creation and the language of the bond remove the document from the sphere of commercial dealing in Venice. Shylock abandons the commercial language that he had forced upon Bassanio, and adopts the languages of play and love:

Shylock: I would be friends with you, and have your love,
Forget the shames that you have stain'd me with,
 Supply your present wants, and take no doit
 Of usance for my moneys, and you'll not hear me, --
 This is kind I offer.

- Bassanio: This were kindness.
- Shylock: This kindness will I show,
 Go with me to a notary, seal me there
 Your single bond, and (in merry sport)
 If you repay me not on such a day
 In such a place, such sum or sums as are
 Express'd in the condition, let the forfeit
 Be nominated for an equal pound
 Of your fair flesh, to be cut off and taken
 In what part of your body pleaseth me.
- Antonio: Content in faith, I'll seal to such a bond,
 And say there is much kindness in the Jew.
- Bassanio: You shall not seal to such a bond for me,
 I'll rather dwell in my necessity.
- Antonio: Fear not man, I will not forfeit it, --
 Within these two months, that's a month before
 This bond expires, I do expect return
 Of thrice three times the value of this bond.
- Shylock: O father Abram, what these Christians are,
 Whose own hard dealings teaches them suspect
 The thoughts of others! Pray you tell me this, --
 If he should break his day what should I gain
 By the exaction of the forfeiture?
 A pound of man's flesh taken from a man,
 Is not so estimable, profitable neither
 As flesh of muttons, beefs, or goats, -- I say
 To buy his favour, I extend this friendship, --
 If he will take it so, -- if not, adieu,
 And for my love I pray you wrong me not.
- Antonio: Yes Shylock, I will seal unto this bond.
- Shylock: Then meet me forthwith at the notary's,
 Give him direction for this merry bond --
 And I will go and purse the ducats straight,
 See to my house left in the fearful guard
 Of an unthrifty knave: and presently
 I'll be with you.
- Antonio: Hie thee gentle Jew.
 The Hebrew will turn Christian, he grows kind.
 (III. i. 135-74; underling is mine)

H. B. Charlton contends that Shylock, at this point, does not have an intention to use the bond as a way to get revenge against Antonio.⁷ Rather, Shylock makes a gesture of forgiveness and only later, after Jessica leaves with Lorenzo, does Shylock seize upon the bond as a way of getting revenge. On the other hand, given the following aside by Shylock, spoken just before the bond's formation, Shylock could be hoping from the beginning that Antonio will default:

How like a fawning publican he looks.
 I hate him [Antonio] for he is a Christian;
 But more, for that in low simplicity
 He lends out money gratis and brings down
 The rate of usance here with us in Venice.
 If I can catch him once upon the hip,
 I will feed fat the ancient grudge I bear him. . .
 . . . Cursed be my tribe
 If I forgive him. (I. iii. 38-48)

Whatever Shylock's private intentions are, his stated intention is that the forfeiture provision is merely a joke. Shylock twice calls the bond a "merry bond" and the whole transaction a "merry sport".⁸ Shylock even pokes fun at Bassanio for suggesting that Antonio is putting himself in danger by agreeing to forfeit a pound of flesh. Antonio also seems to understand that the bond is in fact, a no interest loan, the pound of flesh clause being but a jest: "I'll seal to such a bond,/And say there is much kindness in the Jew." A contract, or part of a contract, which is recognized by the parties as being but a joke, and not part of an agreement which either party intends to enforce, is simply not enforceable. Neither an Elizabethan nor a twentieth-century English court would even regard such an agreement as a contract, because there is no serious mutual intent by the parties to be

bound by the agreement.

The context of the bond's formation is not only one of jest but of love. Shylock says he wants to buy Antonio's love, demonstrating an unfamiliarity with the discourse of love which complements Bassanio's unfamiliarity with the discourse of commerce. But Shylock is clearly trying to use the language of love. Antonio may have a subterranean urge to martyr himself for Bassanio's sake, but superficially he agrees to the bond because there is a tacit understanding between him and Shylock that the bond will be interpreted charitably, rather than literally. The entire transaction is framed by two statements. Shylock begins by saying, "I would be friends with you and have your love. . . This is kind I offer," and Antonio ends the conversation with, "The Hebrew will turn Christian, he grows kind."

The dialogue of love and game which forms the context of the bond's creation is ephemeral and vanishes like the sound waves that sustain the speech of the parties. As soon as Shylock, Bassanio and Antonio go their own ways, the verbal context vanishes but the written product remains. The bond is a text which has an ascertainable range of meaning within the context of its creation, but may have another outside of that context. The persistence and mobility of the bond as a written text allows Shylock to radically decontextualize the bond, and to construct a different meaning by placing the bond in a completely different context of interpretation. The bond, essentially, will pass from an interpretive environment governed by merry sport and love to a more restrictive environment governed by literalness, legality, and the values of commerce, i. e., the environment of the courtroom. In order to understand how Portia, as judge, deals with this bond, it is necessary to take a brief diversion into sixteenth-century English views of usury, the common law, and equity.



With regard to usury, the social psyche of England was split during the sixteenth century, as was that of Europe as a whole. The need to borrow and the temptation to lend coexisted at once with a palpable fear of usury in particular and the sin of avarice in general. As in so many other aspects of their lives, the people of Renaissance England had one foot planted in the medieval world, and another foot, more tentatively set in the modern. R. H. Tawney summarizes the difference between the two perspectives as follows:

The most fundamental difference between medieval and modern economic thought consists, indeed, in the fact that, whereas the latter normally refers to economic expediency, however it may be interpreted, for the justification of any particular action, policy or system or organization, the former starts from the position that there is a moral authority to which considerations of economic expediency must be subordinated.⁹

In the early medieval economy, which was essentially static and which was characterized by strong monopolies, the ban on usury tended to make economic sense, and was supported from the pulpit with reference to texts such as Deuteronomy xxiii: 19-23, Exodus xxii: 25, and Leviticus xxv: 35-7.¹⁰ In an expanding, capital hungry economy, such as has generally characterized Europe since the late middle ages, outright bans against all forms of usury made little sense, and were often circumvented with all the creativity that financial and legal minds could muster. The experience of Florence was typical of the back and forth war between conscience and expediency which engaged governments trying to develop a policy on usury:

Florence was the financial capital of medieval Europe; but even at Florence the secular authorities fined bankers right and left

for usury in the middle of the fourteenth century, and fifty years later, first prohibited credit transactions altogether, and then imported Jews to conduct business forbidden to Christians.¹¹

The experience of England in the sixteenth-century was as schizophrenic as that of Florence. In 1487, an act was passed prohibiting the taking of interest, but was easily circumvented because of ambiguity.¹² An act of 1495 again forbade interest, attempting to broaden and strengthen the definition so that certain devices by which the first law was evaded (e.g. an agreement to sell something to the "lender," and then buy it back on a specific date at a higher price) would be outlawed. The act of 1545 allowed the taking of interest up to 10%, but those who charged more were subject to damages in treble the value of their profits and were to be punished with imprisonment. The act drew great blasts from the pulpit and from an aristocracy which was rapidly sinking into debt.¹³ In 1552 the 1545 act was repealed, and the taking of interest for any rate was outlawed. The 1552 ban proved to be utterly unenforceable. The demand for capital was simply too great. In 1571 the 1552 act was repealed, and the 1545 act revived, with certain qualifications. The taking of interest over 10% was illegal, and all such agreements were void. Interest under 10% was allowed, with the following qualifications: the debtor had the right to refuse to pay the interest, or to recover interest paid. What seems like a very minor concession toward usury was in fact major. Though a debtor technically had the right to renege on his creditor and return only principle, such an action would effectively destroy the debtor's credit. Those who needed loans from time to time, as did many merchants, would not dare take legal action that sealed them off from financial markets.

As R. H. Tawney notes, in sixteenth-century England, books against usury were legion, and this proliferation of anti-usury discourse continued into the seventeenth-century. In Tawney's introduction to A Discourse Upon Usury by Thomas Wilson (1572) a sampling is provided: A General Discourse against the damnable sect of Usurers (1578) The Death of Usury, or the Disgrace of Usurers (1594) A Tract agaynst Usurie, Presented to the High court of Parliament (1621), Usurie arraigned and condemned (1625) and Usury is injury (1640). The topic of usury was not particularly hot in 1596 when Shakespeare appears to have written The Merchant of Venice. Usury was simply a subject of continuous emotional attention. At the time, the Jewish population of Britain was insignificant,¹⁴ and as far as is known, did not participate in usury. If Shylock was a focus for the animosity of Shakespeare's audience, it was an animosity generated by the Christian money lenders of England, people like Hugh "the great" Audley, who made a fortune during the reign of James I as a usurer and was not above charging exorbitant interest when he could get away with it.¹⁵

Despite contemporary abuses of usury, the audience of the Merchant of Venice was not likely to have been uniformly united against usury per se, and I do not believe that we can assume an automatic reaction against Shylock simply because he is a usurer. There may well have been usurers in Shakespeare's audience, merchants who dealt with usurers to no great detriment and who were happy to obtain loans, aristocrats deeply in debt who hated usurers, and a whole spectrum of people inbetween. Tawney delineates two differing theological attitudes toward usury in the sixteenth-century, and people in Shakespeare's audience probably reflected this division:

Conservative writers took advantage of the section in the [1571] Act declaring that "all usurie being forbidden by the lawe of God is sinne and detestable," to insist that the statute had, in reality, altered nothing. . . . Men were subjects . . . of the Church as well as of the State; the law of the church condemned all interest as usurious. . . . The more liberal theologians, working on the tradition which had started with Calvin. . . continued to reply to them with arguments designed to show that, since land and capital were interchangeable investments, interest was ethically as justifiable as rent, and that the crucial point was not the letter of the law which condemned the breeding of barren metal, but the observance of Christian charity in economic as in other, transactions.¹⁶

Given the liberal Christian position toward usury, there is some logic in making Shylock a Jew. If usury is only acceptable within a Christian context, then the status that Shylock lacks is perhaps as important as the Jewish status that he has. In this respect, Shylock could as well be a Moslem, or an atheist. But his Jewishness immediately conjures up the Christian paradigms of Jewish legalism versus the Christian freedom that Paul sets forth, for example, in Romans 8 and 13, and Galatians 5.¹⁷ The Christian position toward the law is that it is impossible to obey perfectly, that men are saved by God's love, rather than their own attempts to obey the law, and that the law is but an imperfect attempt to embody the rule of love. The theological opposition of the Old Testament Old Law and the New Testament New Law, which is love,¹⁸ finds a parallel contrast in the English system of law and equity. The common law courts tended to be governed by the mechanical application of rules, but equity, especially in its early days, was governed by a respect for the spirit of the law. It sought to achieve results which conformed to broad notions of fairness, and to temper the rigor of legal rules with mercy. Thus equity was often seen as a more "Christian"

branch of the English judicial system than was the common law. The liberal position toward usury called upon love, as a higher law, to ameliorate unloving conduct that is often legal. Broadly speaking, this was also the "equitable" as opposed to the "legal" position. Shylock's Jewishness would probably be an immediate stimulant to the anxieties of Shakespeare's audience, for how could one expect a non-Christian -- and particularly a Jew, faithful to the Old Law of the Old Testament-- to exercise that Christian charity which ameliorates the evils of law in general and usury in particular? Shakespeare's audience, of course, did not deal with Jewish usurers. Shylock's Jewishness would have been significant mainly as an emblem of the un-Christian conduct of Christian usurers the audience actually dealt with.

The liberal argument that usury could be tolerated, so long as the parties governed themselves by Christian charity, existed as more than a theoretical contention. Elizabethan policy was to encourage the settlement of disputes between debtors and creditors out of court, using ministers, justices of the peace and prominent members of the community as mediators who encouraged the parties to settle as Christians. The spirit in which this was done recalls that with which Paul had advised the Corinthians to stay out of court:

The very fact that you have lawsuits among you means you have been completely defeated already. Why not rather be wronged? Why not rather be cheated? ¹⁹ (I Corinthians 6: 7-8)

According to R. H. Tawney, the general policy of the Privy Council with regard to creditor and debtor disputes was

to try to secure the settlement of disputes out of court through the good offices of a friend, an influential neighbour, or when necessary, an arbitrator appointed by itself. The justices of Norfolk are instructed to put pressure on a money-lender who has taken "very unjust and immoderate advantage by way of usury." The Bishop of Exeter is advised to induce a usurer in his diocese to show "a more Christian and charytable consideration of these his neighbours." . . . It is evident that under Elizabeth the government kept sufficiently in touch with the state of business to know when the difficulties of borrowers threatened a crisis, and endeavoured to exercise a moderating influence by bringing the parties to accept a compromise.²⁰

In addition to the liberal and conservative theological positions on usury, Tawney identifies a third position which had obtained a great deal of strength by James' reign, and this is the "modern" position that the spheres of business and religion occupy separate realms -- a "dissociation of sensibility" of profound consequences:

[W]hether theologians and moralists condemned all interest, or only some interest, as contrary to morality, the assumption implicit in their very disagreement had been that economic relations belonged to the province of religion. That buying and selling, letting and hiring, lending and borrowing, and all other economic transactions were one department of ethical conduct and to be judged, like other parts of it, by ethical criteria; that whatever concessions the State might see fit to make to human frailty, a certain standard of economic morality was involved in membership of the Christian church; that it was the function of ecclesiastical authorities, whoever they might be, to take the action needed to bring home to men their economic obligations. . . It was precisely this whole conception of a social theory based ultimately on religion which was being discredited. "Merchants' doings," said the man of business in Wilson's dialogue [Thomas Wilson's A Discourse on Usury] "must not be overthrown by preachers and others that cannot skill of them." While rival authorities were discussing the correct

interpretation of economic ethics, the flank of both was turned by the growth of a body of opinion which argued that economics were one thing and ethics another. The creed of the commercial classes was a doctrineless individualism. By the reign of James I they had almost come to their own. . .²¹

"Doctrineless individualism" not only characterizes Shylock's belief that he should be allowed to sacrifice Antonio, because according to a contract, he owns a pound of Antonio's flesh, but as Shylock himself indicates, it characterizes Venice:

You have among you many a purchased slave,
Which like your asses and our dogs and mules
You use in abject and in slavish parts,
Because thou bought them. Shall I say to you,
"Let them be free! Marry them to your heirs!
Why sweat they under burdens? Let their bed
Be made as soft as yours, and let their palates
Be seasoned with such viands? You will answer,
"The slaves are ours." (IV. i. 90-8)

If in the end, Shylock becomes a scapegoat for the sins of Venice, he reflects as much sin as he is forced to bear.



Today, the action which Shylock brings against Antonio for the enforcement of the bond would be known as an action for summary judgment. There is no question of fact for the court to decide, the only fact being the language of the bond, which both Antonio and Shylock concur is the language they agreed to. The only question for the court is legal: How should the language of the bond be interpreted, or more precisely, what legal effect should the court give the language? Thus, there is a contest, once again, over the meaning which language will carry. The interests involved in

the contest are manifold, and of great political importance, as Portia recognizes when she concedes the constraints on her interpretation of the bond. The primary interest of Venice is to preserve its reputation as a center of trade and commerce in which all nationalities are welcome to do business. All ducats are created equal. Although the Duke does not want to see Shylock cut a pound of flesh out of Antonio, he is perfectly willing to let Shylock go ahead, if that is what is necessary to sustain the commercial reputation of Venice. Portia acknowledges the constraint when Bassanio urges her to avoid it:

Wrest once the law to your authority, --
 To do a great right, do a little wrong, --
 And curb this cruel devil of his will. (IV. i. 211-3)

But if the law becomes unpredictable, and prejudiced in favor of Venetians, then Venice will lose its position as the premier financial center of the Mediterranean. The ducats will go elsewhere. Portia's response, essentially, is that she must follow the law, for the very basis of Venice's existence is that business will be conducted according to settled rules upon which the parties involved can rely:

It must not be, there is no power in Venice
 Can alter a decree established:
 'Twill be recorded for a precedent,
 And many an error by the same example
 Will rush into the state, -- it cannot be. (IV. i. 214-218)

For the reasons that Portia alludes to, Venice in fact was a model of the "inexorable administration of justice."²² For Venice, justice paid. In James I and the Politics of Literature, Jonathan Goldberg argues that

Englishmen may have had a more positive view of Venetian government -- the view that Venice was an ideal state in which the wheels of justice ground even-handedly and rationally, albeit somewhat impersonally:

The Venice known to Englishmen at the opening of the seventeenth century was a compound of . . . facts and . . . myth. [The Commonwealth and Government of Venice, by Contarini and translated by Lewes Lewkenor in 1599 was, according to J. G. A. Pocock] the most "mythical" of accounts of Venice: "The mito de Venezia consists in the assertion that Venice possesses a set of regulations for decision-making which ensure the complete rationality of every decision and the complete virtue of every decision-maker. Venetians are not inherently more virtuous than other men, but they possess institutions which make them so. . . to an Elizabethan mind, Venice could appear a phenomenon of political science fiction."

Venice, Contarini writes, is a paragon of "institutions and lawes" . . . Man as a naturally political animal finds his fulfillment in Venice, where law is the product of consultation, rationality overcomes private desire, and the state, in its complex interlocking of princely rule in the doge, aristocracy in the senate, and democracy in the council of citizens presents the perfect order of the Polybian mixed state. . . a mirror of perfect government, uncorrupted justice.²³

The "myth of Venice" is that a machine of justice can be devised that will always yield the correct legal results despite the fallibility of those who operate the machine. This is also the myth that the English common law system, particularly under the guidance of Edward Coke, tried unsuccessfully to foster: that it was a system of pure rationality and justice. The bind in which Venice finds itself, when Shylock demands the enforcement of his bond, is a satirical deflation of the myth of Venice and of the English common law. What is lacking in the Venetian and English common law systems, obviously, is mercy -- the recognition that fixed rules, rigidly

applied, often lead to injustice. The significance of this to The Merchant of Venice is that Portia, as judge, must uphold the myth of Venetian justice and infallibility, and therefore must never be perceived as wresting the law to her authority, as Bassanio would have her do. Yet, the mercilessness of enforcing the bond would also be an embarrassment to the Venetian legal system. It is upon the horns of this dilemma that Portia appears to be stuck. Portia's first tactic, therefore, is to avoid making any legal ruling at all. She tries to do just what the Privy Council of England would have suggested: get the parties to settle amicably, out of court.

Portia's famous speech on mercy, which many critics have associated with the law of equity, can be understood as an attempt to return the text of the bond to its original environment of interpretation -- the discourse of love in which the bond was formed:

The quality of mercy is not strain'd,
 It droppeth as the gentle rain from heaven
 Upon the place beneath: it is twice blest,
 It blesseth him that gives, and him that takes,
 'Tis mightiest in the mightiest, it becomes
 The throned monarch better than his crown.
 His sceptre shows the force of temporal power,
 The attribute to awe and majesty,
 Wherein doth sit the dread and fear of kings:
 But mercy is above this sceptred sway,
 It is enthroned in the heart of kings,
 It is an attribute to God himself
 And earthly power doth then show likest God's
 When mercy seasons justice: therefore Jew,
 Though justice be thy plea, consider this,
 That in the course of justice, none of us
 Should see salvation: we do pray for mercy,
 And that same prayer, doth teach us all to render
 The deeds of mercy. I have spoke thus much
 To mitigate the justice of thy plea,

Which if thou follow, this strict court of Venice
Must needs give sentence 'gainst the merchant
there. (IV. i. 180-202)

In this passage, Portia examines the intimate connection between language and action. It is the language of mercy -- prayer -- that teaches "us all to render/The deeds of mercy." Using the proper language is a prerequisite for committing the proper action. The language of justice is an inferior discourse because it is unmitigated by love, and those who are habituated to the language of justice can only produce loveless acts. Rather than being able to give and hazard all, they are limited to the morality of quid pro quo. Portia implies, of course, that Jews, characteristically, are so habituated: ("therefore Jew/ though justice be thy plea") and in this would have been echoing Anglican commonplaces regarding the opposition of Christian charity and Jewish legalism. She forcefully argues that the context in which Shylock would like the bond to be interpreted -- the community and language of justice -- is less appropriate than the language of love. She gives Shylock a chance to put the bond back into the context of its formation, and to give it's language the effect of a "merry bond," one in which the "kind" offered by Shylock is indeed the "kindness" which Bassanio and Antonio understood Shylock to be offering (Act I. iii. 138-40)

A modern court, or an Elizabethan court of equity (Chancery), interpreting a contract would initially attempt to give the language of the contract the effect that the parties intended when the contract was drafted, the parties' statements as to their intention being given great weight. If the intentions of the parties were impossible to determine, the court would attempt to give the contract a reasonable interpretation given the business customs of the community. In effect, Portia follows these steps. Her plea to

Shylock to be merciful, if successful, would yield the same result as interpreting the bond according to the expressions of "love," "friendship," "kindness," "merry sport," "merry bond," and "forgiveness," which Shylock himself used to gain Antonio's agreement to the flesh-bond.

Shylock, however, blocks Portia's attempt to reconstruct the interpretive environment within which the bond was first written. The implication is that in the literal and legalistic world of Venice, proof as to the intent of the parties (i.e., proof of what they said at the time the bond was formed) would not be allowed by the court -- but that the intent of the parties could only be urged in settlement negotiations. This also would have been the case in English court of common law, pursuant to the Statute of Frauds, which severely limited proof of oral contracts or oral portions of contracts. Portia's next step therefore is to persuade Shylock to give the bond an interpretation that is commercially reasonable:

Portia: Shylock, there's thrice thy money off'red thee. . .
 be merciful,
 Take thrice thy money, bid me tear the bond.
 (IV. i. 225, 231-2)

To take a pound of Antonio's flesh as a forfeiture penalty is, according even to Shylock's earlier admission, commercially absurd:

Pray you tell me this, --
 If he should break his day what should I gain
 By the exaction of the forfeiture?
 A pound of man's flesh taken from a man,
 Is not so estimable, profitable neither
 As flesh of muttons, beefs, or goats, -- (I. iii. 158-63)

Commercially, a bond to which no profit attaches simply does not

make sense. So Bassanio's settlement offer can be seen as an effort to give the bond a commercially reasonable if not charitable meaning. Shylock's reply emphasizes how far he has parted from the logic of thrift and the language of commercial Venice:

If every ducat in six thousand ducats
Were in six parts, and every part a ducat,
I would not draw them, I would have my bond! (IV. i. 85-7)

For Shylock, the bond has become an instrument to achieve a quasi-religious purpose: the sacrifice of Antonio. Furthermore, Shylock has sworn an oath that he will accept no interpretation that thwarts this sacrifice:

An oath, an oath, I have an oath in heaven, --
Shall I lay perjury upon my soul?
No not for Venice. (IV. i. 224-6)

Antonio himself is drawn into a religious interpretation of his situation. The part of Antonio which desires to be martyred for Bassanio and which wants to keep Bassanio in debt forever, finds a perfect instrument in Shylock; Antonio's conformance to Shylock's language shows these two men resonating in the strangely cooperative relationship of victim and victimizer:

Antonio: I am a tainted wether of the flock,
 Meetest for death, -- the weakest kind of fruit
 Drops earliest to the ground, and so let me;
 You cannot better be employ'd Bassanio
 Than to live still and write mine epitaph.
 (IV. i. 114-18)

The legalistic formalism which Shylock demands ("I stand for

judgment. . . . I stand for law"; IV. i. 103, 142) was a characteristic of common law administration in such courts as the King's Bench and Common Pleas. As critics have recognized,²⁴ Shylock's confrontation with Portia pits to two very different legal styles against each other: that of the common law and that of equity. Common law, particularly in the fourteenth and fifteenth centuries and to a large degree in the sixteenth, was characterized by many faults. As a system, it was dilatory and expensive. Rules for the service of process (getting and delivering bills of complaint and other pleadings) were technical and inadequate. The system of pleading (Pleadings are the documents by which the parties to a lawsuit frame the issues for the court; they include, among other documents, the complaint, answer, and rejoinder) was formulaic, tricky, and "becoming so rigid that litigants who had substantial justice on their side might often be defeated."²⁵ Cases were often decided not on the basis of the facts involved and the applicable substantive law, but on whether the highly technical rules of conducting a lawsuit had been meticulously followed. The attraction to Chancery in its early days was that the judges attempted to render just decisions based on the facts of the cases. Judges in Chancery were the first to examine the meaning of contractual language in light of the circumstances in which the contract was created and the intention of the parties. "The chancellor could say with truth that 'a man shall not be prejudiced by mispleading or by defect of form, but he shall be judged according to the truth of his case.'"²⁶

Portia wants to give the bond an equitable construction in order to avoid the absurd result that Shylock's legalism seems to demand. In doing so, she is following the standard Elizabethan conceptions of equity that where the law would require an unreasonable result, equitable principles should be applied:

[E]quity is no other thing but an exception to the Law of God or of Reason from the Generall Rules of the Lawe of Man, when they by reason of there Generallitie, woulde in any partiulcar Case, judge against he Law of God, or the Lawe of Reason: the which exception is generally understood in every Generall rule of every Positive Lawe. . . . Equity followeth the Lawe in all particular Cases, where right and Justice requires, notwithstanding that the General Rule of the Lawe be to the contrary.²⁷

Equity's spiritual homolog is Christ's summary of the ten commandments as "Love." When any general legal rule would lead to a result that is contrary to the rules of God or of reason, general conceptions of justice will apply. To take a man's life for being late in the payment of a bond would certainly have been understood by an equitable court as contrary to the rules of God or Reason and a "reasonable" forfeiture or interest rate would have been determined.

Portia gives Shylock a great opportunity to demonstrate charity and forgiveness. She waits until the last instant to reprieve Antonio, giving Shylock the utmost chance to be merciful. It is the same opportunity which Vincentio and Marianna give Isabella in Measure for Measure, and one which, had Shylock taken it, might have enobled him before Venice despite his status as an alien and a Jew. But Shylock does not rise to the occasion and for him the play is indeed a spiritual tragedy, not so much because he is forced to convert to Christianity, but because he fails to demonstrate the love, generosity or forgiveness which Renaissance Englishmen held to be the foundation of Christianity, and which is so powerful coming from a truly wronged human being.

In response to Shylock's rejection of either a charitable or a

commercially reasonable interpretation of the bond, and his demand for a "literal" interpretation, Portia administers poetic justice. There is an equitable maxim that he who seeks equity must do equity. Since Shylock seeks a "literal" interpretation, and nothing else, that is what he gets. But Portia demonstrates that in literal interpretation -- interpretation without reference to an extra-textual reality -- even the meaning Shylock wants can be made to disappear.

Shylock has a misconception about language. He is the most naive kind of formalist. He believes that the words on the page can maintain a fixed meaning which transcends reference to the time and place of utterance or interpretation. The theoretical basis for Shylock's trap of Antonio is that Antonio does not appreciate the fixity of meaning that attaches to written language. Shylock believes that the bond has a "literal" meaning which the bond carries from one context to another. For Shylock the original meaning of the bond, which was formed in a context of love, honor and play, ceases to exist once that historical moment is past, but a permanent, literal meaning does continue to exist. Portia's lesson to Shylock is that "literal" interpretations are the most shifty and evanescent of all. Once Portia follows Shylock's suggestion and does away with extra-textual constraints on interpretation, the play of signification truly becomes "free" in the most Barthesian sense and Portia beats Shylock at his own game. Given the ground rules for interpretation that Shylock has demanded, Portia's eccentric interpretation of the bond is as reasonable as Shylock's, the only difference being that Portia has the power of Venice at her disposal to legitimate her interpretation. And arguably Portia preserves the rule of law in Venice by conforming to a legal literalism that no one in the play questions.

Portia's challenge is to satisfy Shylock's overt demands for literal

interpretation while saving Antonio's life and preserving the integrity of the rule of law in Vienna. Portia's ruling, which makes Shylock's revenge too dangerous for him to exact, is based on three equally sufficient grounds, the first two of which are non-sensical within the context of legal reality, but which are logical within the context of the play.

Portia's third ground is that the contract violates Venetian law against conspiring to harm a Venetian citizen. This is very close to a ruling that the bond violates public policy and would be an obvious and unassailable ground for denying the forfeiture provision.

The first ground of Portia's decision is based on her interpretation of the word "flesh":

This bond doth give thee here no jot of blood,
The words expressly are "a pound of flesh":
Take then thy bond, take thou thy pound of
flesh,
But in the cutting it, if thou does shed
One drop of Christian blood, thy lands and goods
Are (by the laws of Venice) confiscate
Unto the state of Venice (IV. i. 301-8)

Critics have argued that Portia's interpretation of "flesh" makes no legal sense because it assumes the parties had contracted to do an impossible action, and a court will start out with the assumption that the parties to an agreement do not contract to do the impossible. W. Moelwyn Merchant sets forth this objection as follows:

[Portia's] quibble on the spilling of blood denies another legal maxim that any right assumes the conditions which make the exercise of the right possible; in this instance the right to take a pound of flesh presupposes the necessary condition of

blood-shedding.²⁸

The same objection can be raised against the second ground of Portia's decision, her interpretation of the word "pound":

Shed thou no blood, nor cut thou less nor more
 But just a pound of flesh: if thou tak'st more
 Or less than a just pound, be it but so much
 As makes it light or heavy in the substance,
 Or the division of the twentieth part
 Of one poor scruple, nay if the scale do turn
 But in the estimation of a hair,
 Thou diest, and all thy goods are confiscate. (IV. i. 321-28)

As Shylock rapidly realizes, it is impossible to measure an exact pound of anything. Any court, trying to give effect to the commerical intentions of the parties would interpret flesh as including blood, and one pound as being one pound more or less. But the most crucial point which this analysis misses, even from the standpoint of legal realism, is that this is not a commerical bond. And because it is not a commercial bond, Portia is under no obligation to give it a commerical interpretation. In fact, the bond is a "merry" bond, not an earnest bond, and Portia's playful interpretation of "flesh" and "bond" actually gives effect to the stated intentions of the parties at the time the bond was made and thus, paradoxically, her absurd construction of "flesh" and "pound" yields the most reasonable interpretation of the bond. Shylock's effort to detach the bond from its original context of interpretation sets up a situation in which the play of signification is unrestricted. In this arena of textual play, Portia can do with the bond what she wants. (That she realizes this makes her the intellectual superior of everyone else in the scene and the most adept player in the game of

interpretation.) The irony is that by giving Portia this chance to play, Shylock has given her the opportunity to recreate an interpretive environment that replicates the one in which the bond was formed. Shylock's demand for rigid legality ends in giving the bond the exact effect that he had publicly proclaimed the bond should be given when he and Antonio formed their agreement. The "merry" bond, created in an atmosphere of game and charity is finally, as a result of Shylock's own demands, interpreted by the court in an equally "merry" way.

Portia's sentence of Shylock has been characterized, with some justice, as uncharitable and unequitable.²⁹ Shylock loses the principle of the bond. He is forced to convert to Christianity. He is threatened with execution, his goods are confiscated, but (under certain restrictions) returned. On the other hand, Shylock had attempted, in effect, to defraud Antonio of his life. Shylock's forced conversion to Christianity may not sit well with the post-holocaust, largely post-Christian audience of 1988, but to the Christian audiences of Shakespeare's day, this would have been perceived as comic rather than tragic. With the exception of a fine (which perhaps is also remitted), Shylock gets the use of his goods for his lifetime with the provision that he leave them to Jessica and Lorenzo on his death. The remission of Shylock's death sentence, his goods, and perhaps his fine, when apparently for Shylock, all was lost, is the final extension of the playful impetus Portia gives to the trial. Antonio is liberated by play and it is this liberation that makes his charity to Shylock possible.



As Portia and Nerissa return to Belmont after their judicial adventure, in a passage of calm beauty they describe the sounds and sights of the night. Like Theseus and Hippolyta trying to make sense of the tale told by the four

Athenian lovers, Portia and Nerissa, on their journey home, find the time and tranquillity that often in Shakespeare's drama preceeds the experience of wonder and insight. Although Portia and Nerissa do not refer to the case of the bond, what they say is inextricably connected with, and perhaps motivated by, their experience in Venice:

- Portia: That light we see is burning in my hall:
How far that little candle throws his beams!
So shines a good deed in a naughty world.
- Nerissa: When the moon shone we did not see the candle.
- Portia: So doth the greater glory dim the less, --
A substitute shines brightly as a king
Until a king be by, and then his state
Empties itself, as doth an inland brook
Into the main of waters: -- music -- hark!
- Nerissa: It is your music (madam) of the house.
- Portia: Nothing is good (I see) without respect, --
Methinks it sounds much sweeter than by day.
- Nerissa: Silence bestows that virtue on it madam.
- Portia: The crow doth sing as sweetly as the lark
When neither is attended: and I think
The nightingale if she should sing by day
When every goose is cackling, would be thought
No better a musician than the wren!
How many things by season, season'd are
To their right praise and true perfection!
(V. i. 89-108)

This conversation, in which Portia and Nerissa muse over the powers of context, is a philosophical recapitulation, in pastoral guise, of the lesson of Shylock's bond. Context changes our appreciation and understanding of everything. The night gives a special virtue to the candle, the nightingale, and the music from Portia's house. The king's substitute only seems bright when the king is gone. Portia, the self-proclaimed "unlesson'd girl,

unschool'd, unpractised" who is "not bred so dull but she can learn" (III. ii. 159, 161) can prove her virtue only outside the context of idyllic Belmont and in the context of trial. Bassanio will only appreciate her virtue fully when she proves to him, through the ring trick, that she indeed was the judge who decided Antonio's case.

Similarly, a bond often seems to mean one thing when it is created and another in court. Stripping the bond of its original interpretive environment perverts its meaning in the same way that a nightingale's song would be perverted "if she should sing by day/when every goose is cackling." In other words, "Nothing is good without respect," without relation to the circumstances which allow its qualities to be perceived. The bond between Shylock and Antonio can only be understood outside the context of legal formalism and within the context in which it was created. Only Portia's genius, which turns a deadly formal proceeding into a playful one, allows the original meaning of the bond to be effected and preserves the mythic virtue of the Venetian legal system by adhering to the spirit of the law through a playful adherence to the letter.

CHAPTER 3

Staging Justice: The Trial Scenes of Measure for Measure

A prince must also show himself a lover of merit, give preferment to the able, and honour those who excel in every art. . . He ought, at convenient seasons of the year, to keep the people occupied with festivals and shows; and as every city is divided either into guilds or into classes, he ought to pay attention to all these groups, mingle with them from time to time, and give them an example of his humanity and munificence, always upholding, however, the majesty of his dignity, which must never be allowed to fail in anything whatever.¹ (Nicolo Machiavelli. The Prince)

It is a trew old saying, That a King is as one set on a stage, whose smallest actions and gestures, all the people gazingly doe behold: and therefore although a King be neuer so praecise in the discharging of his Office, the people, who seeth but the outward part, will euer iudge of the substance, by the circumstances and according to the outward appearance, if his behauiour bee light or dissolute, will conceiue prae-occupied conceits of the Kings inward intention: which although with time, (the trier of all trewth,) it will euanish, by the euidence of the contrary effects, yet interim patitur iustus; and prae-iudged conceits will, in the meane time, breed contempt, the mother of rebellion and disorder.² (James I. Basilikon Doron)

If, as Jacques says, all the world is a stage and all the men and women merely players, then drama, when it holds the mirror up to nature, reflects a process which is unavoidably theatrical. For Shakespeare and his audience

the theater provides a space in which the fictions, rituals and performances of life can be revealed and then examined, new roles can be tried and problems imaginatively confronted. Drama can help to preserve a social order by celebrating and reinforcing the fictions and rituals that are already in place or it can subvert a social order through its power to reveal fictions which would conceal themselves as such. Through its re-creative power, drama can also become a dynamic force of social change, suggesting alternative roles and fictions for its audience to live by.³

Trial is one of man's most theatrical institutions, and this, perhaps, is why the trial scene was so tempting to Elizabethan dramatists.⁴ A trial not only has characters with well defined roles (judges, lawyers, parties, jurors, witnesses, and bystanders) but rules governing dialog (the wealth of procedural rules specifying, often with utter precision, what participants can say and when they can say it) and blocking (for instance, how close an attorney can get to a witness, whether the lawyers and parties must stand or sit or approach the judge). Furthermore, the criminal trial even approximates genre requirements, having the potential to end as comedy, with the threat to the defendant's life overcome, or as a tragedy ended by execution. One could say that once the judicial machinery is put in motion, a trial is a play that writes, produces and performs itself, all at the same time --- and in Jacobean England, where criminal trials were open to the public, there was almost always an audience.

Trial also has ritualistic aspects. For the accused, a criminal trial is a rite of passage, involving a potentially enormous change in status. If "vindicated," the defendant will be reinitiated into society and resume a condition approaching his former status, though even the stigma of being tried leaves its unalterable impression. If convicted, the accused faces

exclusion from society as a whole, initiation into the society of prison, and perhaps undergoes a "change of status" as drastic as execution. For society, the revelation and punishment of criminal activity is a purification ritual. Societal beliefs in morality and order are reaffirmed while evil, in the form of the criminal, is isolated, stigmatized, and eliminated. Even if the adjudication results in an incorrect verdict, the ritual benefits still accrue to society unless it becomes apparent that the decision was wrong or that the judicial system is corrupt. The theatricality of trial and its ritual significance are mutually reinforcing, and together, they work to generate state power and legitimate its use.

In Measure for Measure, Shakespeare and the King's Men put the theatricality and ritual of trial on stage for examination. Beginning with the problem of a Duke who does not like to stage himself to the people's eyes, and ending with a Duke who has become, perhaps, an excessively flamboyant producer/director/actor, Measure for Measure confronts the theatrical and ritual aspects of adjudication at every turn. The play⁵ contains five scenes in which part or all of an adjudication is dramatically presented: Act II. i, in which Escalus and Angelo try Pompey and Froth, Act II. ii and iv., in which Isabella pleads for the life of her brother Claudio, Act III, ii., in which Escalus sentences Mistress Overdone, and Act V., in which almost every major character of the play stands trial. Altogether, ten characters in the play stand trial, on or off stage, for one or more offenses: Claudio and Julietta, Pompey, Froth, Mistress Overdone, Barnardine, Lucio, Angelo, Isabella, and Duke Vincentio as Friar Lodowick. The scenes in which the fate of these characters is determined engages the audience on at least two levels. First, there is the level of primary dramatic concern for what happens to these characters as 'people'; we are involved with how each

character's case will be decided. On a more profound level, the play forces the audience to confront its own legal system -- to ask the questions, "What is a trial and what should it be?"

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In the self-consciously theatrical age of Renaissance England,⁶ it is not surprising that the Tudor and Stuart governments had a particularly sophisticated sense of trial's theatrical possibilities. Trials became elaborately crafted rituals, connecting the prince, God and people through the process of judgment. These judicial productions were consciously staged, scripted, and performed to a remarkable degree, and as we shall see, in some cases had "surprise" endings. The trials of Sir Walter Raleigh, and his "co-conspirators" Cobham, Markham and Grey were masterpieces of theatrical trial, and coming about six months before the first performance of Measure for Measure, had, I believe, a great influence on that production. I will discuss those trials and their relationship to Measure for Measure at length, but first I would like to briefly examine theatricality as a pervasive part of all trials during Shakespeare's period.

First, let us examine scripting. As an example, consider the liturgical uniformity of a criminal arraignment at an assize:

The prisoner, whom we shall call John Style, was called to the bar and addressed by the clerk: 'John Style, hold up thy hand.' This was not a mere ceremony, but an acknowledgement by the prisoner that he was the person indicted. The clerk then read the indictment, paraphrasing it into English and into the second person: 'Thou art here indicted by the name of John Style, late of London, yeoman, for that thou. . .' It was necessary that the indictment itself be in Latin, but the prisoner was not entitled to have it read in Latin, nor to have copy of the original, unless he could assign some error in law upon hearing it. After reading the indictment the clerk asked: 'How sayest thou, John

Style, art thou guilty of this felony as it is laid in the indictment whereof thou standest indicted or not guilty?' If the prisoner denied the charge he pleaded 'not guilty,' to which the clerk replied: 'Culprit, how wilt thou be tried?'⁷

To this question, only one answer was accepted: "By God and by country." Any other answer had the same effect, legally, as if the prisoner had stood mute. Thus, even the defendant had to follow a script which sacralized the proceedings, implied his own desire to be tried, and reaffirmed the power of the state.

Executions were often as carefully scripted as indictments. The person convicted was expected to say a few words in apology, ask the queen's or king's forgiveness, and then go to his death:

Almost every prisoner said a few words, some a fair number, and what they had to say was listened to carefully by the sheriff and the chaplain, who quickly intervened to silence the speaker should he say something deemed inappropriate. In 1594 a catholic priest named William Dean had his mouth gagged with a cloth and was nearly suffocated because his words were thought hurtful. What was to be permitted in this respect at the execution of Essex in February 1601 was clearly laid down in a letter from Cecil and others to the constable and lieutenant of the Tower. The prisoner was to confine himself to confessing his treasons and 'his sins towards God', and to his 'heartly repentance and earnest and incessant prayers to God for pardon'. If, however, he entered into 'any particular declaration of his treasons or accusation of any of his adherents therein' the constable and the lieutenant were to 'forthwith break him from the course' as the time was 'not fit.' . . . These instructions in some form were doubtless passed on to the condemned man.⁸

Perhaps the most theatrical element of trial was the "set," the whole aura created by costuming the judges and lawyers in robes, placing the judge

on a raised platform, conducting trials in large "theaters" such as Westminster Hall, or the Guildhall in London, so that spectators could be accommodated. Particularly at the assize sessions, when the circuit judges representing the queen or king came to town, the ceremony of adjudication was impressive, and much effort was taken to weld the prince's judgment to God's:

At the border of the first county on each circuit the judges were met by trumpeters and the sheriff's bailiff and, several miles from the assize town, by the sheriff himself, other local officers, and representatives of the county gentry. The ensuing cavalcade . . . was one of some magnificence, attended by pike- and liverymen specially clothed for the occasion. Welcomed into town with bells, music and occasionally, a Latin oration, the judges went first to their lodgings. There they received leading members of the local gentry who probably reported briefly on the state of the county. Thus forewarned, the judges, now robed and again attended by the sheriff and his men, passed to the church where the local minister read prayers and the sheriff's chaplain delivered a sermon. . . . Immediately after the service all proceeded solemnly to the Crown court for the opening of assizes.⁹

Criminal trials were open to the public, which was encouraged to attend. These spectators were active, interested, and to some extent, included in the proceedings as participants. Treason trials, those great political morality plays of Tudor and Jacobean government, drew particularly great crowds:

The natural interest aroused by the drama of treason trials, the ease of access to the courts, the relative simplicity of the judicial process and, in the case of certain catholic priests, the sympathy of co-religionists, encouraged many of the public to attend. Chapuys told his imperial master that there were more than

two-thousand persons present at the trial in the Tower of Anne Boleyn and her brother. A report of the trial before the lord high steward of the duke of Norfolk in January 1572 states that there were 'a great number' of people present, and that order within the hall was maintained by the knight marshal and the warden of the Fleet prison and their servants with tipstaves. An eye witness of the trial in 1595 of the catholic priest William Freeman remarked that the throng was so great that he was too far away from the prisoner to hear certain of his retorts. . . . When the catholic priest William Lacey was arraigned at York on 11 August 1582 the crowd was so numerous 'that the court was in great disorder and the justices of assize forced to make room for themselves like ushers'.¹⁰

Though ostensibly, the main purpose of these trials was to determine the guilt or innocence of the defendant, they were mainly important to the crown as an instrument of social control. Popular trials provided the chief opportunity for the crown to "teach" the public its own brand of political morality. Though the defendant as an individual was the focus of attention, the audience rivalled the defendant in importance. Thus, the audience was often addressed directly by judges and lawyers, before and during the trial, and sometimes indirectly by the accused:

As Sir Thomas Smith noted, it was customary in all criminal cases at gaol deliveries for the justices to announce in court the cause of their coming and to give 'a good lesson to the people', and we may add that in treason trials they and the king's learned counsel were careful to provide in addition information about why the law on treason took the form it did as well as the background and the political implications of the case for the benefit of the courtroom audience.¹¹

The emotional involvement of the audience was sometimes very high. However, there is no evidence that treason trials were ever disrupted by the

audience. People came because they believed the defendant "was an enemy to the king and the realm and hoped to see him found guilty of his heinous crime and thereby the canker rooted out of the body politic; or contrariwise because they were sure the prisoner was unfairly accused and hoped to see him acquitted."¹² Acquittals of prisoners whom the crowd favored were often greeted with great demonstrations of joy and convictions of people the crowd disfavored, with righteous approval. The spectators, however, did not always agree on the verdict, and William Allen's comment on the sentencing of Edmund Campion, who with eleven other Jesuits was executed, displays the fundamental and deep divisions of Shakespeare's England. The crowd came to the proceeding, Allen said

to behold whether the old honor of law and iustice wherein our nation hath of all the world had the praise, could or durst stand notwithstanding any violent impression of power and authorities to the contrary: whether there were any Markhams left in the land that would yield up coiffe, office and life rather than geve sentence against such as they knew in conscience to be innocent and in truth not touched by any evidence whatsoever.¹³

From Allen's view, the crowd was undoubtedly disappointed -- certainly the Catholics in the crowd were. Renaissance trial audiences were vitally concerned with adjudication and often divided in their sympathies.

There is an additional similarity between the theater and trial of Shakespeare's day: they both have a dialectical structure. Robert Weimann has argued very persuasively that the structure of locus and platea of medieval English drama was incorporated in Shakespeare's theater through the "naturalistic" representation of kings, courtiers, and other noble characters, and in the "expressive" representation of clowns.¹⁴ In the

English mystery plays, the locus had been the raised scaffold on which characters such as Herod, Pilate, Ananias and Caiphus, and other characters of high social status, had been represented. The platea on the other hand, was an "unlocalized" space, on the same level as the audience, in which Shepards, mechanicals, and clowns appeared, people generally of the same status as those in the audience, who mingled with the audience and formed a participatory link between audience and stage. This division found embodiment in Shakespeare's dramaturgy which linked mimetic representations of characters and action with the on-stage commentary of clowns, who emphasized their role as actors rather than characters. The audience was simultaneously involved in a dialectical theater of representational drama and a drama which called attention to the process of representation itself. The dialectical structure of the theater incorporated popular participation and dissent as the actions and speeches of "platea" actors, which qualified the pretensions of "locus" characters.

Weimann has argued that the dialectical structure of the popular theater produced a discourse which was unique in England, in that it allowed the position of the Elizabethan establishment and the position of popular dissent to be placed in opposition in the same forum.¹⁵ I believe, however, that the same structure existed, to a large degree, in the juridical discourse of the English trial.

The homolog in trial to the locus of the stage is the raised bench of the judge. The homolog to the platea of the stage is the audience level jury. Though during the later part of Elizabeth's reign, when England was at war with Spain, English juries were quite obedient about convicting defendants charged with treason, they had not been so cooperative in the first half of the century, as Nicholas Throckmorton's trial proves. In cases other than

treason, juries also often gave into the pressure of judges to return a conviction. However, on occasion, juries could be very stubborn about opposing the crown's judges. There were two theoretical advantages in having a jury:

First, since the jurors in giving a general verdict were judges of law as well as fact, they could override strained or unpopular interpretations of the law or of the evidence by government-minded judges. Second, they could mitigate the rigours of the penal system by 'pious perjury' -- the merciful use of 'partial verdicts' or false acquittals contrary to the evidence. The precise extent of these advantages is difficult to quantify, but it seems that from the sixteenth to the eighteenth centuries the acquittal-rate (whatever the reasons for acquittal) -- was between one-quarter and one-half of those indicted.¹⁶

Though jurors were chosen from a propertied segment of the population (one had to be a freeholder to the value of 40 s. or, in a city or town, owner of 40 s. worth of goods, to be on a jury¹⁷), these restrictions were not so onerous as to exclude a genuine popular presence in judicial decision making.

Although one cannot maintain that even the majority of English juries were independent or courageous,¹⁸ the jury always represented a potential for contradiction that was built into the system.

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No doubt many people who had been involved in the judicial system as lawyers, defendants, jurors, or part of the audience, went to Shakespeare's plays, and when Measure for Measure opened in the summer of 1604,¹⁹ the memory of Sir Walter Raleigh's spectacular trial and aftermath, and the trials and pardons of Markham, Grey, and Cobham, would still have been fresh. Sir Walter Raleigh, along with Sir Griffin Markham, Lord Grey

and Lord Cobham, was arrested for treason in late 1603. Raleigh was accused in his indictment of using Cobham to get 600,000 crowns from the Archduke of Austria to be used for fomenting rebellion, killing the king and "his cubs," putting Arabella Stuart on the throne, and for bringing about peace with Spain and tolerance of the Catholic religion. Raleigh's indictment specified his involvement in "the Main Plot," which was connected with the what was dubbed, the "Bye Plot." Though Raleigh was not accused of involvement in the "Bye Plot" it influenced his trial. The chief conspirators in the "Bye Plot" were two catholic priests, Clerke and Watson; Griffin Markham; George Brooke, the brother of Lord Cobham; and Anthony Copley. The overly optimistic plan of those engaged in the Bye-Plot was to seize the King and force him to adopt a policy of tolerance toward Catholics.

At the time of his arrest, Raleigh was not a popular man. Many thought he was an atheist and his pride had never endeared him to courtiers or the common people.²⁰ Raleigh had openly gloated over Essex' downfall and Robert Lacey notes, "the ordinary people of London were delighted to see him threatened with the same fate to which they believe he had driven Essex."²¹ When Raleigh was tried on November 17, 1603, the theaters had been closed for several months due to a plague which was killing approximately 2,000 Londoners per week. Still, great crowds turned out to jeer him on his way from the Tower of London to Winchester. Sir William Waad, who was charged with getting Raleigh to Winchester alive, testified, "It was hab or nab whether Sir Walter Raleigh should have been brought alive through such multitudes of unruly people as did exclaim against him. He that had seen it would not think there had been any sickness in London."²² Raleigh's defense did not gain him an acquittal, but it swung public opinion in his favor as violently as it had been against him. Although

the jury deliberated for only a quarter of an hour before finding him guilty, the London public judged differently, and had a good many reasons to do so.

Raleigh began the trial by attempting to dispel his reputation for atheism. When asked whether he would take any exceptions to the jury, Raleigh answered, "I know none of them; they are all Christians, and honest gentlemen, I except against none."²³ This typified his tone to the jury (and indirectly, to the crowd) all through the trial. Raleigh took the part of a single man, courageously standing against judges and prosecutors who were determined to find him guilty from the start. Raleigh's genius was that as the underdog, battling an unprincipled prosecutor, he continually and directly appealed to the jury's sense of fairness. That Sir Edward Coke, one of the most brutal and unscrupulous prosecutors in English legal history, was at his most vitriolic only magnified Raleigh's courage in fighting back. Thus, when Coke began to argue that Raleigh was part of the "Bye Plot," Raleigh enlisted the jury's aid: "You Gentlemen of the Jury, I pray remember, I am not charged with the Bye, being the Treason of the priest."²⁴ In response to Coke's essentially unfulfilled but continual promise "I will prove you the notorious Traitor that ever came to the bar," Raleigh implicitly connected himself with Christ:

Your words cannot condemn me; my innocency is my defence.
Prove one of these things wherewith you have charged me, and
I will confess the whole Indictment, and that I am the
horriblest Traitor that ever lived, and worthy to be crucified
with a thousand thousand torments.²⁵

Virtually the only evidence against Raleigh was an examination of Lord Cobham accusing Raleigh of participation in the Main Plot. Cobham himself had retracted and then reasserted the accusation several times.

When the examination was read in court, Raleigh asked to see it (a request which was routinely denied) and again took the opportunity to enlist the jury's aid:

Let me see the Accusation: This is absolutely all the Evidence can be brought against me; poor shifts! You Gentlemen of the jury, I pray you understand this. This is that which must either condemn, or give me life; which must free me, or send my wife and children to Beg their bread about the streets.²⁶

These instances give a good sense of the role that Raleigh had undertaken: a single man, fighting bravely against terrible odds, appealing to the jury to do the right thing, "notwithstanding any violent impression of power and authority to the contrary." Developments in the trial magnified the impression Raleigh wanted to create for the jury. He was denied (again, typically) the right to cross-examine the witnesses against him, which was particularly unfair in application to Cobham. Coke became so offensive that he was even upbraided by Robert Cecil, one of the judges: "Mr. Attorney, you are more peremptory than honest."²⁷

Near the end of the trial, Raleigh pulled a rabbit out his hat equal to that of any fictional lawyer; he produced a letter from Cobham in which Cobham had yet again retracted his charges against Raleigh. Raleigh gave it to Cecil to read, because Cecil was familiar with Cobham's handwriting, and also, it can be surmised, because Raleigh wanted to create an effect: Lord Cecil testifying on his behalf. In a brilliant reversal, the defendant had one of the judges reading from a script!

Cobham's Letter of Justification to Raleigh.

Seeing myself so near my end, for the discharge of my own conscience, and freeing myself from your blood, which else will

cry vengeance against me; I protest upon my salvation I never practised with Spain by your procurement; God so comfort me in this my affliction, as you are a true subject, for any thing that I know. I will say as Daniel, Purus sum à sanguine hujus. So God have mercy upon my soul, as I know no Treason by you.²⁸

The letter should have resulted in an acquittal, Cobham being an utterly unreliable witness either for or against Raleigh. Instead, the jury deliberated for fifteen minutes and returned a verdict of guilty. Raleigh maintained his composure through the reading of the standard sentence for traitors and felons:

Since you have been found guilty of these horrible Treasons, the judgment of this court is, That you shall be had from hence to the place whence you came, there to remain until the day of execution; and from thence you shall be drawn upon a hurdle through the open streets to the place of execution, there to be hanged and cut down alive, and your body shall be opened, your heart and bowels plucked out, and your privy members cut off, and thrown into the fire before your eyes; then your head to be stricken off from your body, and your body shall be divided into four quarters, to be disposed of at the king's pleasure: and God have mercy upon your soul.²⁹

Although convicted, Raleigh became, in one day, "a symbol of the innocent man abused by harsh, unjust laws and wicked, time-serving men."³⁰ Greenblatt quotes one of the spectators at the trial, Dudley Carleton, on the magnificence of Raleigh's performance:

Sir Walter Raleigh served for a whole act, and played all the parts himself. . . . He answered with that temper, wit, learning, courage, and judgment, that, save it went with the hazard of his life, it was the happiest day that ever he spent. And so well he shifted all advantages that were taken against him, that were not fama malum garvius quam res, and an ill name half hanged,

in the opinion of all men, he had been acquitted.³¹



At this point in the proceedings against Raleigh and his alleged accomplices Cobham, Grey and Markham, who were convicted of treason in separate trials, James I, the new king, steps into the picture as actor, director and playwright. Though the trial of Raleigh had already furnished the play-going citizens of London with plenty of food for thought concerning judicial integrity, the fictiveness of due process, the unreliability of informers, and the state's tyrannical use of treason trials, King James was about to feed them dessert.

The reversal of public opinion in Raleigh's favor apparently took James by surprise. Rather than eliminating an ambitious, dissatisfied and potentially dangerous courtier from the old regime, he had created a public hero. Most of the Privy Council interceded on Raleigh's behalf. Raleigh's wife begged for the life of her husband. The Queen interceded for Raleigh. And Raleigh, in a manner which many historians have found pathetic, pleaded for mercy.³² In response, the King ordered the Bishop of Winchester to attend Raleigh and "to prepare him for death."³³

Watson and Clerke, the priests involved in the "Bye-Plot" were executed in early December at Winchester, and the ever present Dudley Carleton noted that both Watson and Clerke were cut down while alive, and the sentence for treason literally carried out. George Brooke went to execution on December 6.

Cobham, Markham and Grey were to be executed on December 10, and Raleigh on December 13, 1603. In a letter dated December 8 to Henry IV, the French Ambassador De Beaumont describes James' apparent irresolution

about whether to extend pardons to the remaining conspirators. This, apparently, was a bit of playacting by James, for by December 7 he had formulated what Edward Edwards describes as "a comedy, of which the principal scenes were to be enacted upon the scaffold at Winchester, whilst a by-scene or two were intended to enliven the Court itself at Wilton."³⁴

Edwards argues that, while James deliberately gave the impression of being perplexed as to whether he should extend mercy, he had already decided to pardon Markham, Cobham and Grey, and that de Beaumont's letter "fixes on the King a deliberate contrivance of all the petty artifices that turned a scaffold -- around which men had gathered to see traitors die -- into a stage for the exhibition of tricks and transformations, some of which would have better befitted the booth of Harlequin and Pantaloon."³⁵

Although Edwards' reaction has a certain amount of Victorian righteousness about it, his description of James' maneuvering in theatrical terms hits the mark.

James appeared to be balancing the interests of justice and mercy, that dichotomy which critics have long found to be the philosophic core of Measure for Measure. James had taken pains to assign each of the condemned men a priest to help prepare him for death, and these priests regularly reported to James on their progress. Indeed, James' interest in the prisoners' preparations for death parallels Vincentio's interest in the spiritual welfare of Claudio and Barnardine, and his attempt to bring Claudio to a full act of contrition. By December 8, however, James was merely feigning confusion. He had already made the decision to pardon Markham, Cobham and Grey and he intended to do it with theatrical emphasis. Edwards describes the script of James' play -- a plot which will be disquietingly familiar to students of Measure for Measure:

"The King [continued De Beaumont in the December 8 letter] has been occupied for some days past, in hearing and considering the indictments and trials; having ordered, for the satisfaction of his conscience, that the whole should be reported to him, point by point, to the end that he might fully inform himself of the matter. The motives to mercy, and the reasons which urge a strict execution of law, have kept him long in perplexity." Despite all these considerations, James' hesitation, he [De Beaumont] says, came to an end on the preceding day. "The King has now resolved that they shall all die; and has signed the needful warrants." . . . [De Beaumont's] letter represents his belief. It also represents the public expectation. . . .

The divines who had it in charge to prepare the prisoners for death were expressly instructed to tell them that remission or commutation of punishment must not be thought of. Another divine -- one of the King's Scottish chaplains -- preached a sermon before the Court at Wilton, on the day after the execution of George Brooke, in which he treated clemency to traitors as a deadly sin. The King himself took more than one opportunity of telling those of the councillors who had joined in the petitions for mercy that it would better become them to press for the due course of law. But on the 7th of December -- the day on which James had listened to his chaplain's exhortation to continued rigour -- he drew with his own hand a warrant, addressed to the Sheriff of Hampshire, for stay of the executions. Having drawn that warrant, he kept the fact within his own breast, and the document within his own custody. He signed death-warrants, in the usual form, for Markham, Grey and Cobham, and sent them to the Sheriff on the 8th at night. Friday, the 10th, was the day appointed for the execution. . . .

The fact that the King had any purpose of sparing life was kept, for three days, as secret as were the terms of his privately drawn warrant. The only person taken into his confidence, prior to the day of execution, was John Gibb, a page, who had just arrived at Wilton from Scotland. The Lords of the Council present at court, we are told upon good authority, knew not but that execution of the sentences was to proceed, unto the very hour appointed for their fulfilment at Winchester.³⁶
(underlining added)

On the scaffold, the King's instructions resulted in a human shell game worthy of Shakespeare's Duke Vincentio. Markham was to be the first to die, then Grey followed by Cobham. There was a large crowd, and Raleigh, whose window commanded a view of the scaffold, could see everything. The drama began with a scene that is striking in its similarity to Act III, scene i. of Measure for Measure, in which the Duke as Friar Lodowick attempts to prepare Claudio for death by getting him to give up hope for life. As Claudio's preparation had been interrupted by hope that Isabella could buy his freedom, so Markham's hopes had been raised by friends at court:

In spite of all that had been said to him by the minister who had visited his prison day after day, he had kept up some hopes of life, until the 9th. He had, it seems, received a cheering message from old acquaintances at court, to which, for a time, he had given more heed than to his spiritual counsellor. But on the preceding day, all expectation of prolonged life had forsaken him. When he reached the scaffold, he complained that he had been deluded with hopes, and brought to his fate unprepared. . . He took sorrowful leave of his friends and lookers-on; knelt down in prayer; and had just made himself ready for the execution, when a commotion was observed in the crowd. . .³⁷

The commotion was the King's messenger, fighting his way through the crush, barely in time to stop the proceedings. "It had been part of the King's plan that his messenger should make his arrival known, only after the first of the prisoners stood upon the scaffold. But it was by an accident, at starting, that the arrival was so much delayed that Markham's neck was almost on the block before the new warrant had reached the hands of the sheriff."³⁸ The sheriff talked to the messenger and turned himself toward Markham:

"You say you are ill prepared to die; you shall have two hours 'respite.'" He then led Markham from the scaffold into the great hall (locally famous as 'Arthur's Hall'), and caused him to be locked in there.³⁹

Once Claudio finds that Isabella will not save him by giving herself to Angelo, and his hopes for life, like Markham's, are shattered, it becomes possible for him to make an adequate act of contrition, and like Markham, Claudio gets a respite to prepare himself.

After Markham was removed from the scaffold and marched to Arthur's Hall, Grey was brought from his chamber to the scaffold, knowing nothing of what had passed. He addressed the crowd, made a long prayer, prepared to die, and was interrupted by the sheriff. The King, he was told, had decided to change the order of execution. Cobham was to die before Grey. A bewildered Grey was also led from the scaffold to Arthur's Hall. Dudley Carleton commented, "His going away seemed more strange unto him than his coming thither; for he had no more hope given him than an hour's respite. Neither could any man yet dive into the mysteries of this strange proceeding."⁴⁰ Then Cobham was brought from his chamber; he reached the scaffold, likewise said a prayer and took leave of the crowd, -- and likewise was balked by the sheriff, who informed him that something yet was to be done. Markham and Grey, who were, as far as Cobham knew, dead, were brought from Arthur's Hall onto the scaffold and were read a speech, apparently drafted by James, consisting entirely of questions:

"Are not your offences heinous? Have you not been justly tried, and lawfully condemned? Is not each of you subject to due execution, now to be performed?" Each of them, it is said, confessed that it was so. "Then," continued Tichborne, [the

sheriff] "see the mercy of your Prince, who of himself hath sent hither a countermand, and hath given you your lives!" The plaudits of the spectators were loud and prolonged.⁴¹ [based on a letter by Dudley Carleton]

Thus, the theatricality of Raleigh's sensational treason trial was rivaled by James' production on the scaffold at Winchester. After the commutation of their executions, Markham, Grey and Cobham were shortly pardoned. This proved to be extremely popular, and Raleigh's execution was delayed indefinitely. In about six months, at the Globe playhouse, London audiences would have the opportunity to think about the meaning of these events once more, as The King's Men presented Measure for Measure.

□ □ □

In Measure for Measure, Shakespeare and his company used theater to set before their audience the theatricality of trial, its dangers and benefits, its role in promoting or impeding the interests of justice and mercy. Since James had recently used the scaffold at Winchester for a stage, the subject was ripe for exploration, and it seems likely that Shakespeare adapted Promos and Cassandra,⁴² adding the figure of the playmaker Duke, specifically to address the modus operandi of James during the preceeding December. By adding the figure of the hidden play-maker, Shakespeare allows his audience to explore the place of ceremony, ritual, theatricality -- and manipulation -- in sustaining the body politic. By splitting the character of Cassandra into two characters, Isabella and Mariana, and then using the bed-trick, Shakespeare enables Isabella to make a disinterested gesture of pure forgiveness -- an act which had been impossible for Cassandra because of her position as Promo's (Angelo's) wife. Through the figures of Angelo, Isabella, Escalus and Vincentio, Shakespeare also makes it possible for his

audience to examine a wide range of responses to requests for mercy and forgiveness. Finally, the addition of Escalus provides the audience with an opportunity to observe a wide range of judicial behavior and technique: that of Escalus, Angelo and Vincentio.

The difficulty of striking the correct balance between Justice and Mercy was a commonplace in Shakespeare's day and was discussed at length by James I in the Basilikon Doron, a work which was introduced to England in the spring of 1603 in a printing so massive that at its height it occupied half the printing presses in London for a period of three weeks.⁴³ James had originally written the Basilikon Doron for his son Prince Henry in 1599 as an advice book on the theory and practice of kingship, but in 1603, the book became a major instrument of propaganda by which James VI of Scotland introduced himself to London as James I of England. In early 1603, copies of the Basilikon Doron were avidly purchased and read by curious, apprehensive Londoners. James pronouncements on Justice and Mercy provide indispensable context for interpreting his actions toward Raleigh, Cobham, Markham and Grey, and for understanding why 1604 was a particularly ripe year in which to present a play that dealt with the balance of Justice and Mercy. The Basilikon Doron is pregnant with the thematic issues of Measure for Measure:

Feare no vproares for doing of iustice, since ye may assure your selfe, the most part of your people will euer naturally fauour Iustice: prouiding alwaies, that ye doe it only for loue to Iustice, and not for satisfying any particular passions of yours vnder colour thereof: otherwise, how iustly that euer the offender deserue it, ye are guiltie of murther before God: For ye must consider, that God euer looketh to your inward intention in all your actions.⁴⁴ [underlining added]

This, of course, could be used as a critical gloss on the moral failure of Angelo, who under the color of law, intends to execute Claudio for the same crime that Angelo himself tries to commit with Isabella. James continues, describing what comes very close to the foundation of plot and theme in Measure for Measure:

And when yee haue by the seueritie of Iustice once settled your countries, and made them know that ye can strike, then may ye thereafter all the daies of your life mixe Iustice with Mercie, punishing or sparing, as ye shall finde the crime to haue bene wilfully or rashly committed, and according to the by-past behauiour of the committer. For if otherwise ye kyth your clemencie at the first, the offences would soone come to such heapes, and the contempt of you grow so great, that when ye would fall to punish, the number of them to be punished, would exceed the innocent: and yee would be troubled to resolute whom-at to begin: and against your nature would be compelled to wracke many, whom the chastisement of few in the beginning might haue preserued.⁴⁵

Did anyone ever state Duke Vincentio's problem more clearly or the results to the innocent (as represented by Claudio) when he tries to recover lost ground by putting the precise Angelo in charge of Vienna?

Having a statement of James' theoretical views on the administration of justice, England waited to see what James would do in practice. The fate of the Main and Bye plotters proved to be James' test case. It was in the general terms of balancing Justice and Mercy that Dudley Carleton described King James' deliberations over the pending executions of Cobham, Markham, Grey and Raleigh. Given that James' final decision went contrary to the sermon of his own chaplain, one might surmise that there had been plenty of debate, in the succeeding several months, as to whether James had struck

the correct balance. In producing Measure for Measure, the King's Men provided a dramatic context for the continuation of that debate. Joel Altman argues in The Tudor Play of Mind that many plays of the English Renaissance were structured as exploratory arguments:

The plays functioned as media of intellectual and emotional exploration for minds that were accustomed to examine the many sides of a given theme, to entertain opposing ideals, and by so exercising the understanding, to move toward some fuller apprehension of truth that could be discerned only through the total action of the drama.⁴⁶

Although in The Tudor Play of Mind, Altman does not examine Measure for Measure, several other critics, M. C. Bradbrook⁴⁷ perhaps being the first, have noted the way in which the play puts ideals such as Justice and Mercy, Law and Religion, Old and New Law,⁴⁸ Equity and Law,⁴⁹ Chastity and Charity,⁵⁰ in dialectical opposition. Indeed, the trouble in Vienna seems to have come about due to the inability of several characters, mainly the Duke, to steer a middle course between extremes. Vincentio, either through negligence or a nature which inclines too strongly toward mercy, has neglected to enforce the laws of Vienna, and the result, as the Duke explains in the first act, is impending anarchy. At the time there was also room to argue that James' constitutional aversion to shedding blood (which, during the course of his reign, would motivate his free use of the pardon power) and his pardon of three men who were convicted of plotting to kill him, would damage the deterrent effect of criminal law. In Basilikon Doron, James himself acknowledged his tendency toward mercy as a potential source of disorder:

In this, my ouerdeare bought experience may serue you [Prince Henry] for a sufficient lesson: For I confesse, where I thought (by being gracious at the beginning) to win all mens hearts to a louing and willing obedience, I by the contrary found, the disorder of the countrie, and the losse of my thanks to be all my reward. ⁵¹

The situation of Vienna, as described by Vincentio, could potentially become that of England. Or worse, from the viewpoint of Englishmen just getting to know their King, James might, in an effort to reverse his own tendency toward mercy, use the whip on England when it was not required. The question posed by Measure for Measure then, was one of central public concern in the early days of James reign. Vincentio's statement as to the situation in Vienna sounds very close James anxieties of what might result if he exercised too much mercy in a nation where the severity of his justice had not yet been settled:

We have strict statutes and most biting laws,
The needful bits and curbs for headstrong jades,
Which for this fourteen years we have let slip;
Even like an o'ergrown lion in a cave,
That goes not out to prey. Now, as fond fathers,
Having bound up the threatening twigs of birch,
Only to stick it in their children's sight
For terror, not to use, in time the rod
Becomes more mocked than feared; so our decrees,
Dead to infliction, to themselves are dead,
And Liberty plucks Justice by the nose;
The baby beats the nurse, and quite athwart
Goes all decorum. (I. iii. 19-31)

The Duke, as overly fond patriarch, to the detriment of his "children," the people of Vienna, has allowed the body politic to slip into disorder. The result is a confusion of roles. The father having abdicated, the baby now

lords it over the nurse; and the birchtwigs, which retain their effectiveness as a prop only if used occasionally, have ceased to prop up the social order. Mercy itself has lost its character and become mere license. To correct the problem, the Duke goes in the opposite extreme and installs the notoriously strait-laced Angelo as governor, placing Angelo in a role the Duke does not want to play. The Duke is quite aware that he is using Angelo to do the necessary dirty work, so he himself can keep clean:

Sith 'twas my fault to give the people scope,
 'Twould be my tyranny to strike and gall them
 For what I bid them do: for we bid this be done
 When evil deeds have their permissive pass
 And not the punishment. Therefore . . .
 I have on Angelo imposed the office,
 Who may, in th'ambush of my name, strike home,
 And yet my nature never in the sight
 To do it slander. (I. ii. 35-9)

The Duke's use of Angelo corresponds suggestively with James' use of the judges who insulated him from direct participation in criminal judgment. Harshness could be blamed on the judges -- James could take the credit for extending royal mercy.

The Duke's tendency toward the extreme is again revealed in his failure to govern visibly. Like Prospero, who "being transported/And rapt in secret studies. . . neglecting worldly ends, all dedicated/To closeness and the bettering of my mind. . ." (I. ii. 89-90) allows a political disaster to happen, Vincentio has "ever loved the life removed." (I. iii. 8) The fictional Duke and King James share an introverted love of study, particularly in the fields of religion and theology. They both dislike crowds. Critics have long commented on how these tendencies connect Vincentio to James. Some base

the comparison on James' alleged "dislike of popular acclaim, manifested during his progress through England in the spring of 1603." ⁵² Lever contends that the connection is derived from James' reclusive conduct during his first royal progress through London on March 15, 1604 -- a progress in which Shakespeare and his company, newly given the title, The King's Men, participated. ⁵³ Though it would be reductive to equate Vincentio with James I, Vincentio's style of leadership so closely approximates that of James, that Vincentio becomes a figure through which the actions and policies of James can be imaginatively explored. It is significant then, that Vincentio's leadership is immediately criticized by Vincentio himself. He knows that his lack of contact with the people has damaged his ability to govern:

... I love the people,
But do not like to stage me to their eyes;
Though it do well, I do not relish well
Their loud applause and aves vehement
Nor do I think the man of safe discretion
That does affect it. (underlining added; I. i. 67-72)

The play, therefore, sets up the problem of a Duke who understands the value of ceremony and theatricality in government -- as does James in Basilikon Doron -- but still cannot make himself engage in theatricality. He does not mind being prince, but he does not want to play the role of prince. The people of Vienna apparently have become unsure of who the Duke is or what he stands for, just as the people of London may have been unsure of who their new Scottish king was, and what he stood for. Thus Lucio articulates public opinion, speaking "but according to the trick," in referring to Vincentio as "the old fantastical Duke of dark corners," implying not only

that the Duke is promiscuous (and already James' attraction to boys had been noticed by the court ⁵⁴), but emphasizing the Duke's avoidance of public appearance.

Vincentio has two tasks in the play. First, he must find out whom he can trust and then he must reestablish his own slipped authority. He needs to rediscover his dukedom, the image he conveys to his subjects, and the moral quality of his lieutenants in much the same way that James, in the first year of his reign, had to discover his new kingdom and assess the loyalty of those courtiers left from Elizabeth's reign -- people such as Sir Walter Raleigh and Robert Cecil. Vincentio begins this process by putting Angelo and Escalus in positions of power to test them. As he tells Friar Thomas, "Hence shall we see,/If power change purpose, what our seemers be." (I iii. 53-4) As Vincentio conducts his investigation, Shakespeare investigates the role of judge, offering to his audience Angelo, Escalus, and finally, the Duke himself.



While in the first act, Shakespeare sets forth the consequences of emphasizing Mercy over Justice and Being over Seeming, in the second act, he explores the equally distressing consequences of emphasizing the second member of these pairs over the first. In an attempt to correct the situation he has created, Vincentio appoints Angelo to "Duke it" in his place, knowing Angelo to be as radically strict as the Duke himself was lenient. This reversal is not only meant as a corrective to Viennese license, but also, the Duke tells Friar Thomas, is a test of Angelo's true nature:

Lord Angelo is precise,
Stands at guard with envy, scarce confesses
That his blood flows, or that his appetite

Is more bread than stone. Hence shall we see,
If power change purpose, what our seemers be. (I. iii. 50-4)

In fact, the very "test of my metal," (I. i. 48) which Angelo ironically requests the Duke to make before deputizing him is about to take place. Angelo not only proves to be something utterly different than even he thinks himself to be, but his rigor in enforcing the law and the severity of his punishments lead just as surely to unjust and intolerable government as the Duke's excessive leniency. Angelo fails to conform to Jacobean ideals of judicial conduct in four ways: (1) by reviving long dead laws against fornication and imposing them essentially by surprise, (2) by failing to measure out punishments appropriate, in degree, to the crime committed, (3) by his corrupt dealings with Isabella, and (4) by his temperamental inability to conduct a trial attentively and patiently .

Francis Bacon's essay, "Of Judicature," ⁵⁵ which first appeared in the 1612 edition of his essays, provides a touchstone by which we can judge Angelo. What Bacon says about the enforcement of criminal laws is particularly applicable to the first two ways in which Angelo fails as judge:

Specially in case of Lawes Penall, they [judges] ought to have Care, that that which was meant for Terrour, be not turned into Rigour; and that they bring not upon the People, that Shower, whereof the Scripture speaketh: Pluet super eos Laqueos. For Penall Lawes Pressed, are a Shower of Snares upon the People. Therefore, let Penall Lawes, if they have been Sleepers of long, or if they be growne unfit for the present Time, be by Wise Judges confined in the Execution; Judicis officium est, ut Res, ita Tempora Rerum, &c. In Causes of Life and Death: Judges ought (as farre as the Law permitteth) in Justice to remember Mercy; And to Cast a Severe Eye upon the Example, but a Mercifull Eye upon the Person.⁵⁶ [italics in original]

Angelo has snared Claudio by imposition of a long dead law against

fornication. The revival of a law which has been so long out of use, without any warning to a population that has simply forgotten the law and in which significant numbers of the population engage in the proscribed conduct, indeed is like dropping a "Shower of Snares upon the People." In effect, there is little difference between enforcing a law which has been ignored for "nineteen zodiacs" and imposing an ex post facto law, i.e., a law which retroactively makes certain conduct illegal. Both actions allow the arbitrary prosecution of defendants who at the time did not have notice they were engaging in a proscribed activity. That Claudio, in fact, is surprised is obvious from his conversation with Lucio in the first act. Being engaged to marry Julietta, Claudio does not seem to quite believe that the sex he has had with her even constitutes a crime. When Lucio asks him if he is guilty of lechery, Claudio's response is "Call it so," and Lucio's surprise at the penalty being exacted from Claudio is also evident: "Is lechery so looked after?" Claudio is to be used as an example, rather than to be judged as a human being, and he is correct when he complains of the injustice of reviving the old law:

... this new governor
Awakes in all the enrolled penalties
Which have, like unscoured armor, hung by th' wall
So long, that nineteen zodiacs have gone round,
And none of them been worn; and, for a name,
Now puts the drowsy and neglected act
Freshly on me. 'Tis surely for a name. (I. ii. 160-6)

Fornication was in fact a crime in Tudor and Jacobean England, and penalties against it were enforced. However, sex which partners engaged in prior to their marriage, but after a binding marriage contract, was regarded as a minor infraction -- a "peccadilo." ⁵⁷

Angelo's sentencing of Claudio to death for the crime of fornication would

have been regarded, even by the more "precise" play-goers of the day, as an extremely severe punishment for that offense.⁵⁸ Whetstone's appraisal of the severity of his own fictional law provides some evidence of audience reaction to Angelo's rigor:

There was a law, that what man so ever committed Adultery, should lose his head & the woman offender, should weare some disguised apparel, during her life, to make her infamously noted. This severe law, by the favour of some mercifull magistrate, because little regarded, untill the time of Lord Promos aucturity.⁵⁹

Claudio, in effect, becomes another gallows actor, with Angelo pulling the strings so that the populace is furnished with a negative example. Claudio is led through the town by the provost to advertise his crime, and typically, Claudio is forced to advertise his impending execution as a deterrent to other offenders. Angelo's punishment of Claudio is far in excess of what the strictest English parish would have required and this is an important fact in establishing that Shakespeare's audience would have regarded Angelo's severity as surpassing the requirements of justice and establishing a form of tyranny. That a good share of Shakespeare's audience was probably guilty of the same infraction merely emphasizes the point. In fact, it appears that one of Shakespeare's friends, Thomas Russell married a widow clandestinely so that she could inherit a large estate from her previous husband.⁶⁰ Cases involving clandestine marriage contracts constituted a large part of business for the ecclesiastical courts of the late sixteenth century,⁶¹ and no doubt these cases represent only a fraction of the people who considered themselves to be married, despite the lack of a public ceremony or publication of marriage bans. Indeed, in Leicester, the

custom in 1598 appears to have been that the marriage was consummated on the same day the contract was made, before any public ceremony or proclamation of bans.⁶² Thus, Pompey's comment on how Angelo's enforcement of the law will affect the population of Vienna would also be applicable to England:

If you head and hang all that offend that way
But for ten year together, you'll be glad to give out a
Commission for more heads; if this law hold in Vienna
Ten year, I'll rent the fairest house in it after threepence
A bay; if you live to see this come to pass, say Pompey
Told you so. (II. i. 225-9)

Angelo's plan for solving "the problem" of Vienna may have also corresponded to some of the more extremely Puritanical opinions of Shakespeare's day, for when the Puritans finally came to power, the penalties for sexual misconduct became much stiffer. Thus Angelo may be the very embodiment of the rigorous morality coming to power in the beginning of the sixteenth century -- rigorousness which, in the form of Angelo, is submitted to the audience for moral evaluation.

Angelo's revival of this particular law is absurd, and his approach to sentencing arises from a choleric temper that makes him blind to degrees of crime, and therefore to degrees of punishment. Certainly, Angelo fails to heed Bacon's injunction to "cast a Merciful Eye upon the Person" of the defendant by taking mitigating circumstances into account, and he also fails to follow James' advice to Prince Henry: "Vse Iustice, but with such moderation, as it turne not in Tyrannie: otherwaies summum Ius, is summa iniuria." ⁶³ That Claudio in effect is married, that his wife is bearing a child, and that he fully intended to marry Julietta all along, are given no

consideration by Angelo.

Forced to play the role of criminal, Claudio, with the help of Lucio, persuades his sister to take the role of advocate. Claudio is the first on a long list of characters, who for one reason or another, want Isabella to speak: a sister of the Order of St. Clare, Lucio, Angelo, Vincentio as Friar Lodowick, and Vincentio as the Duke -- all pressure Isabella to speak the lines they want her to:

Implore her, in my voice, that she make friends
To the strict deputy; bid herself assay him.
I have great hope in that; for in her youth
There is a prone and speechless dialect,
Such as move men; beside, she hath prosperous art
When she will play with reason and discourse,
And well she can persuade. (I. ii. 175-181)

Isabella, in other words, is the right girl for the part. But even she needs a drama coach when she begins what in effect is a sentencing hearing before Angelo. She forgets that she is entering a theater and that she has a role to play. As Lucio tells her twice: "You are too cold," (II. ii. 45, 57). Even Raleigh, in his anger at Coke's heat, had to be reminded by a judge that he was in an essentially theatrical situation in which he and Coke both had to play their parts: "Sir Walter Raleigh, Mr. Attorney speaketh out of the zeal of his duty, for the service of the king, and you for your life; be valiant on both sides."⁶⁴ Lucio gives Isabella similar advice in her address of Angelo:

Give't not o'er so: to him again, entreat him,
Kneel down before him, hang upon his gown;
... If you should need a pin,
You could not with more tame a tongue desire it;
To him, I say. (II. ii. 43-7)

Lucio continues to urge Isabella on, with the Provost, as audience, in the grip of her performance. "Pray heaven she win him," the Provost says (125) and she nearly does, for Angelo says with double meaning, "She speaks, and 'tis/Such sense that my sense breeds with it." (141-2)

Isabella is ineffective, perhaps partly because she offers Angelo so few alternatives for sentencing Claudio. Isabella argues as Mercy, and Angelo replies as Justice, but neither realizes that Justice and Mercy are complementary rather than opposing concepts. Angelo remains rigidly gripped by the idea that Claudio's crime must be punished with death, but the only alternative Isabella has to offer Angelo is that Claudio be pardoned. Neither recognizes there might be a middle ground of punishment in which the criminal is neither executed nor let off scot free. Isabella takes the extreme position that since Christ has atoned for the sins of man, that the law of the state should be equally forgiving, which would, of course, result in the abolition of criminal punishment. Angelo, on the other hand, has even surpassed the lex talonis in his severity. "An eye for an eye and a tooth for a tooth" at least had the genuinely beneficial effect of limiting punishment. Angelo's program exceeds the severity of even Old Testament justice. His argument that he "shows most pity" when he "shows most justice" is justifiable as an abstract proposition that punishment deters crime, and therefore severity shows mercy to future victims. However, in application to Claudio it makes no sense for two reasons. First, Claudio's crime is victimless -- Julietta was a willing participant and the couple intend to marry anyway; it is only enforcement of the law that will create victims of Julietta and her unborn child by depriving them of husband and father. Second, in the matter of fornication, the object of deterrence cannot be accomplished no matter how severe the penalty; as Pompey has already noted: "Does your

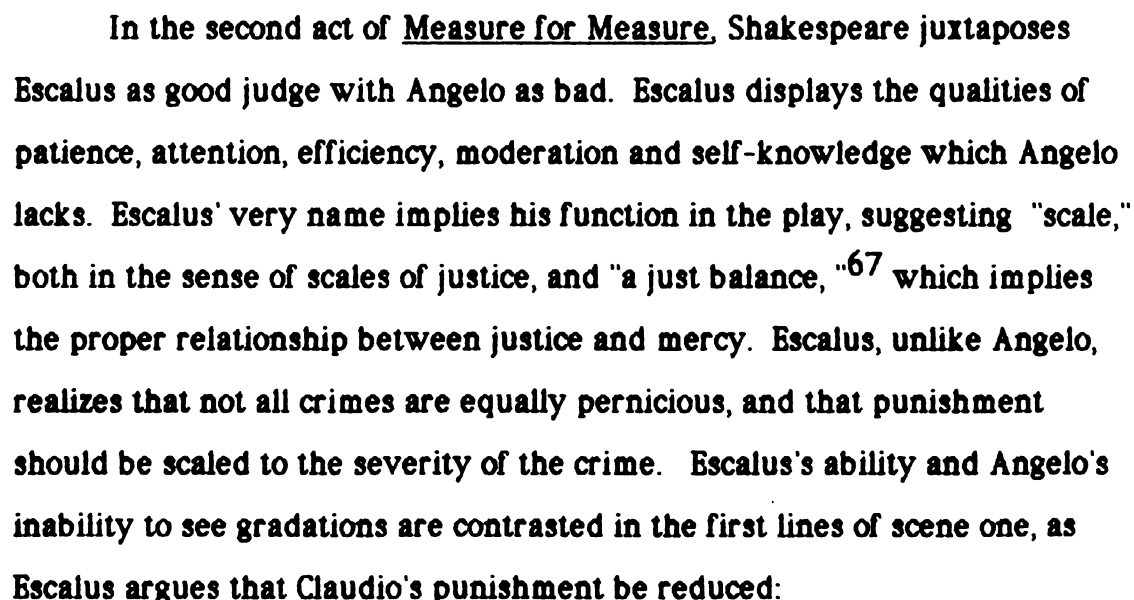
worship mean to geld and splay all the youth of the city? . . . Truly, sir, in my poor opinion, they will to't, then." (II. i. 218-20) If deterrence is not a goal which can be promoted by Claudio's punishment, then even Angelo's argument that meeting out "justice" results in mercy can not stand in this particular case. The law against fornication becomes an instrument of oppression which the state can use selectively, for its own purposes, against virtually anyone, since at any time, a large portion of the populace is likely to be guilty. In this respect, the law becomes an administrative tool, very similar to Tudor/Jacobean treason legislation.

As other commentators have noted, Isabella is as much the rigid legalist as Angelo; we first see Isabella as a novitiate in the notoriously strict Order of St. Clare, seeking to make the order even stricter. Although she has faith in God's mercy when it comes to the sin of Claudio, she has no faith in his mercy when it comes to herself:

Better it were a brother died at once
Than that a sister by redeeming him,
Should die forever. (II. iv. 106-8)

Despite what she says in trying to save Claudio, for Isabella it is by obeying the rules that one achieves salvation, and one slip mars all. When Claudio entreats her to save him and go to bed with Angelo, her unmoderated condemnation for her brother contradicts everything that she has said to Angelo about being aware of one's own faults and withholding judgment. Thus for Angelo and Isabella, Justice and Mercy represent such extremes that both concepts become meaningless.

Scene four ends with Angelo's definitive mistake; he not only shows himself to be an incompetent judge, but a corrupt one. His proposition to



Escalus: Ay, but yet

Let us be keen, and rather cut a little,
Than fall, and bruise to death. (II. i. 1-6)

Angelo is unable to see that deterrence may be accomplished by a lesser response than the imposition of utter terror. One of the psychological reasons for Angelo's inability to measure the appropriate punishment apparently stems from his own lack of self-knowledge, for he tells Escalus:

When I, that censure him, do so offend
Let mine own judgment pattern out my death,
And nothing come in partial. . . . (II. i. 29-31)

Escalus' response demonstrates his acceptance of universal human sinfulness and his unease at meeting out severe penalties for minor offenses. Although the word "him" in the first line is probably in reference to Claudio, it could as well be said with reference to Angelo:

Well heaven forgive him, and forgive us all
Some rise by sin and some by virtue fall:
Some run from breaks of ice, and answer none;
And some condemned for a fault alone. (II. i. 37-40)

In the trial of Pompey and Froth, which occupies the central portion of this scene, Escalus continues to demonstrate his superiority to Angelo as a judge. Here, Shakespeare presents a mimetic recreation of a rather mundane trial. Escalus and Angelo are forced to confront obstacles to judgment which can be observed in any present day small claims court: witnesses who cannot or will not communicate, witnesses who are biased or unreliable, the need to restrict the fact gathering process by disallowing evidence based on hearsay and rumor, and the simple boredom which can lead to lack of attention and bad judgment. The way in which Escalus and Angelo deal with

these obstacles confirm their positions in the dichotomy of good and bad judges.

In "Of Judicature," Bacon emphasizes the ethical necessity for a judge to be a patient and perceptive listener:

Patience and Gravitie of Hearing, is an Essentiall Part of Justice; And an Over-speaking Judge is no well tuned Cymball. It is no Grace to a Judge, first to finde that, which hee might have heard, in due time, from the Barre; or to shew Quicknesse of Conceit in cutting off Evidence or Counsell too short; Or to prevent Information, by Questions though Pertinent. The Parts of a Judge in Hearing are Foure: To direct the Evidence; To Moderate Length, Repetition, or Impertinency of Speech; To Recapitulate, Select, and Collate, the Materiall Points of that, which hath beene said; And to give the Rule or Sentence. Whatever is above these, is too much; And proceedeth, Either of Glory and willingnesse to Speake; Or of Impatience to Heare; Or of Shortnesse of Memorie; Or of Want of a Staid and Equall Attention.⁶⁸

Angelo fails in most of the points set forth by Bacon. Angelo's response to the verbal meandering of the constable, Elbow, is to lose patience before the case has even begun: "How now sir! What's your name? And what's the matter?" (II. i. 44-5) Angelo is unable to see the humor in Elbow's malapropisms, or even, initially, to understand that they are malapropisms. When Elbow accuses his defendants of being notorious "benefactors," Angelo goes from confusion to pettish irascibility: "Benefactors? Well, what benefactors are they?/Are they not malefactors?" (II. i. 48-9) This little exchange accomplishes two things. It demonstrates that Angelo has little understanding of the people whom he is to govern, or their language, and it demonstrates the lack of humor which alienates Angelo from the community of Vienna and from the audience. Everything is

deadly earnest to Angelo -- he can seem but he cannot play. Finally, the scene demonstrates that, lacking patience and understanding, Angelo is able to accomplish little as judge: because he has placed himself so far above people like Elbow, he is unable to communicate with them, and therefore finds it impossible to "Direct the Evidence; To Moderate Length, Repetition, or Impertinency of Speech."

In contrast, Escalus' dry comment "This comes off well, here's a wise officer," indicates that he can distance himself from the courtroom activity and achieve the more detached, even "playful" perspective of a theater goer. The line could be delivered to indicate Escalus' appreciation of the humor in Elbow's case. Escalus' later line in reference to Elbow, "Do you hear how he misplaces," can be used to the same effect, and as a gentle language lesson to Angelo.

The trial continues with essentially no progress. Angelo is unable to determine even the nature of the charges. Finally, Angelo loses patience and simply abdicates as judge, demonstrating his "Impatience to Heare," and "Want of a Staid and Equall Attention." He leaves Escalus to do the job:

This will last out a night in Russia,
When nights are longest there. I'll take my leave,
And leave you to the hearing of the cause,
Hoping you'll find good cause to whip them all. (II. i. 127-30)

This lack of self-restraint is, of course, typical of Angelo, and parallels his unrestrained punishment of even minor criminals and his fear of "Liberty." Thus Angelo projects his own internal struggle against desire onto the body politic of Vienna. But Escalus, who can exercise self-restraint, does not find cause "to whip them all." His speedy resolution of the case, once Angelo is gone, hints that Escalus has reservations about Angelo's ability as a judge --

and that all along, he is hoping the case will drag out until Angelo leaves so that he himself can make the final decision.

Knowing that he is going to get little if any reliable testimony, either from Elbow or the defendants, Escalus refers to the only objective evidence he has: Froth's face. As Pompey notes, "If his face be the worst thing about him, how could Master Froth do the constable's wife any harm?" (line 138) This may seem like a slim basis on which to make a decision, but Elbow, as "prosecutor," certainly has not proved his case and the presumption of innocence holds. Froth and Pompey are released with warnings.

After the case is decided, the scene continues for about thirty more lines, which more firmly establish Escalus as an exemplar of the good judge. Realizing that Elbow is simply incompetent as a constable, Escalus, in the interests of better administration, seeks to replace him. However, Escalus does this in a way which demonstrates his respect, kindness -- and psychological acuity. He emphasizes Elbow's length of service by making an intentional mistake that elicits a comment from Elbow himself on his duration as constable. Then, Escalus stresses the frustrations of Elbow's position, puts himself on the Constable's side, indicates his sympathy, and makes Elbow feel that he is doing him a favor by replacing him:

Escalus: Come hither to me, Master Elbow; come
 Hither, Master Constable. How long have you been
 In this place of Constable?
 Elbow: Seven year and a half, sir.
 Escalus: I thought by the readiness in the office, you
 Had continued in it some time. You say, seven years
 Together?
 Elbow: And a half, sir.
 Escalus: Alas, it hath been great pains to you. They
 Do you wrong to put you so oft upon't. Are there
 Not men in your ward sufficient to serve it? (II. i. 43-52)

The scene concludes with a demonstration of Escalus' commitment to his job. Elbow is to bring him the name of six or seven of the "most sufficient men" of his parish so that Escalus can choose a better constable. Escalus is to bring the list to Escalus' house, after dinner. (During the Tudor and Jacobean periods, courts met only in the morning.) Escalus, in other words, is a judge who is willing to do homework, and who cares enough about what he is doing, to take his job home. As he exits, he is still pondering the human problem of Claudio: "Mercy is not itself that oft looks so;/Pardon is still the nurse of second woe./But yet -- poor Claudio." (62-5)

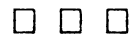
Escalus continues to display a rational approach to sentencing in Act III. ii., where we see him in the process of sending Mistress Overdone to prison for prostitution. While in the case of Pompey and Froth, Escalus demonstrated that he knew the limits of severity, in the case of Mistress Overdone, he demonstrates his understanding of the limits of mercy. Escalus refers to three different cases in this scene, displaying a "measured"⁶⁹ response to each. Despite Mistress Overdone's plea to Escalus that he is accounted a merciful man, in her case, Escalus clearly realizes that mercy is not the solution:

Double and treble admonition, and still forfeit
In the same kind! This would make mercy
Swear, and play the tyrant. (181-3)

There is clearly nothing to be gained by an extension of clemency to "a bawd of eleven years continuance" (83); Escalus must respond with some kind of punishment. Yet, there is no indication that Mistress Overdone will be executed, for Escalus merely says, "Go, away with her to prison." (79) Upon hearing that Kate Keepdown is with child by Lucio and that Lucio had

promised to marry her, Escalus orders Lucio to be called before him. Lucio apparently has committed the same crime as Claudio, except that Lucio's is worse, for unlike Claudio, he has no intention of marrying the mother of his child. Again there is no indication that Escalus intends to punish this crime with death, and he finally indicates with regard to Claudio that he would save him if Angelo did not stand in the way. In this scene, Shakespeare again shows Escalus trying to walk a middle path between extreme severity and extreme leniency, meeting out a punishment of middling severity and that only after admonition has failed.

By the end of Act II., extreme examples of good and bad judges have been presented to the audience, and Vienna has been shown to be a realm of antithesis, where being and seeming do not coincide, justice and mercy are placed in opposition, and the rituals which support government and adjudication are ignored or abused. Escalus, although hindered by Angelo's severity, and saddled with problems resulting from the Duke's leniency, is working methodically and unobtrusively to establish a solid system of criminal justice in Vienna. Escalus' lack of display can be seen as a strength and a weakness. It is a strength because Escalus is more interested in making the right decision than in using his judgeship to gain a name, which is Claudio's accusation against Angelo. It is a weakness because hidden virtue has little ability to inspire. The laws not only need to be administered well, but for the system to achieve its ends, the public must know that the laws are being administered well, and there are few witnesses at the trial of Pompey and Froth or at the sentencing of Mistress Overdone. As Hermione notes in A Winter's Tale, "One good deed dying tongueless slaughters a thousand waiting upon that." The good deeds of judges must be perceived and celebrated to be perpetuated.



It remains for the Duke, in Act V., to bring synthesis and harmony out of chaos by creating a ritual of justice. The Duke's second task, which apparently becomes clear to him during the course of the play, is to stage a theatrical spectacular to begin the moral regeneration of Vienna. He needs to make an effective statement that his own authority will be reaffirmed, vice discovered and rejected, virtue revealed and glorified, status assigned according to desert, and the ship of state set on a new course. The Duke attempts to accomplish this through a highly dramatic trial -- a comic crucible out of which the new society of Vienna is to be formed. To achieve all of this, the Duke needs to produce a really remarkable trial, and when one examines the Duke's production, and the machinations he must go through to bring it about, its similarity to King James' production of the preceeding December immediately becomes apparent.

Vincentio's trial features: an unqualified act of virtue in Isabella's disinterested forgiveness of Angelo, a person she has legitimate reason to hate; the revelation of Angelo's unsuspected judicial corruption; pleas for mercy by those convicted (Claudio and Lucio), by Mariana for the life of her husband Angelo, and by Isabella for Angelo; the adamant refusal by the prince to listen to those pleas of mercy; the vital interest of the prince in the preparation for death of those convicted; the apparent resurrection of Claudio, a man thought to have been executed; and the pardon of three men, all of whom at some time were on their way to immediate execution.

As we have already seen, James' production on the scaffold of Winchester featured his apparent strong denial of pleas for mercy by the friends of Markham and Grey, by Raleigh's wife, and in Raleigh's case, by the Queen. James led Grey to believe that Markham had been executed and

Cobham to believe that both Markham and Grey had been executed, so that bringing them together on the scaffold would not miss its full effect --

"wherein Grey, Markham and Cobham looked upon each other's faces, as if each had just rise from the dead."⁷⁰ And most obviously, James also made three seemingly last minute commutations of execution, which were shortly turned into pardons.

The Duke had to work rather harder than James to bring his rather more complicated production to pass, but his manipulativeness and secrecy are strikingly similar to James'. As James kept his intention to commute the executions of Markham, Cobham and Grey secret for three days, except from his page John Gibb, so Vincentio kept Claudio's rescue secret from everyone but the Provost. James was as willing to play with the emotions of the three men, their friends and families, as Vincentio was ready to play with Isabella's by telling her that Claudio was dead; and the justification for such manipulation is identical in both instances -- James and the Duke wanted to create a theatrical effect. Thus, Shakespeare and company put the theatricality of trial on the Globe's stage for examination -- the same type of theatricality in which James had engaged during the preceding November.

The main difference between the Duke's method of operation and James', is that, in the final trial of Measure for Measure, the Duke reveals himself and takes personal control of the proceedings. He does not content himself with pulling strings behind the scenes -- he takes a highly public role, assumes direct responsibility for his judgments, and lays visible claim to his full political authority as prince.

The public morality play which the Duke stages during the final scene of Measure for Measure powerfully emphasizes the ritual aspect of criminal trial and demonstrates Vincentio's determination to "stage himself to the

people's eyes" so that he can reestablish his lapsed authority. Occurring within the context of another ceremonial occasion -- the "return" of Vincentio as ruler -- the trial provides a ritual framework for several other rituals: marriage ceremonies, rituals of status reversal, and rituals of initiation. Thus, the trial in the last act of the play is a rich and complex web of interdependent rituals, staged by the Duke not for the usual purpose of determining guilt or innocence, but to join public ritual with private reality for the purpose of revealing truth and reinforcing the political and moral order. Whether the Duke achieves his purpose, however, is debateable.

Half the significance of the trial Vincentio arranges lies in Isabella's forgiveness of Angelo, and Isabella's act of forgiveness can only display exceptional virtue if she truly believes Claudio to be dead. Thus, for Vincentio's production to succeed, he must lie to Isabella about her brother's death and perpetuate that lie even after Angelo's confession, until the time for Isabella's apotheosis has come. The revelation and glorification of unfeigned virtue, in the character of Isabella, is as important to the health of the body politic as the revelation and extirpation of Angelo's vice. Thus, Isabella's role is crucial. But for the audience of Vienna (and the theater) to accept her in the roles of Innocence, Mercy, and finally, Forgiveness, Isabella's essential virtue and truthfulness must remain intact.⁷¹ In addition, Isabella's request that Angelo be pardoned must rise so far above self-interest and the human desire for revenge that it leaves the audience awestruck. The more there is to forgive, the more wonderful the forgiveness.

The final act begins with Duke Vincentio entering Vienna, and for the first time in the play, staging himself to the people's eyes, mingling with the people to give them "an example of humanity and munificence." The highly

choreographed welcome given to Vincentio on his "return" to Vienna -- with leading citizens meeting him at the city gate, trumpeters sounding his entrance, and a procession through the streets -- is remarkably similar to that given assize judges, as they toured their circuits, "met by trumpeters and the sheriff's bailiff. . . attended by pikemen and liverymen specially clothed for the occasion, [w]elcomed into town with bells [and] music."

Vincentio emphasizes his reassertion of authority by requiring Angelo and Escalus to meet him at the gates of the city and redeliver their authority to him. With Angelo on one hand and Escalus on the other, Vincentio proceeds through the streets of Vienna, emphasizing that power is centralized in his person, that his judges are appendages, that he is once again in control.

In addition, a proclamation is issued that "if any crave redress of injustice, they should exhibit their petitions [to the Duke] in the street," giving Isabella her opportunity to bring charges against Angelo, but also underscoring the Duke's return as a new beginning. (IV. iv. 8-9) The trial starts when Isabella kneels before the Duke and issues her complaint:

O worthy prince, dishonor not your eye
By throwing it on any other object
Till you have heard me in my true complaint
And give me justice, justice, justice, justice! (V. i. 22-5)

The Duke responds to Isabella's accusation by accusing her of conspiring against Angelo; then he commits an obvious breach of procedure by allowing Angelo to judge his own case. That a judge cannot decide a case in which he is a party was as much a rule in Shakespeare's England as it is today,⁷² and Vincentio's act would have been immediately recognized by the educated members of Shakespeare's audience as an extreme breach of law. Given the fairly strong connection between the Duke and James I, it has

even broader implications, for in the context of a treason trial, such as Raleigh's, the King, for all practical purposes, was in fact judge and party. In a sense, the King is a party to all criminal cases, as the titles of criminal cases in England testify. But the King was a particularly interested party in treason cases, which often included an allegation that the defendant intended personal violence to the king's physical as well as political person. Since the judges represented the King a latere regis, and since the king could bring virtually irresistible pressure to bear on judges and witnesses in order to obtain a conviction, treason defendants were routinely placed in the position of Isabella, pleading her case to a judge who is the man she is accusing. In Measure for Measure, this intentional bit of despotism is merely staging by the Duke to give dramatic emphasis to Isabella's plight, and to allow himself to exit, change costume, and participate in the trial as Friar Lodowick. The situation of treason defendants was not so benign and, in the wake of Raleigh's trial, this was one possible way in which the issue could be surreptitiously raised and examined.

By assuming the identity of Lodowick and putting himself into the trial as one of the defendants, the Duke has begun, in effect, what anthropologists refer to as a "status-reversal" ritual, characteristic of festivals such as Fasching or Mardi Gras, in which the elders, and other authorities of the city are "dethroned" for a brief period, and the commoners are put in mock positions of authority.⁷³ Occasions of status reversal seem fundamental to the ethos of medieval and renaissance Europe, the paradigm of the central cultural myth being a status reversal: God takes on human form, allows his own subjects to put him on trial and crucify him, resurrects himself, and on judgment day, judges them. The fifth act of Measure for Measure, as we shall see, figures forth this "perfect pattern." In this

instance, the Duke makes his subject Angelo the judge, not only of Isabella, a novice in a Christian order, but of the Duke himself, disguised as Friar Lodowick. In a festival, of course, the temporariness of the role reversal, and the ludic nature of the reversal, is evident to all. In the final act of Measure for Measure, the ludic nature of the situation is not immediately apparent to the fictional participants, who unlike the audience are not in on the "joke." However, the Duke has adopted a status reversal ritual to accomplish the ends of all such rituals: the reaffirmation of existing structures of power and authority.

In The Ritual Process, Victor W. Turner explains the structure and function of such status reversal rituals:

Cognitively, nothing underlines regularity so well as absurdity or paradox. Emotionally, nothing satisfies as much as extravagant or temporarily permitted illicit behavior. Rituals of status reversal accommodate both aspects. By making low high and the high low, they reaffirm the hierarchical principle. By making the low mimic (often to the point of caricature) the behavior of the high, and by restraining the initiatives of the proud, they underline the reasonableness of everyday culturally predictable behavior between the various estates of society. On this account, it is appropriate that rituals of status reversal are often located either at fixed points in the annual cycle or in relation to movable feasts that vary within a limited period of time, for structural regularity is here reflected in temporal order. It might be argued that rituals of status reversal are also found contingently, when calamity threatens the total community. But one can cogently reply by saying that it is precisely because the whole community is threatened that such countervailing rites are performed.⁷⁴

Perhaps the play accomplished the same ends for Shakespeare's audience, who after a few hours of vicarious "ludic" participation, may have

left the theater reaffirming the status quo.⁷⁵ On the other hand, and what I believe is more likely, the play may have demystified rituals of status reversal simply by putting them on stage for examination. The power of theater and ritual as political techniques may have been diminished by the effective demonstration, on stage, that they are merely techniques, by getting the audience to see on stage what could not be seen off stage. Given the readiness of Renaissance audiences to see correspondences even when none were meant, it is likely that such issues were considered, and that Shakespeare's drama truly did affect as well as reflect his society.

By Turner's definition, the Duke's status reversal ritual is a contingent one, produced for the purpose of avoiding a calamity⁷⁶ that threatens the whole community of Vienna: the threatened dissolution of the body politic into disorder, anarchy, and violence. The pattern of act five corresponds with that described by Turner. Vincentio, masqued (as is common during rituals of status reversal) is judged by an inferior, who, in this instance, masks his corruption by his position:

. . . O place, O form
How often dost thou with thy case, thy habit,
Wrench awe from fools, and tie the wiser souls
To thy false seeming! (II. iv. 12-5)

Vincentio is abused by someone even more inferior than Angelo -- Lucio, and when Lucio pulls off Friar Lodowick's hood, revealing the Duke, the shock of recognition is apparently accompanied by a powerful reestablishment of the Duke's status, a dethronement of venal authority in the person of Angelo, and the laying hold of rumor in the person of Lucio. The Duke's magical revelation of Angelo's corruption adds to his authority as ruler, and the ritual of the "inferior" friar becoming the "superior" Duke

satisfies -- and purges -- the corresponding illicit desire in the populace to overthrow authority, a desire partly articulated in Lucio's slanders of the Duke.

In making use of the myth of Christ, Shakespeare presents the Duke intentionally appropriating the numinous energy of the most powerful myth available and uses it to bring the social order of "Vienna" into closer conformity with the Tudor scheme of a hierarchical Christian universe. Both Isabella and the Duke (as Friar Lodowick and as himself) function in the trial scene as types of Christ. Isabella and Vincentio appear emblematically as Christian figures in their roles as novitiate and friar, and the trial, in many respects, sets forth a ritual reenactment of Christ's passion. Both Isabella and Friar Lodowick find themselves before a corrupt judge, as Christ did before Caiaphus. Isabella is betrayed and Lodowick is slandered and abused by Lucio, a type of Judas and angry crowd in one. When all seems lost, Lucio unfrocks Friar Lodowick to reveal the Duke, accomplishing the Duke's resurrection. The tables turn, with the prosecuted becoming the triumphant and Angelo and Lucio finding themselves as defendants. Lodowick the friar becomes Vincentio the judge. The Duke's sudden transformation, his omniscient knowledge of Angelo's wrongdoing, his control of events, and his theatricality (for Christ's death and resurrection are certainly dramatically compelling) establish his god-like credibility in the eyes of the populace, and even Angelo confesses to the Duke as if he were God:

O my dread lord
 I should be guiltier than my guiltiness
 To think I can be undiscernible,
 When I perceive your grace, like power divine,
 Hath looked upon my passes. Then, good prince,
 No longer session hold upon my shame,

But let my trial be mine own confession. (V. i. 362-68)

The Duke orders the execution of Angelo and fulfills the three general functions of criminal punishment: purification of the body politic by the public revelation and extirpation of vice, retribution and the deterrence of future criminal activity.⁷⁷ But purgation is only a partial remedy for Vienna's moral lassitude. If vice is to be publicly purged, then virtue needs to be publicly celebrated, so that not only a morality of duty is encouraged, but also a morality of aspiration.⁷⁸ To accomplish this, the Duke has deliberately contrived a situation in which Isabella can become such an exemplar. However, though ceremonies may be required by force, the expression of virtue must be the result of free-will, and therefore the Duke is not completely in control of Isabella's actions. All Vincentio can do is to set the stage by bringing Isabella into contact with Mariana, and by making her believe that Angelo's order for the execution of Claudio has been carried out.

When Mariana's pleas to Vincentio for the pardon Angelo are unavailing, she asks Isabella to intercede -- "to lend . . . your knees." (427) To emphasize the unearthly character of what Isabella is about to do, the Duke sets forth the most probable human reaction to Mariana's plea:

Against all sense you do importune her;
Should she kneel down in mercy of this fact,
Her brother's ghost his paved bed would break,
And take her hence in horror. (V. i. 429-432)

Isabella, however, fulfills all of the Duke's unstated expectations. In the dramatic apex of the play, Isabella kneels, and motivated by sympathy for Mariana, pleads that Angelo be pardoned:

Most bounteous sir,
 Look, it it please you, on this man condemned
 As if my brother lived. I partly think
 A due sincerity governed his deeds
 Till he did look on me. Since it is so,
 Let him not die. (V. i. 439-444)

These lines accompany Isabella's ritual apotheosis. In asking mercy for Angelo, the "murderer" of her brother, the man who has done everything he could to virtually rape her, Isabella becomes "a thing enskied and sainted," (I. iv. 314) making mythic truth of Lucio's earthly cynicism. Isabella's act of forgiveness also brings to a conclusion a rite of passage begun in Act I., when we see Isabella preparing to enter the Order of St. Clare. Throughout the play, Isabella has been in a condition which Arnold Van Gennep, in his seminal work, The Rites of Passage, called the "liminal phase."⁷⁹ According to Van Gennep, in a rite of passage, when one is passing from one status to another, there is a liminal period in which one's "attributes" are ambiguous because one's status has not been defined:

Liminal entities are neither here nor there; they are betwixt and between the positions assigned and arrayed by laws, custom, convention, and ceremonial. As such, their ambiguous and indeterminate attributes are expressed by a rich variety of symbols in the many societies that ritualize social and cultural transitions. Thus, liminality is likened to death, to being in the womb, to invisibility, to darkness . . . to an eclipse of the sun or moon.⁸⁰

A monastic order itself is a form of institutionalized liminalism of passage from this world to the next,⁸¹ and as a novitiate, Isabella occupies a

position "betwixt and between" full membership in the order and her status as a lay person, between taking the life of a celibate or the sexual life of a wife and mother. It is also obvious, given Isabella's unforgiving and unnecessarily spiteful response to her brother's pleas to save his life that Isabella is also a novice in truly understanding Christianity, for while she can talk of forgiveness, she finds it impossible to be forgiving to either her brother or herself. She is as much the thrall of legality as Angelo, and therefore, her status as a Christian is ambiguous.

During her trial Isabella shares a liminal status of another kind: that of the criminal defendant awaiting the outcome of her case. In jeopardy of conviction, she can only exercise patience until the trial runs its course and her status is finally determined. That she understands this situation is evident from her prayer:

O you blessed ministers above
Keep me in patience, and with ripened time
Unfold the evil which is here wrapped up
In countenance. (V. i. 115-8)

The outcome of Isabella's rite of passage also remains "wrapped in countenance," as if enwombed, until "ripened time" brings forth the truth. Isabella, of course, is "acquitted" and Angelo "convicted." Isabella not only forgives Angelo, but begs, at Mariana's request, that Angelo be spared, finally putting into practice the course of mercy she had urged Angelo to take:

Alas, alas,
Why all the souls that were forfeit once
And He that might the vantage best have took
Found out the remedy. How would you be

If he who was the top of judgment should
 But judge you as you are? O think on that,
 And mercy then will breath within your lips,
 Like man made new. (II. ii. 72-9)

Isabella emerges as more than a mere apologist for Christian forgiveness. Isabella comes through her rite of passage as the personification of forgiveness. Moreover, her empathy for Mariana's impending loss indicates that perhaps Isabella's real initiation is not into the Order of St. Clare but the secular world of women.

As James had apparently decided to execute Raleigh, despite the pleas of Raleigh's wife or the Queen, so the Duke, apparently, decides to execute Angelo despite the pleas of Mariana and Isabella. This, of course, is all part of the show, which is revealed and concluded in the last half of act five.



For several reasons, the ending of Measure for Measure has proved troublesome to critics for over a century and a half. Coleridge commented that the play is "the most painful -- say rather, the only painful -- part of his [Shakespeare's] genuine works. The comic and tragic parts equally border on the . . . disgusting, [and] the . . . horrible, and the pardon and marriage of Angelo not merely baffles the strong indignant claim of justice. . . but is likewise degrading to the character of women."⁸² A. C. Bradley described Vincentio's marriage to Isabella as a "scandalous proceeding,"⁸³ Quiller-Couch found the character of Isabella to be repulsive and inconsistent,⁸⁴ and L. C. Knights questioned the wisdom of marrying Angelo and Mariana and the Duke's seemingly wholesale pardon policy.⁸⁵ More recently directors have emphasized some of the features of the "comic" ending which make the play problematic: the Duke's excessive and apparently indiscriminate use of the pardon power,⁸⁶ the Duke's possibly

coercive and unwanted proposal to Isabella,⁸⁷ and the efficacy of the imposed marriages at the end of the play.⁸⁸ These critical and interpretive reservations about whether the Duke finally achieves justice in his realm of Vienna focus mainly on the last half of the trial scene in Act V.

Critics who have defended the play offer several arguments in an attempt to meet or explain away these objections. Battenhouse,⁸⁹ Bennett,⁹⁰ Coghill,⁹¹ Ferguson,⁹² and Knight⁹³ contend that much of the confusion in critical response is do to a misunderstanding of the play's genre,⁹⁴ that if the play is interpreted as an allegory the ending becomes much less problematic.

I believe that the ending needs to be examined in light of the contemporary social issues which it raised for audiences in 1604. It is possible, even likely, that those audiences found the closure of Measure for Measure troublesome, but it is also likely that they found it stimulating, because it posed questions and explored issues in which they and their country were deeply involved.

First, let us consider the pardons. The Duke's "pardon" of Angelo is particularly troublesome since it is highly ambiguous whether Angelo is legally guilty of anything anyway. This, I believe, becomes obvious as the play moves toward conclusion and constitutes a final ironic revelation of the divergence between true justice and mere legality. Although Angelo is morally culpable, it is not clear, as Isabella recognizes, that Angelo has committed any crime at all and her argument makes perfect legal, if not moral, sense:

My brother had but justice,
In that he did the thing for which he died.
For Angelo,

His act did not o'ertake his bad intent,
 And must be buried but as an intent
 That perished by the way. Thoughts are no subjects,
 Intents but merely thoughts. (V. i. 444-450)

To commit a crime, as Isabella points out, one must intend to commit a criminal act and then, commit the act, i. e., the act must "o'ertake [the] bad intent." Act and intention must both be proven to establish a crime. This is the law today, and it was the law during the time of Elizabeth I and James I. As Kadish, Schulhofer and Paulsen explain in The Criminal Law and Its Processes,⁹⁵ an objectively innocent act, even though accompanied by evil intent, cannot be regarded as a crime. Thus, the following are not crimes: "A soldier during battle shoots and kills an enemy soldier believing that his victim is his own sergeant. A man has sexual intercourse with a woman over the age of consent, though he believes that she is underage. A man deliberately shoots and kills [the] deceased unaware that at that very instant [the] deceased was about to kill him." In all of these cases an evil intention is present, but the actor committed no crime because his actions were not illegal. This principle reaches back to the beginnings of English common law.⁹⁶

In the case of Angelo, the element of illegal action appears to be missing. What is Angelo to be executed for? The murder of Claudio? Even if Claudio were dead, which, of course, he is not, Claudio has merely received what was coming to him under a literal application of the law. Angelo may have enforced the law for the wrong reasons -- but that is no crime, the important fact being that laws are to be enforced. Angelo had the right to execute Claudio for fornication. Therefore, Claudio's death cannot form the basis for a criminal charge against Angelo.

Is Angelo to be executed for the seduction of Isabella? Though he

intended to seduce her, and thought he had seduced her, he never actually committed the act. He wound up in bed with Mariana.

Does Angelo's liason with Mariana, then, constitute the crime of fornication? In other words, did the Duke's bed-trick result in an illegal act? This is much more ambiguous. There has been a great deal of scholarly interest in this question, resulting in a series of articles on the precontracts in Measure for Measure.⁹⁷ If Claudio and Julietta are guilty of fornication, the argument goes, despite the fact of their precontract, why are not Angelo and Mariana equally guilty for having sex after a precontract but before the marriage ceremony? If anything, the crime of Claudio and Julietta seems less severe, since they at least desire to wed each other, but Angelo does not desire to wed Mariana. Critics have tried to draw a distinction on the basis of the type of precontract each couple had,⁹⁸ asserting that the Claudio-Julietta precontract was de futuro and that the Angelo-Mariana precontract was de praesenti, and that this distinction supports a distinction in punishment, or even a distinction in whether there was a crime. There are several difficulties with this entire debate. First, under the laws in place in Jacobean England, both the acts of Claudio and Angelo certainly would constitute crimes. As previously indicated, prenuptial intercourse even between couples who were married pursuant to a de praesenti or a de futuro contract was illegal. But the question is not whether the act is legal in England, but whether it is legal in Measure for Measure's mythical world of "Vienna." Since throughout the play, characters make reference to law which is in place in England, it seems most reasonable to assume English law holds in this stage-world unless specifically replaced with "stage-law." That the death penalty would be given for fornication or sexual slander is obviously stage law -- law which sharpens and exaggerates the struggle between

justice and mercy and which also which sets before the audience possible responses to contemporary issues involving sexual incontinence and marriage.

That Mariana could have intercourse with Angelo without committing a sin or a crime is more stage law -- and if Mariana is not guilty of fornication, then Angelo cannot be guilty of it either. The Duke specifically tells Mariana that she is not committing a sin in bedding Angelo:

Nor, gentle daughter, fear you not at all;
He is your husband on a pre-contract
To bring you thus together, 'tis no sin,
Sith that the justice of your title to him
Doth flourish the deceit. (IV. i. 70-74)

Is the Duke urging Mariana to sin and break the law so that he can entrap Angelo? Is he giving a correct statement of "Viennese" law? In the preceeding scenes, the Duke has demonstrated a great respect for spiritual matters: he is a good confessor and even delays Barnardine's execution at the risk of spoiling his entire scheme, which demonstrates his recognition that spiritual values have a certain priority. There is no good reason to reject the Duke, in this instance, as a reliable and honest authority on law and sin in "Vienna." The only course available, therefore, is to accept the Duke's opinion that there is a distinction between Claudio's situation and Angelo's. Therefore, it seems, Angelo is not guilty of fornication with Mariana.

But can Angelo be held guilty for attempting to commit the murder of Claudio or fornication with Isabella? Again, the answer is no, for at the time of Shakespeare, the criminal law of "attempts" was virtually non-existent. That Angelo could even have been charged with such a crime would not have occurred to Shakespeare or the audience. "The old English law 'started

from the principle that an attempt to do harm is no offense." 98 "There did not exist a general conception that an attempt to commit a crime was criminal as such." 100

Although the argument which I suggest as to Angelo's technical guiltlessness may seem overly ingenious, the play text itself indicates that Vincentio not only understands Isabella's argument but feels its force. Vincentio never refutes Isabella's argument or indicates in any way that it is incorrect with regard to the crimes of fornication or murder. But apparently, because of the persuasiveness of Isabella's argument the Duke is forced to come up with another charge in order to continue his play:

Your suit's unprofitable; stand up, I say.
I have bethought me of another fault.
Provost, how came it Claudio was beheaded
At an unusual hour? (V. i. 451-54)

It is hard to believe that the beheading of Angelo at an unusual hour, by private message (V. i. 456) would be a capital crime, Angelo having full power of sovereignty in Vincentio's absence. Once Claudio is revealed, his head yet on his shoulders, it becomes extremely ambiguous whether there is a crime for which Angelo can be convicted, and therefore, whether there is a crime for which he need be pardoned. The Duke's description of Angelo's reaction when Claudio is uncowed provides further support:

By this Lord Angelo perceives he's safe
Methinks I see a quickening in his eye. (V. i. 490-1)

The words could indicate that Angelo now at least has the hope of presenting a defense -- or even that, upon seeing Claudio, he feels completely "safe." It is important to note that these lines occur before the

Duke's line: "I find an apt remission in myself," which is usually interpreted as a pardon of Angelo. That line, however, may not even be in reference to Angelo. The Duke seems to be done with Angelo before he even delivers the line, as is suggested by the two preceeding lines: "Well, Angelo, your evil quits you well./Look that you love your wife; her worth, worth yours." (V. i. 492-3) Second, the Duke seems to be turning his attention toward Lucio, and the line could simply be a declaration by the Duke that despite his inclinations, he will not pardon Lucio: "I find an apt remission in myself./ And yet here's one [Lucio] in place I cannot pardon." (V. i. 494-5). Third, even if the Duke is referring to Angelo, the "remission" he speaks of may not be a legal declaration, but simply an indication of the Duke's personal willingness to forgive Angelo. Still, it is possible that the Duke's "remission" does constitute a pardon of Angelo.

The irony is that Angelo, who has demonstrated far more wickedness than Claudio, may not actually be guilty of a crime, while Claudio, everyone in the play agrees, is guilty. Broader political implications arise from the fact that Angelo is brought within a hair's breadth of execution -- even though it is quite unclear he has committed any crime. This, of course, was the problem with Raleigh's conviction, which rested solely on the shaky support of Cobham's ever shifting confessions. The very ambiguousness of Angelo's position matches that of Raleigh, whose guilt was not proven to the populace -- but whose innocence was never conclusively established either, and whose fate, after the deferral of his execution, was anything but clear.

The pardon of Barnardine, an unrepentant murderer, is perhaps even more problematic than that of Angelo. Barnardine is the most subversive character in the play -- the person who most consistently refuses to play the socially assigned role of a repentant man on his way to execution. Ironically,

it is his refusal to play the part that has kept him alive so long. He cannot be executed because he does not fit into the standard script for executions. Barnardine's absolute refusal to be the socialized scapegoat of the judicial system or the church poses the greatest threat to the Duke's new society, and from the Duke's point of view, Barnardine "wants advice." Someone needs to "persuade this rude wretch willingly to die," or else the performance of execution will be thwarted. Barnardine is not one of the Duke's victories and that is why he is turned over to Friar Thomas for what amounts to "reeducation." Barnardine's subversiveness is accentuated by his audience appeal; he can be one of the funniest characters in the play, and he makes resistance appear enjoyable. The audience simply does not want to see him executed, and this too has obvious political implications. James' interest in bringing Cobham, Markham and Grey to the proper state of repentance was not motivated solely by concern for their religious welfare. The carefully controlled gallows spectacle of repentance by Cobham, Markham and Grey was typical of what occurred at most executions: the condemned man admitted guilt, stated his acceptance of the verdict, the justness of the sentence, and pronounced his willingness to die. Thus, the condemned were forced into the role of legitimating their own executions. Barnardine refuses to legitimate any of the process, and offers the audience the same blackly comic alternative.

Lucio's pardon is less problematic. His crime is slandering the Duke. In a less obstinate style Lucio poses the same type of threat to the Duke's new social order as Barnardine. He exerts his independence by choosing a role that does not fit into the established order. But in his role, Lucio is far more dependent on society than Barnardine. Lucio needs Vienna because he needs an audience and subject matter that audience will appreciate, such as

gossip about the Duke. He has little sense of duty to anyone but himself. Although he urges Isabella to come to Claudio's aid, he is quite willing to testify against her in Act V. Though he has promised to marry Kate Keepdown, the mother of his child, he has refused to honor the promise. The Duke orders Lucio to be married to Kate Keepdown, and then after the ceremony, to be whipped and hung. Although during Tudor and Jacobean times people were particularly sensitive to the crime of sexual defamation and slander,¹⁰¹ (recall Elbow's indignation at the accusation that his wife was a "respected" woman) it was not regarded as a capital offense. The Duke's sentence that Lucio be hung would be notably excessive, except his quick commutation of the sentence indicates that from the beginning, he was merely trying to throw a scare into Lucio. Even Lucio seems to understand this. The portion of his sentence requiring whipping and hanging does not seem to bother Lucio very much -- he does not even respond to it. But being made a cuckold -- even for the short time before he is to be whipped and hung -- brings him to beg for mercy: "Marrying a punk my lord is pressing to death,/whipping and hanging." (V. i. 517-8) The Duke, of course, withdraws the order that Lucio be whipped and hung, but the marriage goes forward, and aside from the dramatic inadvisability of executing one of the most comic characters in the play, Shakespeare and the Duke seem to have given Lucio what he deserves, though the question remains whether they have given Kate Keepdown what she deserves.

By the end of the play, three pardons are issued on stage and Claudio, like Markham and Grey, is "resurrected" from the dead. For some spectators these fictional events may have been a fictional recelebration of the pardons issued by James -- for others, a fictional reexamination of those pardons which led not to closure but to more thought. Shakespeare's audience could

not have known yet that the pardons of Markham, Grey and Cobham were to establish a pattern. James I made particularly liberal use of the pardon power. As noted by Rolph in The Queen's Pardon, "In the sixteenth, seventeenth and eighteenth centuries the royal pardon was in fact being granted pretty freely, the Stuart Kings in particular placing reliance on the hot line by which they felt themselves to be connected with the Holy Ghost."¹⁰² The three pardons we see at the end of Measure for Measure not only reflected the past, but set before the audience a type of political action which would continue.

Another difficulty for critics has been the Duke's use of forced marriage as a solution to sexual licence. Angelo and Lucio are both coerced into marrying women they obviously do not love, and the Duke, perhaps, coerces an unwilling Isabella into marriage with himself. As Jonathan Dollimore has pointed out, Measure for Measure seems obsessed with the subject of sexual license and the need to control it.¹⁰³ Dollimore's thesis is that sexual license is artificially blown into crisis by the state, so that an excuse is afforded for more thoroughgoing social control. Dollimore may be at least partly correct, though the "crisis" in Shakespeare's day was not simply an artificial creation of the government. As Margaret Spufford has argued,¹⁰⁴ though the culpability of sexual offenders was couched in moral terms, the principle motivation for the punishment of sexual crimes was economic -- to keep the support of bastards from falling, under the Poor Laws, on the parishes where the children were conceived. In relatively prosperous areas of England, there was little bastardry because people could afford marriage, and therefore, there was little attention paid to sexual crime. In less prosperous areas, however, where payment to support fatherless children was a genuine sore spot, economic concern generated the

moral outrage which inspired rigorous enforcement of laws governing marriage, sexual slander and defamation, and sexual incontinence.

The Duke's concern with the sexual slander spread by Lucio could be a reflection of tales that had already spread about James' sexual preferences. But I think it is more likely that Shakespeare is confronting a more widespread problem of slander. J. A. Sharpe notes that "considerations of honour, good name and reputation were of central importance"¹⁰⁵ to Jacobean society. They were also matters of economic importance. When an unmarried woman was found to be pregnant, the first response by those in authority was to find the father, for if the father could be identified, he could be found and forced to pay for the support of the child. Raleigh had an illegitimate daughter whom he acknowledged and supported, and very little moral opprobrium attached to him as a result. But the men who attempted to avoid financial responsibility were "demonized" as moral failures. Aside from the distastefulness of being accused of sexual incontinence, the purported father was under a monetary threat. If charges against him were proved, he had to support the child. This goes a long way to explaining the extreme sensitivity in Shakespeare's day to sexual slander, since a slander could develop into a formal accusation in ecclesiastical court of illicitly fathering a child.

The bizarre marriage laws in force in England throughout the sixteenth and seventeenth centuries merely made matters worse, and it is necessary to take a digression into the marriage law of the period to understand the significance to Shakespeare's audience of Measure for Measure, particularly the final trial. The cases of Claudio and Angelo will furnish instructive examples of how English marriage law generated problems. Claudio describes his offense and his relationship with Julietta as

follows:

Upon a true contract
I got possession of Julietta's bed.
You know the lady, she is fast my wife,
Save that we do the denunciation lack
Of outward order. This we came not to do,
Only for propagation of a dower
Remaining in the coffer of her friends,
From whom we thought it meet to hide our love
Till time had made them for us. (I. ii. 142-8)

In other words Claudio and Julietta have, if we assume English procedures apply, married themselves by forming a mutually binding contract of marriage. According to the law of Shakespeare's day, people could become married simply by private agreement to regard themselves as man and wife. No ceremony or public proclamation of bans was necessary in order to form a valid marriage. Two kinds of marital contracts were recognized in Shakespeare's England: de futuro contracts and de praesenti contracts.¹⁰⁶ A de futuro contract was basically a promise made by the couple signifying their intention to marry at a future time. This was the equivalent of an engagement. (The words "I will marry you," would be sufficient to form a de futuro contract.) In forming a de praesenti contract, the couple essentially agreed that they were married, and the contract itself, even if made in private, constituted a valid marriage. (The words "I take you as spouse" would be sufficient to form a de praesenti contract.) A de futuro contract followed by sexual intercourse became the equivalent of a de praesenti contract, i.e., it constituted a marriage.¹⁰⁷ Under this law, Lucio would be married to Kate Keepdown, since he promised to marry her and had sexual union with her.

Although marriage contracts were legal, and a couple could, in effect, marry by forming a binding contract, it was illegal to live as husband and wife or to have sexual intercourse prior to a wedding ceremony, or public proclamation of bans. (In the 12th century, the Church had made cohabitation before the ceremony illegal in an attempt to gain control over the sacrament of marriage.¹⁰⁸) A substantial number of English couples, however, simply ignored the formality of the ceremony and set up housekeeping immediately after the contract. This course was possible in most European countries throughout the Middle Ages until the Council of Trent in the middle of the sixteenth century, when the Church finally declared lay marriages to be invalid as well as illegal. However, in England, such marriages remained valid (but illegal) until the case of the Queen v. Millis in 1844,¹⁰⁹ when an English court finally held that marriages not celebrated before an ordained priest were invalid. Thus, under English law, though Claudio and Julietta (and Lucio and Kate) would have a legally binding marriage -- their act of secret marriage would have been illegal. If, as the Duke tells Mariana, she and Angelo have a valid precontract, it seems that the bed-trick also would have made them husband and wife. On the continent, these three couples would not have been married at all.

The ability to effect a marriage in private led to significant social problems in Tudor and Jacobean England, for men were often able to lure women into bed by making a de praesenti contract (recall Claudio's "upon a true contract/I got possession of Julietta's bed") -- and then making successive de praesenti contracts with as many women as they liked. The result was widespread serial polygamy.¹¹⁰ People who had led a life of promiscuity, but who had finally settled down with one partner, seldom formalized their marriages in public ceremonies for fear that a previous

partner could object to the wedding on the basis of a former precontract, or even marriage. (Since the first de praesenti precontract would have constituted marriage, all subsequent contracts would have been adulterous, and all children born of subsequent unions, illegitimate.) In addition, since private marriage was regarded as valid, it was difficult for the people, especially those of the lower classes, to take seriously the illegality of such marriages, and so private marriage flourished. Henry Swinburne's treatise Of Spousals, written in the late sixteenth century,¹¹¹ clearly reflects the social problems created by the confusing marriage laws:

The "Law doth forbid all Persons to make Secret Contracts of Spousals, or Matrimony; and that justly, considering the manifold discommodities depending thereupon, namely, for that hereby it cometh to pass oftentimes, that the Parties secretly contracting, are otherwise formally affianced, or so near in Blood that they cannot be Married; or being free from those impediments, yet do they alter their purposes, denying and breaking their promises, whence Perjuries" and "many more intolerable mischiefs do succeed." Yet though "Secret Marriages are done indeed against the Law," it is held that once contracted they cannot be dissolved because public "solemnities are not of the Substance of Spousals, or of Matrimony, but consent only; . . . So that it may be justly inferred, that the only want of Solemnity doth not hurt the Contract." Moreover, if it be urged that "seeing secret Contracts cannot be proved, it is all one in effect, as if they were not," it may be answered that such is truly the case 'jure fori, non jure poli. Before Man, not before God; for the Church indeed doth not judge of secret and hidden things," but before Almighty God "bare conscience alone is as a thousand Witnesses: Wherefore I do admonish thee, that hast in truth contracted secret Matrimony, that thou do not marry any other Person; for doubtless this thy pretended Marriage, how lawful soever it may seem in the eye of Man, who judgeth only according to the outward apperance, is nothing but meer Adultery in the infallible sight of God's just Judgment."¹¹²

Aside from criminal sanctions, the only solution offered by English law to a jilted partner was "forced" marriage. Women who had married privately -- or who had become engaged -- could sue in ecclesiastical court for enforcement of the contract. The forced marriages of Angelo and Lucio at least provide an intermediate step between ignoring the social problem of child support and executing the father (a step which seems absurdly counterproductive if one wants the father to support his children). Forced marriage of course produces obvious problems, just as does the inability to obtain a divorce. These were problems, however, for which Shakespeare's age had little solution.

In addition to the widespread contemporary concern with sexual slander, James had also let England know, in the Basilikon Doron, that slandering a prince was a matter of central concern to him:

Vnto one fault is all the common people of this Kingdome subject, as well burgh as land; which is, to iudge and speake rashly of their Prince, setting the Common-weale vpon foure props, as we call it; euer wearying of the present estate, and desirous of noueltie. For remedie whereof (besides the execution of Lawes that are to be used against vnreuerent speakers) I know no better meane, then so to rule, as may iustly stop their mouthes from all such idle and vnreuerent speeches; and so to prop the weale of your people, with prouident care for their good gouernment, that iustly, Momus himselfe may haue no ground to grudge. . . ¹¹³

Again Shakespeare seems to echo James, when, in response to Lucio's complaint that being forced to marry a punk is both pressing and hanging, Vincentio says: "Slandering a prince deserves it."

The final objection to the fifth act is the Duke's proposal to Isabella. Isabella's silence to the Duke's two proposals of marriage can generate a host of interpretations, but all must address the issue of whether Isabella accepts or rejects the proposal and the manner in which she does it.¹¹⁴ The propriety of the Duke's proposal is also on the table. Other characters have tried to force Isabella into roles from the very beginning of the play. First Lucio directed her in her performance before Angelo, when Isabella pleaded for Claudio's life. Then Angelo and Claudio both tried to put her into the position of prostitute. Then the Duke cast her in the role of fornicator, convincing her to commit perjury and slander herself in the bargain. Then Mariana once again put her into the role of supPLICATOR. Finally, the Duke tries to put her into the role of wife. Whether, in the end, Isabella allows the Duke to define her part, or whether she stands silent because she finally refuses to take on that last role, the issue of coercion has been raised. It is possible that at the end of the play, Isabella's silence and Barnardine's merge in mute resistance.

Arguably, Measure for Measure reaches both the formal closure appropriate to comedy and an ending which is morally satisfying. The threat to the lives of Claudio, Barnardine and Angelo is averted. Escalus, who has come closer than any other judge in the play to steering a middle course between justice and mercy, will play an important part in the future government of Vienna. The Duke tells him: "Thanks, good friend Escalus, for thy much goodness;/There's more behind that is more grate." (V. i. 523-4) The Duke, in making clandestine marriages public, and enforcing contracts of marriage already made between the parties, merely reestablishes the order needed for a society to function and the ceremonies required by the Duke will help to assure that Angelo and Lucio fulfill their

spousal responsibilities. And in the theatricality of the final trial, the Duke has elevated virtue, extirpated vice, and reestablished his own authority in Vienna, and in the process provided examples of moral inspiration for his people.

But the Duke's theatricality has its price. To reaffirm the ritual of marriage, he must create two marriages which offer little prospect of happiness; to display Isabella as a moral exemplar, he must lie to her about her brother's death, get her to commit perjury, and slander herself in the process. The moral order which the Duke seeks to establish is undercut at every turn by the Duke's actions in attempting to bring it about. James' actions in the matter of Cobham, Markham and Grey also had their price, mainly born by the convicted men and their families, who were put through three more days of agony to assure the appropriate response on the scaffold at Winchester. But the state also paid a price, for in making the theatrics of trial so obvious, James may have rendered them all the more unconvincing. As the scrivener of Richard III comments, "Who is so gross/That cannot see this palpable device?" (III. iv. 10-11) The Duke ends Measure for Measure with a promise to tell how he has brought about the amazing trial of Act V: "So, bring us to our palace, where we'll show/What yet's behind, that's meet you all should know." At the time when Markham ascended the scaffold at Winchester, James, in court at Wilton, called together his Privy Councillors and favorite courtiers and explained in great detail how he had brought about the pardons of Markham, Grey and Cobham, and how he had commuted the death sentence for Raleigh. It was as difficult for James to leave the glow of his production as it was for the previously shy Duke Vincentio to leave his. Thus, theatricality enters the blood of the sovereign and through that, the body politic.



In The Political Unconscious, Frederic Jameson summarizes his project as an exploration of a proposition suggested by Levi-Strauss's work. That proposition is: "all cultural artifacts are to be read as symbolic resolutions of real political and social contradictions." ¹¹⁵ In application to dramatic representations of trial, this proposition is doubly potent, since trials themselves are attempts to resolve real social and political contradictions. One only has to leaf briefly through a book on the constitutional law of the United States to see how our society generates contradiction and how the legal system attempts to generate resolution. Is a particular newspaper article "including military operations and secret diplomatic negotiations" of the United States in Indochina a violation of national security or is it an utterance privileged by the first amendment, protecting the public's right to know? (New York Times Co. v. United States; United States v. Washington Post Co. 403 U.S. 713 (1971)) Is there a right to privacy and does it conflict with a right to life? (Roe v. Wade, 410 U.S. 113 (1973)) Does the right to free speech require a university to make its facilities available to a student prayer group despite first amendment provisions requiring the separation of church and state? (Widmar v. Vincent, 454 U.S. 263 (1981)) All of these cases explore the limitations of rights, such as freedom of speech, freedom of religion, which we tend to think of as absolute and non-negotiable, in much the same way that Angelo thinks of Justice and Isabella of Mercy as absolute and non-negotiable. Yet, when two "absolute" principles collide, some accomodation has to be made. I have cited these specific controversies as examples, but the mere existence of a legal system implies that fundamental and potentially lethal conflicts and contradictions are at the base of any society. In Violence and the Sacred, Rene Girard gives a most cogent

account of what these subterranean forces are, and how they work. The problem, according to Girard, is that desire is mimetic:

Once his basic needs are satisfied (indeed, sometimes even before), man is subject to intense desires, though he may not know precisely for what. The reason is that he desires being, something he himself lacks and which some other person seems to possess. The subject thus looks to that other person to inform him of what he should desire in order to acquire that being. If the model, who is apparently already endowed with superior being, desires some object, that object must surely be capable of conferring an even greater plenitude of being. It is not through words, therefore, but by the example of his own desire that the model conveys to the subject the supreme desireability of the object.

We find ourselves reverting to an ancient notion -- mimesis -- whose conflictual implications have always been misunderstood. We must understand that desire itself is essentially mimetic, directed toward an object desired by the model.¹¹⁶

Thus begins the quest for status, power, material possessions, far in excess of what one needs for survival, which in turn leads to the pattern of competition, conflict, murder, and blood feud which characterizes the heroic society of early Europe, as set forth, for instance, in epics like Njal's Saga. Retaliation continues in the blood feud until a society is either destroyed or finds some way to stop the feud. The sacrifice of a scapegoat is one way in which primitive societies stop or at least control the feud;¹¹⁷ another is the erection of a legal system which, in its punishment of criminals, does not entirely abandon the rite of sacrifice. The objective of these early legal systems is not so much to do justice, but to preserve society from utter destruction. If the payment of wergild can appease the parties' sense of injured honor and stop the progression of a blood feud, it has served its

purpose, without regard to whether murders are punished or the exact value of stolen property recovered. Legal systems may grow to any degree of complexity, but at bottom, they are simply ways of controlling the energy of mimetic desire, of resolving the tensions and contradictions that threaten to wreck society.

When a legal system fails to perform this function, the result is akin to removing the control rods from the core of a nuclear reactor. This is the process that Shakespeare describes in 2 Henry VI. The object of mimetic desire in that play is, of course, the crown, possessed by Henry and coveted by York, Suffolk, Somerset, Margaret, and Beaufort. The growing manipulation of justice for the benefit of local warlords such as York and Suffolk, the political use of the courts, and the execution of Duke Humphrey, the last exponent of the rule of law, removes the last stop against a blood feud. "Equity is exiled," and the houses of York and Lancaster fight an on again, off again war for half a century. The Tudor restoration of order, as I have argued in the introduction, is, in the absolute sense, a myth. The Tudor regime was marked from the beginning by aristocratic ambition, popular rebellion and resistance, and the threat that a York or a Mortimer, a Perkin Warbeck or a Lambert Simnel, would assert a superior claim to the throne. Yet, in comparison to the fifteenth century, the Tudor restoration of order was a fact. Particularly under the administration of Thomas Cromwell, the English were able to establish a bureaucracy, a legal system, and more profoundly, an attitude toward the rule of law, that kept the lid on a boiling political pot for a remarkably long period of time.

Shakespearean drama, as Louis Adrian Montrose contends,¹¹⁸ provided its audiences with an opportunity to imaginatively confront the real social and political challenges of their age, and the trial scene, by its

very nature, made these contradictions explicit by embodying them in a dispute between two contending parties. In the particularized instance of interpreting a bond, one character could "stand for law," and the other for mercy; one for a mechanical and efficient administration of law, and another for a less predictable and efficient application of the "spirit" of the law. Confronted with these oppositions, the audience symbolically participated in the resolution of the trial, and in the process, modified its own attitudes about the proper relationship of justice and mercy, efficiency and fairness. As I have tried to demonstrate in my treatment of 2 Henry VI, this dramatic confrontation with contradiction did not necessarily result in a symbolic resolution. The Thump v. Horner trial and the Cade Rebellion episode raise issues which I believe are not only unresolved by the play, but in Tudor society never were resolved. Frederic Jameson's tendency is to relegate these unresolved contradictions to the realm of "the political unconscious"; the contradictions continue to exist as traces, cryptic textual markings on the literary artifact which neither audiences nor authors were aware of at the time, but which twentieth-century literary archeologists can decipher. Yet, given the multiplicity of interpretive languages available to Shakespeare and his audiences -- languages of Calvinist and Catholic resistance theory, languages of popular revolution contained in documents such as The Articles of the Commons of Kent, the language of Common Law theory on the limitation of monarchical power, and the language of fear manifested in personal letters and conduct books which advised their audiences to trust no one and to keep their mouths shut -- there is little reason to believe that the Elizabethans were less sophisticated than we in interpreting Shakespeare's plays or in recognizing their implications. I do not believe that any interpretation I have suggested in this dissertation is one which an

Elizabethan audience would have been linguistically or philosophically unequipped to obtain. Neither do I believe that they were less sophisticated theoretically than we are. In The Merchant of Venice, the fate of Lorenzo's dinner request to Launcelot Gobbo demonstrates a recognition of the arbitrary relation of signifier and signified -- and of the playful opportunities that arbitrariness creates -- more than 300 years before de Saussure, Derrida, or Barthes made their discoveries. And of course, that episode is but one example of Elizabethan appreciation that "a tricky word" (Merchant of Venice, III. v. 64) can be attached to one signified and then the next -- and then the next.

The history play as a genre, provides less ground for the symbolic resolution of social contradictions than do comedy or tragedy and 2 Henry VI, as one of the middle plays in a tetralogy of histories, is not positioned to bring about resolution. One might expect fuller resolution in Measure for Measure and The Merchant of Venice, but at most, these plays yield only a partial resolution of the contradictions which generate the central dramatic conflict. Both of these comedies are about the preservation of legal systems. The system of Vienna is being destroyed first through neglect and then through a merciless revival of laws that have slept "for nineteen zodiacs." The system of Venice is in danger of embarrassment because, in the case of Antonio, it threatens to produce an absurd and barbarous result. Even assuming that by the end of the play, these systems have been preserved or strengthened (and this is a very debatable assumption) the very affirmation of law implies the continuing existence of problems to be dealt with, for legal systems exist mainly to keep a lid on the potentially destructive boilings of mimetic desire. The Venetians still have their slaves and their Jews to spit upon. At the end of Measure for Measure, Vienna gets two, perhaps three,

problematic marriages and a Duke who still has not demonstrated a willingness to punish offenders.

The comedies pose the dilemma which any legal system faces when it struggles to achieve predictability through the uniform application of rules. On the one hand, predictability is absolutely necessary in a complex society where people make decisions based on the assumption that law will be interpreted and applied the same way tomorrow as it was yesterday. Also, if judges do not adhere to established principles, then there is no restraint on judicial power. The principle of stare decisis which prevents judges from ignoring precedents is the major legal obstacle which prevents individual judges from exercising tyrannical power. On the other hand, as Oliver Wendell Holmes noted, general principles don't decide concrete cases. And by this he meant that no set of general principles would ever be devised by which all cases could be judged fairly, for there would always arise some unanticipated situation to which application of the rules would yield an absurd result. Mark Kelman describes the problem as it continues to exist in the current debate over whether a legal system should be constructed of "rules" or more flexible "standards" (i.e., general policy statements) :

Rules are bad because they are underinclusive as to purpose, overinclusive as to purpose, or both. Any age of majority (for voting, contract, sexual consent) obviously is both under- and overinclusive as to purpose; some people below the age will be as capable and mature as the typical adult; some above the age will still be immature and incapable. Section 119 of the Internal Revenue Code is likewise both: some people required to live on an employer's premises don't radically devalue the receipt of these lodgings; some people who live near but not on the premises or feel constrained, though not contractually bound, to live on the premises will value these premises

far less than their market price. Rulelike definitions of attempt -- which allow the actor to go unpunished until he has taken the last possible step in his control -- or contract norms that leave a party unbound until there has been a mirror-image acceptance to his initial offer are predominantly underinclusive, though with some strain one might see their overinclusive aspects as well, for each fails to impose legal consequences on parties whom we might substantively wish faced such consequences. . . . Since standards are simply restatements of purpose, they cannot, in theory, be under- or overinclusive as to purpose, though of course they may be applied in a way that fails to meet the decision maker's purposes.

Standards are bad because they are subject to arbitrary and/or prejudiced enforcement. The unguided death penalty standard (which Furman ostensibly rejected but to which we have more or less returned) is arguably subject to both sorts of critique; it is probably arbitrarily enforced (in the sense that few claim to discern morally lucid patterns to death sentences) and probably prejudicially enforced (at least in discounting the value of protecting black victims, though probably not in executing disproportionate numbers of black defendants, except when rape was a capital crime). Rules, of course, are designed to permit little discretion; they ensure that people will perceive that they are treated uniformly, even if the dimension along which they have been treated uniformly strikes them as insignificant. . . . Standards are bad because they give people no clear warning about the consequences of their behavior. This leads both to the unfairness we associate with surprise and to the inefficiency we would expect when private parties are unable to plan.¹¹⁹ [underlining added]

In both Measure for Measure and The Merchant of Venice, the heroine urges the legal application of a standard (love) in place of the application of a rule (against fornication or in favor of literal interpretation

of contracts). The attractiveness of applying the standard is that it allows relatively innocent defendants, like Claudio and Antonio, to be spared. But the danger of merely relying on "love," or other broad standards, is that in the Christian courts of Venice, "love" may turn out to mean that Jews always lose their cases, or that in Vienna even unrepentant murders go free. The abstract juridical question the comedies present is how and whether a balance can be achieved between the contradictory strengths of legal rules and standards, and neither play oversimplifies the problem. Vienna is in danger because the laws have not been enforced, and desire threatens to bring about anarchy. In Venice, the very rigidity with which the law is enforced threatens the legitimacy of the system when Antonio stands to be executed. The plays demonstrate that society, and the law which makes society possible, depend on the unreliable human capacity to enforce the laws and maintain a precarious balance between rules of justice and standards of mercy. It is a balance which can never be captured and fixed by the enactment of written statutes, for the statutes can be ignored, or applied with such spiritless rigor and rigidity that the law is delegitimated and the way prepared for revolution. And the will to keep the balance can be lost. What happens after Portia returns to Belmont and Duke Vincentio returns to his palace? Do the Venetians treat Jews better? Do they free their slaves? Are the old days of lawlessness over in Vienna? The constraints of portraying reality, which one would normally associate with a history such as 2 Henry VI, cling to the endings of the comedies. Even at the end of The Merchant of Venice and Measure for Measure Vienna and Venice are still in danger for the breach of law. It is a danger which in Shakespeare's plays, and in the world outside the theater, can never be completely resolved.

Notes

Introduction

¹ Sir Thomas Elyot, The Boke Named The Governour, ed. Henry Herbert Stephen Croft (New York: Burt Franklin, 1967) 25.

² Sir Thomas Smith, De Republica Anglorum (Menston, England: The Scholar Press Ltd., 1970) 47.

³ Sir Thomas Smith, 47-8.

⁴ While at the Folger Shakespeare Library participating in Professor Linda Levy Peck's seminar, "Kings, Courtiers and Judges, Political Thought in Early Jacobean England," Professor Peck and I found that we had both begun the studies we were working on by examining the metaphor of the king as "fountain." Professor Peck was examining the metaphor in its application to the King as a source or fountain of bounty, i. e., patronage.

⁵ William Hughes, "The Diversity of the Courts and Their Jurisdictions," The Mirrour of Justices (1903; New York: August M. Kelley, 1968) 291.

⁶ Francis Bacon, Essays (Harmondsworth, England: Penguin Books, Ltd. 1985) 222-225.

⁷ Sir Robert Phelips, in Wallace Notestein, et al., Commons Debates 1621 7 vols. (New Haven: Yale University Press, 1935) 2: 239.

⁸ Francis Bacon, The Letters and the Life of Francis Bacon, ed. James Spedding, 7 vols. (London: Longmans, Green, Reader and Dyer, 1872) 6: 303.

⁹ William Lambarde, Archeion, or A Discourse upon the High Courts of Justice in England, eds. Charles H. McIlwain and Paul L. Ward (Cambridge, Mass.: Harvard University Press, 1957) 66.

¹⁰ William Lambarde, 141-2.

¹¹ Sir Walter Raleigh, The History of the World (London: G. Latham &

R. Young, 1634) 153.

¹² J. A. Sharpe, Crime in Early Modern England 1550-1750 (London: Longman, 1984); John Brewer and John Styles, eds., An Ungovernable People: The English and Their Law in the Seventeenth and Eighteenth Centuries (London: Hutchinson University Library, 1980); Anthony Fletcher and John Stevenson, eds., Order and Disorder in Early Modern England (Cambridge, England: Cambridge University Press, 1985); J. S. Cockburn, A History of English Assizes, 1558-1714 (Cambridge, England: Cambridge University Press, 1972); E. P. Thompson, Whigs and Hunters: The Origin of the Black Act (London: Penguin Books Ltd., 1975).

¹³ Fletcher and Stevenson, 15.

¹⁴ Brewer and Styles, 13-14.

¹⁵ Bryce Lyon, A Constitutional and Legal History of Medieval England (New York: W. W. Norton & Co., 1980) 322.

¹⁶ Raphael Holinshed, Chronicles (London: J. Johnson, 1807-8).

¹⁷ Holinshed, Chronicles, *supra*; William Camden, Annales, 3rd ed., (London: Benj. Fisher, 1635); John Stow, The Chronicles of England (London: Richard Tottle and Harry Binneman, 1580); Edward Hall, The Union of the Two Noble and Illustre Famelies of Lancaster & York (London: J. Johnson, et al., 1809).

¹⁸ Arthur Freeman, introduction, Henry VI, Part Two (New York: New American Library, 1986) xxxii. Freeman summarizes the political constraints on Shakespeare and his contemporaries, but despite his caution in attributing conservative political views to Shakespeare, I do not believe that he is cautious enough:

Episodes like Cade's rebellion and the rising of the masses in Sir Thomas More . . . were composed under strict scrutiny, and

carefully reviewed by the Master of the Revels or his staff before production could be permitted. Change a scene, omit a scene, and shorten an address, "and not otherwise, at your own peril," warns Edmund Tilney in his holograph comment extant on the manuscript of Sir Thomas More: the recommendations of the authorities are specific, censorious, and peremptory.

Nothing in Shakespeare's career or works suggests that he might find conscientious compliance with such strictures difficult. In fact the implicit conservatism of his political attitudes, so far as we can isolate them (a dangerous attempt, when speech and character must sometimes be separated), made him ideal for the job of rewriting a questioned passage of More, and evidently quite at ease in the matter of Cade.

The problem with Freeman's statement is that it commits the formal fallacy known as the argumentum ad ignoratium -- the argument from ignorance. Lack of evidence to the contrary of a position is not evidence of that position, and lack of evidence to the contrary that Shakespeare was a conservative, in the dangerous environment that Freeman fairly describes, certainly does not support the implication that Shakespeare was a conservative. (And of course, one can question whether the ahistorical label "conservative" has any meaning in application to the politics of Tudor or Stuart England.) There is, however, evidence of continual concern, in Shakespeare's drama, with the fairness of trials. Why does Shakespeare come back to this issue again and again? It seems reasonable to infer that the issue interested him and his audience and that the reason for that interest stemmed from broader social concerns.

¹⁹ Buchanan Sharp, In Contempt of All Authority: Rural Artisans and Riot in the West of England, 1586-1660 (Berkeley: University of California Press, 1980) 50-3.

²⁰ E. M. W. Tillyard, The Elizabethan World Picture (New York: Vintage Books, 1961) vii.

²¹ Jonathan Dollimore, "Shakespeare, Cultural Materialism, and the New Historicism," Political Shakespeare: New Essays in Cultural Materialism, eds. Jonathan Dollimore and Alan Sinfield (Ithaca: Cornell University Press, 1985) 5.

²² Stephen Greenblatt, introduction, The Power of Forms in the English Renaissance (Norman, Oklahoma: Pilgrim Books, 1982) 5.

²³ E. M. W. Tillyard, Shakespeare's History Plays (London: Chatto & Windus, 1964) 4.

²⁴ Fletcher and Stevenson, 2.

²⁵ Dollimore, 6.

²⁶ Lawrence Stone, The Family, Sex and Marriage in England 1500-1800 (London: Weidenfeld and Nicholson, 1977) 653-4, as quoted in Dollimore, 5.

²⁷ J. P. Sommerville, Politics and Ideology in England, 1603-1640 (New York and London: Longman, 1986) 9.

²⁸ Penry Williams, The Tudor Regime (Oxford: The Clarendon Press, 1979) 140.

²⁹ Williams, 140.

³⁰ Williams, 140-1.

³¹ John Pound, Poverty and Vagrancy in Tudor England (London and New York: Longman, 1971) 25.

³² Pound, 26.

³³ Buchanan Sharp, 10.

³⁴ Margaret Spufford, "Puritanism and Social Control," in Fletcher and Stevenson, 41-2.

³⁵ J. A. Sharpe explains the concept of "social crime" as follows:



Awareness of the existence of popular notions of legality and legitimacy, at odds with those of officialdom, has given rise to the concept of 'social crime'. Crime, according to the classic formulation of this concept, can be regarded as social when it represents 'a conscious, almost a political, challenge to the prevailing social and political order and its values'. It occurs when there exist conflicting sets of official and unofficial interpretations of the legal system, when acts of law-breaking contain clear elements of social protest, or when such acts are firmly connected to the development of social and political unrest. (122)

- ³⁶ John Bellamy, The Tudor Law of Treason: An Introduction (London: Routledge & Kegan Paul, 1979) 12.
- ³⁷ Bellamy, 48.
- ³⁸ Lacey Baldwin Smith, Treason in Tudor England: Politics and Paranoia (London: Jonathan Cape, 1986) 1.
- ³⁹ Bellamy, 93-4.
- ⁴⁰ Bellamy, 181.
- ⁴¹ Bellamy, 171.
- ⁴² Bellamy, 161.
- ⁴³ Bellamy, 142.
- ⁴⁴ R. Persons, "The Jesuits Memorial for the Intended Reformation of England under their First Popish Prince," (London, 1690) as quoted in Bellamy, 142.
- ⁴⁵ Ann Jennalie Cook, The Privileged Playgoers of Shakespeare's London, 1576-1642 (Princeton, N. J.: Princeton University Press, 1981) ix.
- ⁴⁶ Cook, ix.
- ⁴⁷ For example, Mark Kelman, A Guide to Critical Legal Studies (Cambridge, Mass.: Harvard University Press, 1987); Roberto Mangabeira Unger, The Critical Legal Studies Movement (Cambridge, Mass.: Harvard

University Press, 1983); Duncan Kennedy, "The Structure of Blackstone's Commentaries," 28 Buffalo Law Review 205 (1979).

⁴⁸ "Trial," Black's Law Dictionary. 1979 ed.

Chapter 1

¹ E. M. W. Tillyard, Shakespeare's History Plays (London: Chatto & Windus, 1964).

² Lily B. Campbell, Shakespeare's Histories: Mirrors of Elizabethan Policy (San Marino, California: The Huntington Library, 1965).

³ J. P. Brockbank, "The Frame of Disorder -- Henry VI," Shakespeare, The Histories: A Collection of Essays, ed. Eugene M. Waith (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1965).

⁴ M. M. Reese, The Cease of Majesty: A Study of Shakespeare's History Plays (New York: St. Martin's Press, 1961).

⁵ David Riggs, Shakespeare's Heroical Histories: Henry VI and Its Literary Tradition (Cambridge, Mass.: Harvard University Press, 1971).

⁶ See Jonathan Dollimore and Alan Sinfield, eds., Political Shakespeare: New Essays in Cultural Materialism (Ithaca: Cornell University Press, 1985); John Drakakis, Alternative Shakespeare's (London: Methuen, 1985).

⁷ David Norbrook, "Macbeth and Historiography," The Politics of Discourse: The Literature and History of Seventeenth-Century England, eds. Kevin Sharpe and Steven Zwicker (Berkeley: University of California Press, 1987) 78-9.

⁸ J. P. Sommerville, Politics & Ideology in England 1603-1640 (London: Longman, 1986) 88.

⁹ Thomas Smith, De Republica Anglorum, The Tudor Constitution, ed.

G. R. Elton, 2nd ed. (Cambridge, England: Cambridge University Press, 1982)

14.

¹⁰ Sommerville, 90.

¹¹ Sommerville, 90.

¹² John Aylmer, An Harborowe for Faithful and True Subjects against the Late Blown Blast concerning of Government of Women, paraphrased by G. R. Elton, The Tudor Constitution: Documents and Commentary, 2nd ed. (Cambridge, England: Cambridge University Press, 1982) 16.

¹³ Sommerville, 103.

¹⁴ See George W. Keeton, Shakespeare's Legal and Political Background (London: Sir Isaac Pitman & Sons, Ltd., 1967) and A. Wigfall Green, The Inns of Court and Early English Drama (New Haven: Yale University Press, 1931).

¹⁵ Lily B. Campbell, 214-5.

¹⁶ William Camden, Annales (London: H. Lowne for B. Fisher, 1625) 1: 14.

¹⁷ John Bartlett, Barlett's Familiar Quotations, ed. Emily Orison Beck, 15th ed. (Boston: Little, Brown & Company, 1980) 181.

¹⁸ This phrase is Linda Levy Peck's, from her lectures at the 1988 Folger Shakespeare Library seminar, "Kings Courtiers and Judges: Early Jacobean Political Thought."

¹⁹ The Church of England. "Sermon Against Wilfull Rebellion," Certaine Sermons or Homilies Appointed to be Read in Churches In the Time of Queen Elizabeth I (1547-1571) (1623; Gainesville, Florida: Scholars' Facsimilies & Reprints, 1968) 280.

²⁰ Sommerville, 11.

²¹ Sommerville, 10.

²² See David Norbrook, "Macbeth and the Politics of Historiography," Politics of Discourse: The Literature and History of Seventeenth-Century England, eds. Kevin Sharpe and Steven Zwicker (Berkeley: University of California Press, 1987) 21-34.

²³ James I., Basilikon Doron, The Political Works of James I., ed. Charles McIlwain (Cambridge, Mass.: Harvard University Press, 1918) 40.

²⁴ Since it is unlikely that Shakespeare's audiences could have been exposed to performances based on modern, conflated editions of the plays, I have referred in all instances to Quarto (in this case, Q1 of 1594, rather than Q2 of 1600) and Folio versions of Shakespeare's playscript. References to Quarto are indicated by quire letter, page number, and whether the passage is on the front (recto -- "r") or back (verso -- "v") of that particular page. References to Folio are indicated by genre (H, for History) and by the page number within that genre section of the Folio.

For Quarto, I am using The First Part of the Contention of the Two Famous Houses of Yorke & Lancaster (London: T. Millington, 1594; Malone Society Reprints, 1985).

For Folio, I am using Mr. William Shakespeares Comedies, Histories & Tragedies (London: 1623; Yale University Press, 1954).

²⁵ The theory that divine retribution especially attached to rebels was drummed into the populace through the official Elizabethan sermon book, from which the clergy was required to read every Sunday and Holy Day. The 1547 version of this book, first published under Edward VI, suppressed under Mary, and then revived under Elizabeth, contained Cranmer's sermon "An Exhortation to Obedience." It was nine pages long and divided into three parts for readings at successive services. The 1571 version, entitled "An Homily Against Disobedience and Wilfull Rebellion," published in response to

the Northern Rebellion of 1569, was a forty-six page expansion of the previous sermon, divided into five parts, with a prayer following each, petitioning God to keep the realm safe from rebellion. One of the most significant themes of these sermons was that the punishment of traitors would not be delayed to an afterlife: "For treason will not bee hid, treason will out at length. God will haue that most detestable vice both opened and punished, for that it is so directly against his ordinance, and against his high principall judge and anoynted in earth." (Part Three of "An Exhortation concerning Good Order and Obedience," p. 69.) In 2 Henry VI (III. iii.) Cardinal Beaufort becomes a standard Elizabethan example for God's punishment of traitors on earth.

In G. M. Trevelyan, England Under the Stuarts (New York: G. Putnam's Sons, 1946) 49, Trevelyan argues for the virtual unanimity of belief in divine retribution:

From the time Marlowe's death in a tavern brawl had illustrated God's judgment on the impious, till the rise of 'Mr Hobbes the Atheist' to notoriety, there was scarcely one known sceptic in the island, [and although medieval belief in miracles had mainly passed away] the Puritan believed in the secret management of human affairs by Providence, in ways that the godless might lightly attribute to chance. Angels did not visit his house, but he recognised a judgment if he fell off his horse, and a 'mercy' if his ship returned safe from Ternate.

Anthony Fletcher and John Stevenson, in Order and Disorder in Early Modern England, p. 23 state the opposite view: "The mass of the people were never persuaded to see life's travails in terms of the workings of God's providence or to accept the link between sin and misfortune that was so central to protestant theology."

²⁶ Raphael Holinshed, Chronicles, 3 vols. (London: J. Johnson, 1807-8) 3: 218.

²⁷ Rene Girard, Violence and the Sacred (Baltimore: Johns Hopkins University Press, 1972); the entire book explores the concept of "mimetic desire" and the violence it generates.

²⁸ R. L. Storey, The End of the House of Lancaster (London: Barrie and Rockcliff, 1966) 8.

²⁹ Holinshed, 222-3; also in John Stow, The Chronicles of England (London; Richard Tottle and Harry Binneman, 1580) 641-2.

³⁰ Holinshed, 221.

³¹ Stow, 640.

³² Karl Zeumer, ed., Formulae Merowingici et Karolini aevi (Hanover, Germany, 1886) 700-1; as quoted by Robert Bartlett, Trial by Fire and Water: The Medieval Judicial Ordeal (Oxford: Clarendon Press, 1986) 1.

³³ Bartlett, 121.

³⁴ Bartlett, 118.

³⁵ Most current historians caution against using the word "class" in reference to the Tudor/Stuart social structure. I agree with them, and will use the word only to refer to a "category" of people which, for whatever reason, can be thought of as having a group identity or cohesiveness.

³⁶ Steven R. Smith, "The London Apprentices as Seventeenth-Century Adolescents," Past and Present 61 (1973): 149.

³⁷ Smith, 151.

³⁸ Anthony Fletcher and John Stevenson, Order and Disorder in Early Modern England (Cambridge, England: Cambridge University Press, 1985) 2.

³⁹ Smith lists the following (p. 151-2):

William Vaughn's The Golden Grove, Lewis Bayly's The Practice of Piety, William Whately's A Bride-Bush, William Gouge's Of Domestical Duties, Thomas Carter's Christian Commonwealth, John Dod's and Robert Cleaver's A Godly Form of Household Government, William Ames's Conscience with the Power and Cases Thereof, Thomas Hilder's Conjugal Counsel, Robert Abbot's A Christian Family Builde by God, and Richard Allestree's The Whole Duty of Man.

⁴⁰ Smith, 152.

⁴¹ Smith, 150.

⁴² Smith, 157.

⁴³ Smith, 156.

⁴⁴ Fletcher and Stevenson, 33.

⁴⁵ Penry Williams, The Tudor Regime (Oxford: Clarendon Press, 1979)

328-9.

⁴⁶ Lacey Baldwin Smith, Treason in Tudor England, Politics and Paranoia (London: Jonathan Cape, 1986) 44.

⁴⁷ John Stow, The Annales of England (London, 1615) 385.

⁴⁸ Edward Hall, The Union of the Two Noble and Illustre Families of Lancaster and Yorke (London: R. Grafton, 1548), quoted in Geoffrey Bullough, Narrative and Dramatic Sources of Shakespeare (London: Routledge and Kegan Paul, 1966) 3: 105.

⁴⁹ Rafeal Holinshed, Chronicles of England, Scotland and Ireland. 6 vols. (London: J. Johnson, 1808) 3: 210.

⁵⁰ John Stow, The Annales of England (London, 1615) 385.

⁵¹ Ann Jennalie Cook, The Privileged Playgoers of Shakespeare's London, 1572-1642 (Princeton, N. J.: Princeton University Press, 1981).

⁵² Joel Altman, The Tudor Play of Mind (Berkeley: University of California Press, 1978) 3.

⁵³ John Henry Wigmore, quoted in J. W. Ehrlich, The Art of Cross-Examination (New York: G. Putnam's Sons, 1970) 96.

⁵⁴ Quintillian, Institution Oratio, ed. H. E. Butler (New York: G. P. Putnam's Sons, 1921) 183.

⁵⁵ Abraham Fraunce, The Lawiers Logike, Exemplifying the Praecepts of Logike by the Practise of the Common Lawe (London: W. How, 1588) 120.

⁵⁶ John Foxe, Foxe's Book of Martyrs, quoted by Arthur Freeman, ed., Henry VI, Part 2 (New York: Signet, 1967) 189.

⁵⁷ See Mark Kelman, A Guide to Critical Legal Studies (Cambridge, Mass.: Harvard University Press, 1987) 242-268 on the various ways law is used to preserve class distinctions.

⁵⁸ See Ralph A. Griffiths, "The Trial of Eleanor Cobham: An Episode in the Fall of Duke Humphrey of Gloucester," Bulletin of the John Rylands Library 51 (1969) 381-99.

⁵⁹ John Stow, The Annales or Generall Chronicle of England (London: 1615) 381: "There was taken also Margery Gurdemaine a witch of Eye besides Westminster, whose sorcerie and witchcrafte the said Elianor hadde long time used, and by her medicines & dringes enforced the Duke of Glocester to loue her, and after to wedde her. . . ."

⁶⁰ [Pseudo] Cicero, Ad Herrennium, ed. Harry Caplan (Cambridge, Mass.: Harvard University Press, 1981) 63.

⁶¹ [Pseudo] Cicero, 65.

⁶² Thomas Smith, De Republica Anglorum, ed. Mary Dewar (Cambridge, England: Cambridge University Press, 1982) 53.

⁶³ For example, consider Artegall's disbursement of the crowd and killing of the giant in The Faerie Queene, Book V, Canto II, 30-54.

⁶⁴ See C. L. Barber, Shakespeare's Festive Comedy (Cleveland: World

Publishing Co., 1963) 14:

The scenes of the Jack Cade rebellion . . . are an astonishingly consistent expression of anarchy by clowning: the popular rising is presented throughout as a saturnalia, ignorantly undertaken in earnest; Cade's motto is: "then are we in order when we are most out of order" (IV. iii. 199). In the early plays, the clown is usually represented as oblivious of what his burlesque implies. When he becomes the court fool, however, he can use his folly as a stalking horse, and his wit can express directly the function of his role as a dramatized commentary on the rest of the action.

As Barber notes, Cade himself may be oblivious of how his clowning comments on the main action. I would still argue, however, that Cade performs the function of a stalking horse, his own foolishness mirroring the foolishness of the nobles.

⁶⁵ See Penry Williams, The Tudor Regime (Oxford: Clarendon Press, 1979) 162-3.

⁶⁶ For Rene Girard's definition of "mimetic desire," see pp. 239-40 of this dissertation.

⁶⁷ Rodney Hilton, Bond Men Made Free: Medieval Peasant Movements and the English Rising of 1381 (New York: Viking Press, 1973) 194-5.

⁶⁸ Hilton, 226-7.

⁶⁹ Robert Weimann, Shakespeare and the Popular Tradition in the Theater: Studies in the Social Dimension of Dramatic Form and Function, ed., Robert Schwartz (Baltimore: The Johns Hopkins University Press, 1978) 240.

⁷⁰ Leah Marcus, The Unease of Topicality, unpublished MS.

⁷¹ For Weimann's core discussion of platea and locus see Weimann, 73-85.

⁷² Christopher Hill, The World Turned Upside Down (Harmondsworth,

England: Penguin Books, Ltd., 1985) 35.

⁷³ Lawrence Stone, The Crisis of the Aristocracy, 1558-1641 (Oxford: Clarendon Press, 1965) 66-71.

⁷⁴ Stone, 66-67.

⁷⁵ Stone, 120:

During the long years of the Interregnum a number of royalists looked back over the history of the previous half-century to try to discover how it was that the institution of monarchy had fallen into such disrepute. Without exception they all agreed in laying great emphasis upon the sale of honours. . . .

. . . Gervase Holles thought 'that way of merchandise. . . was one cause (and not the least) of [the] misfortunes . . . of our last-martered King.' Sir Edward Walker thought the same: 'It may be doubted whether the dispensing of honours with so liberal (I will not say unconsiderate) a hand, were not one of the beginnings of general discontents, especially amongst persons of great extraction.' The Marquis of Newcastle saw a direct chain of causation. First, 'so manye begerlye people [were] made greate Lordes and Ladies in title thatt weare nott able to keepe upp the dignetye off itt' that respect for the peerage declined; and then, once 'Noble-men were pulde doune, which is the foundation off monarkeye -- monarkeye soone affter fell'.

⁷⁶ David Cressy, Literacy and the Social Order: Reading and Writing in Tudor and Stuart England (Cambridge, England: Cambridge University Press, 1980) 17.

⁷⁷ Cressy, 1.

⁷⁸ Douglas Bush, The Renaissance and English Humanism (Toronto: The University of Toronto Press, 1939) 65.

⁷⁹ Hill, 36.

⁸⁰ Set forth by Conrad Russell, The Crisis of Parliaments: English

History 1509-1660 (London: Oxford University Press, 1971) 1.

⁸¹ Andrew S. Cairncross, ed., 2 Henry VI (London: Methuen, 1965)

125. See footnote 45 of on p. 125 of Cairncross edition.

⁸² Anthony Fletcher, Tudor Rebellions (London: Longmans, 1968)

110-11.

⁸³ E. P. Thompson, Whigs and Hunters (New York: Pantheon Books, 1975) 259.

⁸⁴ Thompson, 262-3.

⁸⁵ For a definition of "ideal comedy," see Douglas Peterson, "The Tempest and Ideal Comedy," Shakespearean Comedy, ed. Maurice Charney (New York: New York Literary Forum, 1980): 99-110. Paraphrasing Peterson:

Ideal comedy is persuasive rather than dissuasive. It is devoted to the depiction and praise of exemplary instances of virtue. Dangers to life, moreover, are not only common to its action; they constitute the difficulties that must be overcome for the action to end happily and are therefore definitive. They are manifestations of the forces that in a fallen world pose a constant threat to the well-being, and even the survival of its inhabitants. The happy ending won through virtuous action is, therefore, a celebration of the victory of life over evil and its wages which is possible for all men. . . .

Ideal comedy. . . is a drama of the ethically possible. While acknowledging things as they are, it depicts things as they can and ought to be. (p101-3)

Chapter Two

¹ Geoffrey Bullough, ed., Narrative and Dramatic Sources of Shakespeare 8 vols. (London: Routledge and Kegan Paul, 1961) 1: 446.

² Bullough, I, 445-514. See also Bernard Grebanier, The Truth About Shylock (New York: Random House, 1962), which contains a good chapter on the history of the pound of flesh story: "This Bond is Forfeit: The Pound of Flesh Story." pp 97-145.

³ Ralph Berry, Shakespeare's Comedies: Explorations in Form (Princeton, N. J.: Princeton University Press, 1972) 111: "We can view the play as a potentially subversive study of human relationships mediated by money."

⁴ For my purposes, the Quarto and Folio versions of The Merchant of Venice are not significantly different. Therefore, I have used the edition of The Merchant of Venice contained in Alfred Harbage, ed., William Shakespeare, The Complete Works (New York: Viking Press, 1969).

⁵ See Lawrence Stone, The Crisis of Aristocracy (Oxford: Clarendon Press, 1965) 39-49, on the peerage's concept of honor.

⁶ Frank Kermode, "Some Themes in the Merchant of Venice," Twentieth Century Interpretations of the "Merchant of Venice": A Collection of Critical Essays, ed. Sylvan Barnet (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1970) 98.

For a somewhat divergent view see, Bernard Grebanier, The Truth About Shylock (New York: Random House, 1962) 120. Grebanier argues, that "Morocco's choice of the gold casket is neither a greedy one nor a worldly one. It is based upon a thoroughly decent and romantic veneration for Portia herself." Grebanier bases his argument on the following passage:

Is't like that lead contains her? -- 'Twere damnation
 To think so base a thought. It were too gross
 To rib her cerecloth in the obscure grave.
 Or shall I think in silver she's immur'd,
 Being ten times undervalu'd to tried gold?
 O sinful thought! never so rich a gem
 Was set in worse than gold. (II. vii. 49-55)

These lines indeed seem to be a proper allegorical association of gold with the incomparable Portia. Morocco's interpretation is not unreasonable, nor does it reflect a greedy personality. But the interpretation which Portia's father exerts ("All that glisters is not gold . . .") is equally reasonable, which confirms the arbitrary nature of merely literal interpretation. Morocco's forgivable mistake is that he tries to associate a casket with Portia, when he should be trying to associate caskets and inscriptions with the character of a worthy suitor.

⁷ H. B. Charleton in Shakespearian Comedy (New York: The Macmillan Co., 1938) 147-8.

⁸ There is also no doubt that the bond would be unenforceable for reasons of public policy. One cannot enforce a contract to do an illegal act, i. e. murder. See A. H. Marsh, History of the Court of Chancery and of the Rise and Development of the Doctrines of Equity (Toronto: Carwell & Co., Publishers, 1890) for an analysis of how the bond would have been treated by an English court of equity, p. 116:

A very amusing and at the same time instructive report of an appeal from the judgment of Portia in the action of Shylock v. Antonio is to be found in 5 Albany Law Journal 193, where it is plainly shown that upon Common Law principles the judgment of Portia is wrong in almost every particular, and that the bond itself was void as being contrary to the policy of the law. But even though the bond had been perfectly good and valid, Equity

would have afforded relief to the defendant upon the ground that the bond was given as security for the payment of money, and that in Equity the time named by such security for the payment of the money is never of the essence of the contract, and that payment of the amount secured, together with interest and costs, if any, will operate as a satisfaction of the bond if made or tendered at any time before final judgment in an action.

I think that Marsh could be a little more charitable toward Portia, since the third ground of her ruling implies that the contract in fact does violate a statute, and is therefore void. Also, comparing the legal reasoning of Shakespeare's plays with how the cases he proposes would actually be decided has its limitations. These limitations are addressed by Lawrence Danson, The Harmonies of "The Merchant of Venice" (New Haven: Yale University Press, 1978) 82-3:

It is a pedagogical truism that all drama involves conflict. Any resolution therefore implies some judgment on the issues in the conflict. But when a court of law stands at the center of the drama, certain peculiarities may result. The abstract, theoretical issues behind the fiction's particular conflict may become more prominent than in other drama -- especially if, as in The Merchant of Venice, the bare facts of the case are not in dispute. Thus forensic drama may be a curious and often a disturbing combination of the minutely and realistically particular -- the legal intricacies, that is, of this case -- and of the universal. Such drama easily tends toward the didactic and allegorical, for in any court of law the individual is judged according to standards that pertain to all: in a sense, the One inevitably stands for the Many. . . . In such plays we are asked to judge not only the resolution of the particular issues in the conflict, but the means by which that resolution is achieved and the standards implied by those means. Forensic drama tends to be a self-conscious drama, allowing us, through the metaphor of the courtroom, to glimpse its own judgmental principles.

One may therefore applaud the following typical trumpet

blast by E. E. Stoll: "The juristic disquisitions of the Germans on the issue [of legal procedure] in The Merchant of Venice are among the most misguided and wasted of human exertions," without, however, agreeing with the statement it amplifies: "Law in Shakespeare is, save for phrases and incidental matters or what is taken out of the novel or chronicle he is dramatizing, nothing but stage law." The dismissive "nothing but" short-circuits the real question. Historical research into the laws of contemporary England or Venice may indeed yield little of value; but the nature of Shakespeare's "stage law" is not something to be taken for granted. Precisely because this "stage law" cannot be found codified in the statutes of any realm it is of special interest to us; and at those points where Shakespeare's stage courtroom fails to correspond to what we know of the procedures of any other courtroom we must ask why Shakespeare, especially in that notoriously litigious time, has wrested his fiction away from historical verisimilitude.

The reason, I would speculate, that Shakespeare deviates from contemporary law and procedure in The Merchant of Venice is so that reality does not become an obstacle to exploring issues of real importance, such as the relationship between Old Law and New, Justice and Mercy, Law and Equity. By sharpening the distinctions between these ideas in the trial scene of Act IV, Shakespeare is able to raise issues of fundamental importance about the less sharply opposed (but significantly opposed) contemporary legal system's of Law and Equity.

⁹ R. H. Tawney, Religion and the Rise of Capitalism: A Historical Study (New York: Harcourt, Brace and Company, 1926) 39-40.

¹⁰ The Holy Bible, King James Version (Philadelphia: National Bible Press, 1958):

Deuteronomy 23: 19-20: "Thou shalt not lend upon usury to thy brother; usury of money, usury of victuals, usury of any thing that is lent upon usury: Unto a stranger thou mayest lend upon usury; but unto they

brother thou shalt not lend upon usury: that the Lord thy God may bless thee in all that thou settest thine hand to in the land whither thou goest to possess it."

Exodus 22: 25: "If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shalt thou lay upon him usury."

Leviticus 25: 35-7: "And if thy brother be waxen poor, and fallen in decay with thee; then thou shalt relieve him: yea, though he be a stranger, or a sojourner; that he may live with thee. Take thou no usury of him, or increase: but fear thy God; that thy brother may live with thee. Thou shalt not give him thy money upon usury, nor lend hm thy victuals for increase."

¹¹ Tawney, Religion and the Rise of Capitalism, 37.

¹² R. H. Tawney, introduction, A Discourse Upon Usury, by Thomas Wilson (New York: Augustus Kelley, 1963) 130.

¹³ E. C. Pettet notes in "The Merchant of Venice and the Problem of Usury," Twentieth Century Interpretations of the "Merchant of Venice": A Collection of Critical Essays, ed. Sylvan Barnet (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1970) 101:

By the time Shakespeare was writing his plays the feudal aristocracy had come to feel the full pinch of the century's momentous economic developments. With wealth derived mainly from the land and with their hands tied to some extent by conservative modes of land tenure, members of this class were finding it extremely difficult to adjust themselves to the steep and continuous rise in prices and to the greatly increased wealth of business classes.

R. H. Tawney, in his introduction to Wilson's A Discourse Upon Usury, paints an even bleaker picture:



To the reader who looks at their [the aristocracy's] situation in the light of cold figures, the surprising thing is that some of them survived at all. For their debts were not seldom overwhelming. Consider for example, the picture drawn in some of the personal correspondence, mostly addressed to Lord Burghley and Sir Robert Cecil, of the last twenty years of the sixteenth century. The Duke of Norfolk owes £6,000 to £7,000; the Earl of Huntingdon £20,000, the Earl of Essex between £22,000 and £23,000, Viscount Bindon £4,000, the Earl of Leicester (it is reported) about £59,000, Sir Francis Willoughby (who had spent £80,000 in building Wollaton House) £21,000, Sir Percieval Willoughby £8,000, Sir Phillip Sidney over £6,000, Lord Sandys £3,100, Sir H. Parke £4,600. . . . Lord Vaux of Harrowden has been forced to pawn his parliament robes "to a citizen where I have offered large interest," and subscribes himself "the unfortunatest Peer of parliament for poverty that ever was." (pp. 32-3)

¹⁴ The Jews were officially banished from England by Edward the Confessor in 1290 and were not officially readmitted into the country until 1655 under Cromwell. Grebanier, pp. 30-1, addresses the issue of whether there was a Jewish population in England during the time of Shakespeare:

It has . . . been maintained that in the sixteenth century, after the expulsion of the Jews from Spain and Portugal, a few Jews filtered into England and there secretly founded a small colony. On the other hand, we are told with equal authority: "In Elizabethan and early Stuart England no unconverted Jews were known to be living." Some modification of such a statement is implicit in the insistence of other historians that when Jews became converted it was only for the purpose of avoiding exile, that secretly they practiced their own religion. It is not important for our purposes to decide among these conflicting claims. Allowing for the existence of some Jews in Elizabethan England, either through secret immigration or under the masquerade of pretended conversion to Christianity, the number must have been insignificant. Officially the Jews were

not there. There is perhaps some point to the observation of Holmes concerning their position in Shakespeare's day: "The race had become unfamiliar and exotic"; it was therefore possible "to believe anything of it without any particular ill-feeling." His analogy is with the fashion for peopling early twentieth-century popular novels with sinister Chinese villains, without there having been any real prejudice against the Chinese. The almost total (or actual) absence of Jews from Shakespeare's England may indeed have resulted, as Cardozo has impressively proved, in the word "Jew" being used loosely for anyone outside the pale of accepted respectability -- dissenters, foreigners, Christian usurers.

¹⁵ Grebanier, 45.

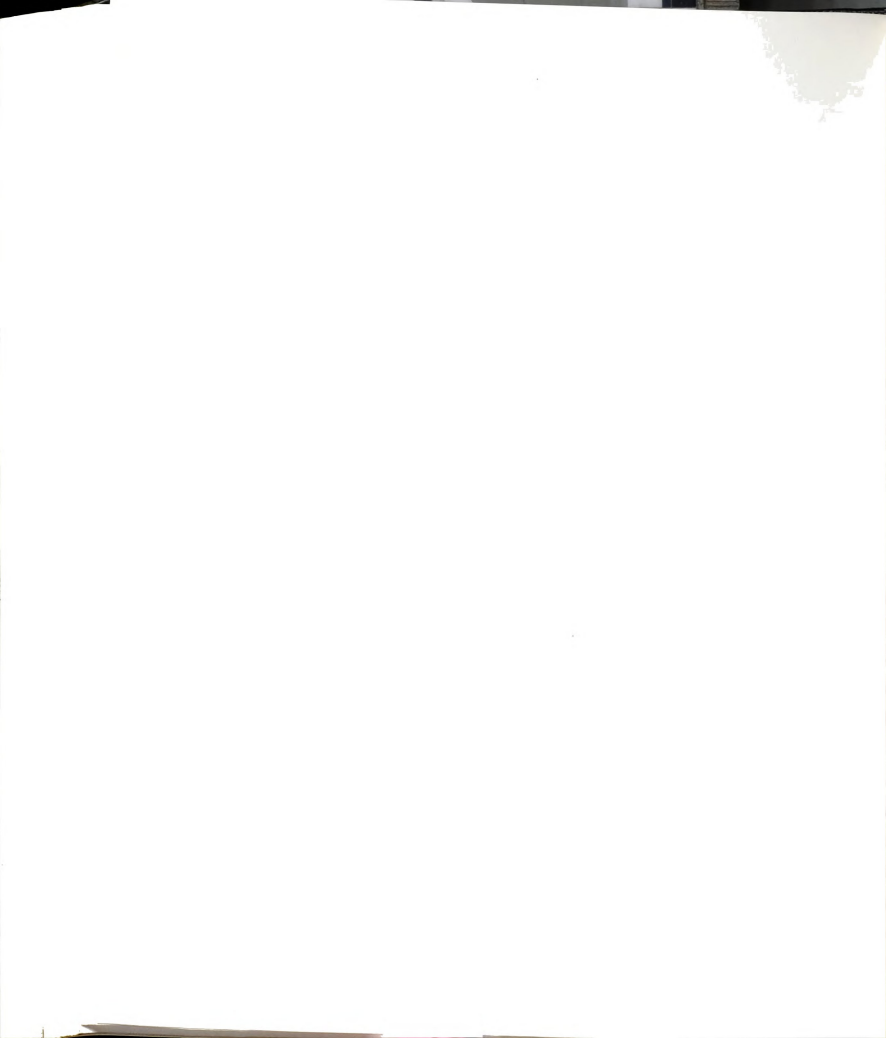
¹⁶ Tawney, Introduction to Wilson's A Discourse Upon Usury, pp. 16-70.

¹⁷ Bible, Romans 8: 1-2: "There is therefore now no condemnation to them which are in Christ Jesus, who walk not after the flesh, but after the Spirit. For the law of the Spirit of life in Christ Jesus hath made me free from the law of sin and death."

Romans 13: 8, 10: "Owe no man any thing, but to love one another: for he that loveth another hath fulfilled the law. . . . Love worketh no ill to his neighbor: therefore love is the fulfilling of the law."

Galatians 5: 1, 14, 18: "Stand fast therefore in the liberty wherewith Christ hath made us free, and be not entangled again with the yoke of bondage. . . . for all the law is fulfilled in one word, even in this; Thou shalt love thy neighbour as thyself. . . . If ye be led of the Spirit, ye are not under the law."

¹⁸ Nevill Coghill, "The Theme of The Merchant of Venice," Twentieth Century Interpretations of the "Merchant of Venice": A Collection of Critical Essays, ed. Sylvan Barnet (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1970),



110: "The play can be seen as a presentation of the theme of Justice and Mercy, of the Old Law and the New."

¹⁹ New Testament, New International Version (Grand Rapids: Zondervan, 1973).

²⁰ Tawney, Introduction to Wilson's A Discourse Upon Usury, 164.

²¹ Tawney, Introduction to Wilson's A Discourse Upon Usury, 170.

²² Zera S. Fink, Classical Republicans (Evanston: Northwestern University Press, 1945) 43; see also Il Pecorone, in John Russell Brown, ed., The Merchant of Venice (London: Methuen, 1984) 149: "Since Venice was a place where the law was enforced, and the Jew had his right fully and publicly, no one dared to speak against him, they could only entreat."

²³ Jonathan Goldberg, James I and the Politics of Literature: Jonson, Shakespeare, Donne, and Their Contemporaries (Baltimore: Johns Hopkins University Press, 1983) 76-7.

²⁴ See for example, Danson, 85.

²⁵ W. S. Holdsworth, A History of English Law (London: Methuen, 1924) 281. For a good summary of the problems of common law administrative and legal machinery, see Holdsworth, pp. 278-336.

²⁵ Holdsworth, 286.

²⁶ John Dodderidge, "Notes on a Method for the Study and Practice of the Common Law," Folger Library MS. V. b. 184, ca. 1630, p. 45 recto.

²⁷ W. Moelwyn Merchant, introduction, The Merchant of Venice (Harmondsworth, England: Penguin Books, Ltd., 1967) 24.

²⁸ See Moody, A. D., "An Ironic Comedy," Shakespeare: "The Merchant of Venice" by A. D. Moody (London: Edward Arnold Publishers Ltd., 1964) 9-15.

Chapter Three

¹ Nicolo Machiavelli, The Prince, trans. Luigi Ricci; rev. E. R. P. Vincent (New York: The New American Library, Inc., 1952) 112-3.

² James I. Basilikon Doron, The Political Works of James I., introduction, Charles McIlwain (Cambridge, Mass.: Harvard University Press, 1918) 43.

³ My theoretical starting point is furnished, to a great extent, by Louis A. Montrose, "The Purpose of Playing: Reflections on A Shakespearean Anthropology," Helios ns 7 (1980): 51-74.

⁴ According to O. Hood Phillips, Shakespeare and the Lawyers (London: Methuen & Co., Ltd) 84:

It has been estimated that nearly one-third of the English plays extant at Shakespeare's death contain a trial scene, and that well over one-third of those plays performed in London during Shakespeare's dramatic career contain one or more trial scenes.

⁵ The text of Measure for Measure only occurs in Folio, and for my purposes, the Folio text is substantially identical to the text of Measure for Measure in Alfred Harbage, ed., William Shakespeare: The Complete Works (New York: Viking Press, 1969). Therefore, all references to Measure for Measure are from the Harbage edition.

⁶ On the general theatricality of Renaissance life, see Stephen Greenblatt, Renaissance Self-Fashioning: From More to Shakespeare (Chicago: University of Chicago Press, 1981) and also Greenblatt's Sir Walter Raleigh: The Renaissance Man and His Roles (New Haven: Yale University Press, 1973); the later contains a particularly interesting examination of Raleigh's "role-playing" during his trial.

⁷ J. H. Baker, "Criminal Courts and Procedure at Common Law 1550-1800," Crime in England 1550-1800, ed. J. S. Cockburn. (Princeton, New Jersey: Princeton University Press, 1977) 15-48.

⁸ John Bellamy, The Tudor Law of Treason: An Introduction (London: Routledge & Kegan Paul, 1979) 191.

⁹ J. S. Cockburn, A History of English Assizes, 1558-1714 (Cambridge, England: University Press, 1972) 65-6.

¹⁰ Bellamy, Tudor Law of Treason, 133-4.

¹¹ Bellamy, Tudor Law of Treason, 137.

¹² Bellamy, Tudor Law of Treason, 135.

¹³ Bellamy, Tudor Law of Treason, 136, quoting W. Allen, "A briefe historie of the glorious martyrdom of xii reverend priests," ed., J. H. Pollen (London, 1908) 18-19.

¹⁴ See Robert Weimann, Shakespeare and the Popular Tradition in the Theater: Studies in the Social Dimension of Dramatic Form and Function, ed. Robert Schwartz (Baltimore: Johns Hopkins University Press, 1978) 49-97 and 208-252.

¹⁵ This is my recollection of Weimann's remarks in his address at the 1988 Shakespeare Association of American convention in Boston.

¹⁶ J. H. Baker, "Criminal Courts and Procedure at Common Law 1550-1800," Crime in England 1550-1800, ed. J. S. Cockburn. (Princeton, N. J.: Princeton University Press, 1977) 23.

¹⁷ Baker, 23.

¹⁹ Baker, 23-4.

¹⁹ J. W. Lever, introduction, Measure for Measure, by William Shakespeare (London: Methuen, 1965) xxxi-xxxiv.

²⁰ Greenblatt notes, in Sir Walter Raleigh:

Raleigh's extraordinary haughtiness is noted by a wide range of contemporary commentators, from the nameless political correspondent of Lord Burgley -- his pride is intolerable without regard for any, as the world knows -- to Raleigh's virulent enemy, Lord Henry Howard -- Rawlie, that in pride exceedeth all men alive. . . . the greatest Lucifer that hath lived in our age -- to Raleigh's uneasy ally, the Earl of Northumberland -- I know him insolent, extremely heated, a man that desires to seem to be able to sway all men's courses -- to the balladmaker --

Raleigh doth time bestride:
He sits 'twixt wind and tide:
Yet uphill he cannot ride,
For all his bloody pride. (pp. 55-6)

²¹ Robert Lacey, Sir Walter Raleigh (London: Weidenfeld and Nicolson, 1973) 291.

²² CPS, Dom (James I), IV, p. 76, quoted by Lacey, p. 295.

²³ Thomas Bayley Howell, ed., Cobbett's Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Present Time. 12 vols. (London: R. Baghaw, 1809) 2: 4.

²⁴ Howell, 6.

²⁵ Howell, 7.

²⁶ Howell, 10-11.

²⁷ C. G. L. Du Cann, English Treason Trials (London: Frederick Muller Ltd., 1964) 102.

²⁸ Howell, 28-9.

²⁹ Howell, 31.

³⁰ Greenblatt, Sir Walter Raleigh, 116.

³¹ Dudley Carleton to Chamberlain, dated Winchester, November 27, 1603, in Cayley, 2: 11-12; quoted by Stephen Greenblatt, Sir Walter Raleigh, 116.

³² Edward Edwards, The Life of Sir Walter Raleigh (London: Macmillan & Co., 1868) 443-6.

³³ Edward Edwards, 446.

³⁴ Edward Edwards, 443.

³⁵ Edward Edwards, 443.

³⁶ Edward Edwards, 443-4.

³⁷ Edward Edwards, 449.

³⁸ Edward Edwards, 450.

³⁹ Edward Edwards, 450.

⁴⁰ Edward Edwards, 452.

⁴¹ Edward Edwards, 454.

⁴² Here, a brief summary of the plot of Promos and Cassandra may be in order. Whetstone's play has judge Promos sentencing Cassandra's brother Andrugio to death for fornication. Cassandra pleads for her brother's life, and Promos agrees to let Andrugio go free if Cassandra will have sex with him. After much agonized debate with herself, Cassandra decides she has to save her brother's life and gives in to Promos. Promos, however, orders Andrugio executed anyway. The execution is thwarted by the jailer, who lets Andrugio go, deceiving Promos with the head of another felon. Meanwhile Cassandra, thinking her brother dead and herself guilty of fornication, goes to the King of Hungary for redress. The King tries Promos and sentences him to death, but to protect Cassandra's reputation he marries her to Promos before the execution. Cassandra, who had previously hated Promos, discovers that she cannot bear to have her husband executed, and

pleads to the King to spare Promos. The King refuses. However, Andrugio comes out of hiding and reveals himself to the King. All are pardoned, and presumably, Promos and Cassandra live happily ever after.

⁴³ These remarks are based on unpublished research done by Peter Blaney at the Folger Shakespeare Library. The Basilikon Doron was first printed in 1599. The nominal audience was Prince Henry. Only seven copies were printed, and these were in Scots. Between March 24 through April 13, 1603, the Stationers Company supervised the production of eight full editions of Basilikon Doron (10,000 copies) keeping over half the printing presses in London occupied. Very few of these copies exist, indicating that they were read until they fell apart. All of this indicates that Basilikon Doron was a major propaganda piece.

⁴⁴ James I., 20.

⁴⁵ James I., 20.

⁴⁶ Joel Altman, The Tudor Play of Mind (Berkeley: University of California Press, 1978) 6.

⁴⁷ M. C. Bradbrook, "Authority, Truth, and Justice in Measure for Measure," Review of English Studies 17 (1942): 385-99.

⁴⁸ John D. Cox, "The Medieval Background of Measure for Measure," Modern Philology 81 (1983): 1-13.

⁴⁹ John W. Dickenson, "Renaissance Equity and Measure for Measure," Shakespeare Quarterly 13 (1962): 287-97. For an interesting historical study on "the temper of the times" relating to mercy and equity, see also Wilbur Dunkel, "Law and Equity in Measure for Measure," Shakespeare Quarterly 13 (1962): 275-286.

⁵⁰ Harriet Hawkins, "The Devil's Party": Virtues and Vices in Measure for Measure," Shakespeare Survey 31 (1978): 105-13.



⁵¹ James I., 20.

⁵² Lever, xxxi., referring to Boswell, ed., Plays and Poems of William Shakespeare (London: 1821) 2: 383-7.

⁵³ Lever, xxxiii-xxxiv.

⁵⁴ Robert Lacey's description of James I has more than a touch of meanness in it, but it is essentially correct:

King James was a coward who wore quilted doublets, padded breeches and slept in the sweaty igloo of a dozen mattresses for fear of the assassin's knife. He was, like Cecil, physically deformed, walking with a crablike waddle, often leaning on the arm of his favourites. And those favourites were invariably male, James doting on them with extravagance that astonished before it shocked, the king nibbling their cheeks and busying his hands in the most intimate places -- in public. (281-2)

⁵⁵ Sir Francis Bacon. The Essays or Counsels, Civill and Morall, ed. Michael Kiernan (Oxford: Clarendon Press, 1985) 165-69. Although Bacon himself was forced from his office for taking "gifts," his essay sets forth an ideal of judicial conduct that continues to be valid.

⁵⁶ Bacon, 166-7.

⁵⁷ Paul Hair, ed., Before the Bawdy Court (New York: Harper and Row, Publishers, Inc., 1972) 232.

⁵⁸ Ecclesiastical courts had jurisdiction over the offenses of fornication and ante-nuptial fornication, and although fornication in the absence of a precontract was held to be a greater sin than if there were a precontract the punishment for both crimes was relatively light, as is illustrated by the following court records:

Warrington, Lancashire, 1592. Against Peter Holbroke and Susan Middleton, fornicators. Excommunicated. [Later -] . . .

He appears and confesses and saieth hee is to marrie the woman presentlie and that the time is appointed. Wherefore his lordship absolved him and also the woman, and decreed that should the marriage be duly solemnised they confess their fault before the Rector of Warrington and the wardens there, and if they do not marry they must do the usual penances, and they are to certify before the Feast of St. Barholomew concerning the solemnisation and also the confessions. (Hair, 232)

The couple in this case got off rather more lightly than usual, having only to do penance if they failed to marry. The following defendant was convicted at a later date in New England of ante-nuptial fornication; in that time and place, penalties for this crime were more severe than in England, and yet, still relatively light:

Plymouth, New England, 1646. John Tompson, coming into this Court and acknowledging his fault of incontineny with his wife before marriage, but after contract, was fined v li. & imprisoned according to order, but paying his fees, was released of his imprisonment. (Hair, 190)

This additional record indicates that even those engaged in simple fornication did not suffer large penalties:

Otterhampton, Somerset, 1623. Against John Duddridge. Presented that he and Jane Vinobles did lye together on Christmas Eve last in fornication or incontineny. He appeared . . . and alleged pre-contract. Ordered to produce proof [Later,] he appeared without proof. Public penance once in church. [Later,] a certificate of penance produced, dismissed, 4d [fees]. (Hair, 119)

Most individuals who were ordered to perform penance did so barefoot and, like Claudio, dressed in a sheet, carrying an explicatory placard

or symbol:

The typical pre-Reformation penitent preceded the cross borne in procession round the church, carrying a candle which he subsequently placed before the principal image or took to the high altar at the time of the offertory. Winchester penances frequently included a beating administered by the penitent's parish priest or rural dean. But in some other dioceses, including that of Norwich, this type of punishment had practically gone out of use by the early sixteenth century. The Protestant church reemphasized the ceremony's didactic purpose; penitents were often ordered to make very full declarations or to stand in an appropriate place while a homily was read. . .

Penance was a humiliating experience, especially for anyone of standing. Judges were sometimes prepared to commute it into a money payment, and in this way quite substantial sums were raised for pious uses such as the relief of the poor and prisoners, the support of scholars at the universities, and the equipment of parish churches.
(Houlbrooke, 46-7)

⁵⁹ George Whetstone, Promos and Cassandra, Narrative and Dramatic Sources of Shakespeare, ed. Geoffrey Bullough, 2nd ed., 5 vols. (New York: Columbia University Press, 1963) 2: 444.

⁶⁰ Karl P. Wentersdorf, "The Marriage Contracts in Measure for Measure": A Reconsideration, Shakespeare Survey 32 (1980): 129-44.

⁶¹ Ralph Houlbrooke, Church Courts and the People During the English Reformation, 1520-1570 (Oxford: Oxford University Press, 1979) 55-88.

⁶² Wentersdorf, 135.

⁶³ James I., 37.

⁶⁴ Thomas Bayley Howell, ed., Cobbett's Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors

from the Earliest Period to the Present Time. (London: R. Bagshaw, 1809) 2: 10.

⁶⁵ The corrupt judge was a common figure in Renaissance literature and art. See, for example, Sir Walter Raleigh's "The Lie," or the Hans Holbein woodcut "Death withdraws the Judge's staff as he takes a bribe from a rich suitor," in Hans Holbein, The Dance of Death, introduction, Austin Dobson (London: George Bell & Sons, 1892). The reign of James I has long been noted for its judicial corruption. In Edward Foss, The Judges of England (London: Longman, Brown, Green, Longmans & Roberts, 1857) 6: 3, Foss describes judicial administration under James I as follows: "The general corruption of this reign, which notoriously pervaded almost every department of the state, extended itself to the courts of justice and those connected with them. . . . Bribery was common though dignified with the title of presents and new year's gifts." A less extreme and probably more accurate appraisal is contained in Joel Hurstfield, Freedom, Corruption and Government in Elizabethan England (London: Jonathan Cape, 1973): 137-162. Jacobean corruption was foreshadowed in Tudor times; for a brief list of corrupt Tudor judges see Penry Williams, The Tudor Regime (Oxford: Clarendon Press, 1979): 104-5. Regardless of whether corruption actually was worse under James I, it seems likely that his subjects perceived it to be worse, which is perhaps more important for our purposes.

⁶⁶ Bacon, 166.

⁶⁷ "Scale," The Compact Edition of the Oxford English Dictionary, (Oxford: Oxford University Press, 1971).

⁶⁸ Bacon, p. 167.

⁶⁹ The need to give a quid pro quo in judicial and commercial dealings was a commonplace. The spiritual dangers of giving false measure

in commercial dealings are set forth in an emblem by George Wither, showing an arm with measuring scales, reaching out of a cloud. The accompanying poem has the concluding couplet: "And, lest thou faile [to give the correct measure] remember who hath sayd/Such measure, as thou givst, shall be repay'd"; see George Wither, Collection of Emblems Ancient and Modern (1635) p. 100.

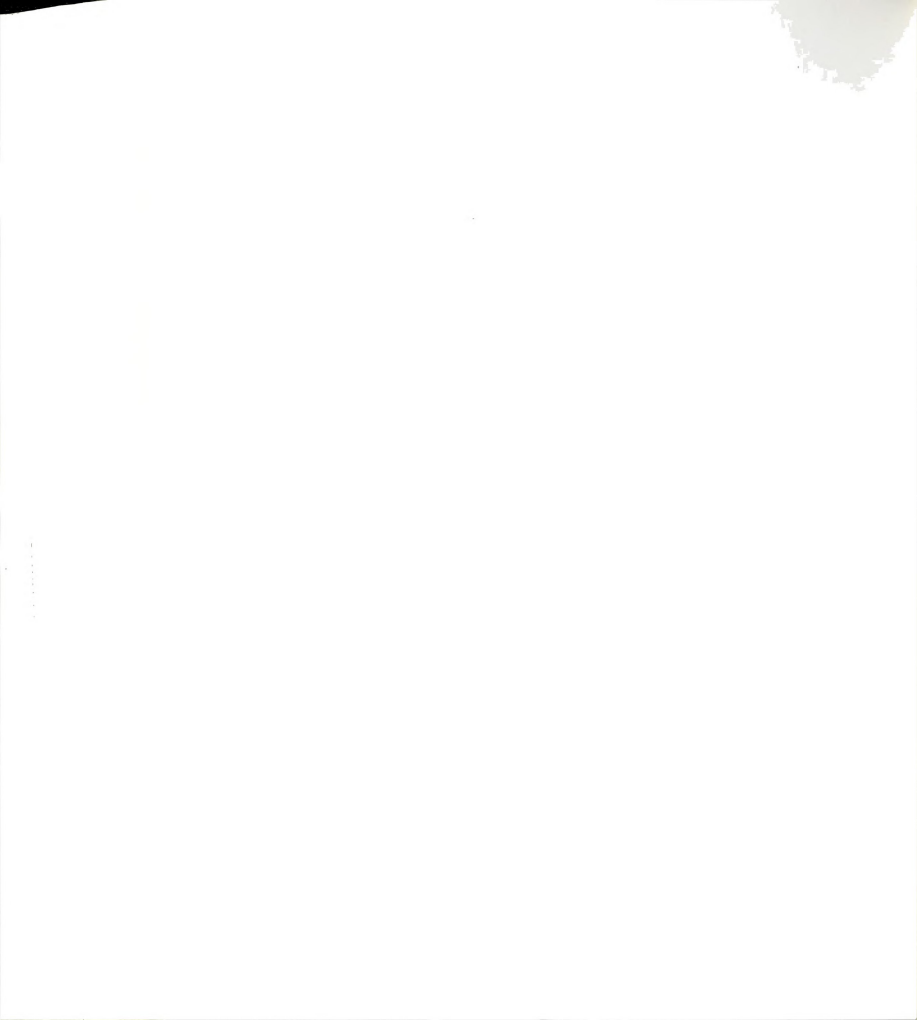
⁷⁰ Edward Edwards, 444.

⁷¹ This view is supported by Rosalind Miles' reading in her book The Problem of "Measure for Measure": A Historical Investigation. (New York: Harper and Row, Publishers, Inc., 1976) 194: " [Isabella] must forgive, but she must forgive disinterestedly, and this is the reason why Shakespeare makes the Duke harp on Claudio's execution in a way that has often been received as cruel."

⁷² According to the principle of natural justice (which is not to be confused with the principle of natural law), a man cannot be a judge in his own case. As noted by H. H. Marshall in Natural Justice (London: Sweet & Maxwell Ltd.: 1959): 25, "The principle is not confined merely to the case where the judge is an actual party to a cause, but applies to a cause in which he has an interest. An 'interest,' . . . has been defined as a legal interest or a pecuniary interest . . ." Clearly, on the issue of his own guilt, Angelo is an "interested" party.

⁷³ Turner, Victor W. The Ritual Process: Structure and Anti-Structure (Chicago: University of Chicago Press, 1967) 172-8. See also: Van Genep, Arnold. The Rites of Passage (Chicago: University of Chicago Press, 1960) The introduction by Solon T. Kimball is particularly helpful.

For a discussion of how these status-reversal rituals relate to Shakespeare's comedy, see C. L. Barbar, Shakespeare's Festive Comedy



(Princeton, N. J.: Princeton University Press, 1972). Barber does not use the term "status reversal ritual," but everything he has to say about Tudor festivals supports the position that Shakespeare was aware of such rituals as festivals and that he incorporated them in his plays.

⁷⁴ Turner, 176-7.

⁷⁵ Edmund R. Leach, International Encyclopedia of Social Sciences, ed., David L. Sills (New York: Macmillan, 1968-77) 13: 525, summarizes from Gluckman, Max. "Les Rites de Passage," in Essays on the Ritual of Social Relations, ed. Max Gluckman (Manchester, England: Manchester University Press, 1962), 1-52: "Gluckman stresses the aggressive [sic] elements present in role-reversal ceremonies, which he aptly names "rituals of rebellion." The performers, he suggests, act out in dramatic form hostilities that are deeply felt but may not be expressed in normal secular relationships. This acted aggression serves as a cathartic release mechanism, and by relieving tension these inverted behaviors actually serve to strengthen the moral code they appear to deny."

⁷⁶ Jonathan Dollimore, "Transgression and Surveillance in Measure for Measure," "Political Shakespeare: New Essays in Cultural Materialism, eds., Jonathan Dollimore and Alan Sinfield (Ithaca: Cornell University Press, 1985) 72-87; Dollimore contends that the emergency in Vienna is a false one, created by the Duke to increase his own power.

⁷⁷ H. L. A. Hart, Punishment and Responsibility: Essays in the Law (Oxford: Oxford University Press, 1968) 2-3: Hart lists the main objectives of the criminal sanction as deterrence, retribution and reform.

⁷⁸ Lon Fuller, The Morality of Law (New Haven: Yale University Press, 1964); Fuller describes the relationship of law to two moralities: the morality of duty and the morality of aspiration. On page 30, Fuller notes:

In the morality of duty it is understandable that penalties should take precedence over rewards. We do not praise a man or confer honors on him, because he has conformed to the minimum conditions of social living. Instead we leave him unmolested and concentrate our attention on the man who has failed in that conformity, visiting on him our disapproval, if not some more tangible unpleasantness. Considerations of symmetry would suggest that in the morality of aspiration, which strives toward the superlative, reward and praise should play the role that punishment and disapproval do in the morality of duty. To some extent this mirror image maintains itself in practice. But perfect symmetry is marred by the fact that the closer a man comes to the highest reaches of human achievement, the less competent are others to appraise his performance. [underlining added]

I would argue that, through the ritual-trial that closes Measure for Measure, the duke tries to establish in Vienna both a morality of duty and a morality of aspiration, by exposing Angelo's vice and glorifying Isabella's virtue. As Fuller notes, the attainment of a "perfect symmetry" between these two moralities is, in practice, very difficult. One way of attaining such symmetry is through ritual -- and drama -- both of which can be used to "figure forth a perfect pattern" of order and morality. Not only does the Duke's production give society useful models to emulate and avoid, but inspires emulation and avoidance through the mythic power of ritual.

⁷⁹ Van Genep, 1-14; and Turner, 95-6.

⁸⁰ Turner, 95.

⁸¹ Van Genep, 168.

⁸² Samuel Taylor Coleridge, Coleridge's Shakespeare Criticism, ed. T. M. Rayson (New York: E. P. Dutton & Co., Inc., 1930).

⁸³ A. C. Bradley, Shakespearean Tragedy (London, 1904).

- ⁸⁴ Quiller-Couch, Sir Arthur, introduction, Measure for Measure. (Cambridge, England: Cambridge University Press, 1922) xxx-xxxii.
- ⁸⁵ L. C. Knights, "The Ambiguity of Measure for Measure," Scrutiny 10 (1942): 222-33.
- ⁸⁶ For a description of the Robin Philips 1975 Stratford Festival production, see Philip McGuire, Speechless Dialect: Shakespeare's Open Silences (Berkeley: University of California Press, 1985): 64-6.
- ⁸⁷ For a description of how this was done in the 1970 John Barton production and the 1975 Jonathan Miller production, see McGuire, 164.
- ⁸⁸ This also occurred in the Robin Philips production; see McGuire, 74.
- ⁸⁹ Roy Battenhouse, "Measure for Measure and the Christian Doctrine of Atonement." PMLA 61 (1946): 1029-59; see also Roy Battenhouse, "Measure for Measure and King James." CLIO 7 (1978): 193-215.
- ⁹⁰ Josephine Waters Bennett, Measure for Measure as Royal Entertainment (New York: Columbia University Press, 1966).
- ⁹¹ Nevill Coghill, "Comic Form in Measure for Measure," Shakespeare Survey 8 (1955): 14-26.
- ⁹² Francis Ferguson, The Human Image in Dramatic Literature, (New York: Doubleday & Co., Inc., 1957).
- ⁹³ G. Wilson Knight, The Wheel of Fire (Oxford: University of Oxford Press, 1949).
- ⁹⁴ Battenhouse, Ibid.
- ⁹⁵ Kadish, Sanford H., Stephen J. Schulhofer and Monrad G. Paulsen, Criminal Law and Its Processes: Cases and Materials (Boston: Little Brown and Company, 1983) 257-8.
- ⁹⁶ The existence of this principle in the time of Shakespeare is evident from a reading of Sir Edward Coke's Third Institute of the Laws of

England (1644), particularly page 5. Coke gives a lengthy discussion of the felony of murder, noting that intention to commit murder is not enough to establish a crime, even if the intention is spoken or put in writing. (A notable exception is the spoken intention to murder the king, which was high treason regardless of whether it was accompanied by any action against the king.) Coke's book, which lists the elements of many crimes, typically sets forth, for each crime, the requirement of intention, and then lists several acts which, when joined with the intention, constitute the crime. The discussion of the law of attempts, which follows, clearly indicates the Elizabethan and Jacobean refusal to criminally prosecute persons who had not in fact committed some overt and obviously damaging act. Sir William Blackstone in 4 Commentaries on the Laws of England p. 21 (1769) thus gives an accurate summary of law, even as it existed in Shakespeare's day:

Indeed, to make a complete crime, cognizable by human laws, there must be both a will and an act. For though, in foro conscientiae, a fixed design or will to do an unlawful act is almost as heinous as the commission of it, yet, as no temporal tribunal can search the heart, or fathom the intentions of the mind, otherwise than as they are demonstrated by outward actions, it therefore cannot punish for what it cannot know. For which reason in all temporal jurisdictions an overt act, or some open evidence of an intended crime, is necesasry, in order to demonstrate the depravity of the will, before the man is liable-to-punishment.

In Angelo's case, we can be rather sure of the intentions of his heart. Therefore the rational for applying the rule would not be effectuated. Still, the rule would stand, and Angelo would receive its benefit. One can be guilt in foro conscientiae without being guilt in a court of law.

⁹⁷ See J. Birje-Patil, "Marriage Contracts in Shakespeare's Measure for



Measure," Shakespeare Studies 5 (1969): 106-11; Harriet Hawkins, "What Kind of Precontract Had Angelo?" College English 36 (1974): 173-9; Davis P. Harding, "Elizabethan Betrothals and Measure for Measure," Journal of English and Germanic Philology 49 (1950): 139-158; the chapter on Measure for Measure in William W. Lawrence, Shakespeare's Problem Comedies (New York: Frederick Ungar Publishing Co., 1931); S. Nagarajan, "Measure for Measure and Elizabethan Betrothals," Shakespeare Quarterly 14 (1963): 115-119; Ernst Schanzer, "The Marriage Contracts in Measure for Measure," Shakespeare Studies 13 (1962): 81-9; Karl P. Wentersdorf, "The Marriage Contracts in Measure for Measure": A Reconsideration," Shakespeare Survey 32 (1980): 129-44.

⁹⁸ Birje-Patil, Lawrence, Schanzer, as cited in previous note.

⁹⁹ LaFave, Wayne R. and Austin W. Scott. Handbook on Criminal Law. (St. Paul: West Pub. Co., 1972), p. 423, quoting 2 Pollack & Maitland, History of English Law 508 n. 4 (2d ed. 1923).

¹⁰⁰ LaFave and Scott at p. 424 quoting Sayre, "Criminal Attempts, 41 Harvard Law Review 822-37 (1928), 827 note 1.

LaFave and Scott, at p. 424, note that the modern doctrine of criminal attempts may have originated in the Court of Star Chamber, which was abolished in 1640. They state (with internal quotation from Sayre, note 1, p. 829 :

The modern doctrine of criminal attempts is said to have had its origin in the Court of Star Chamber. . .

The Court of Star Chamber was abolished in 1640, and its influence upon subsequent common law courts is a matter of dispute. But it is clear that many years elapsed after its abolition before a doctrine of criminal attempt was actually formulated. "The language of the common law courts after 1640 continues to reflect the early common law views and statements

antedating the Star Chamber; there is not a ripple in the calm surface to indicate that a new doctrine of criminal attempts had been suggested."

LaFave and Scott go on to state that "The modern doctrine of attempt may actually be traced back to the case of Rex v. Scofield in 1784. . . ."

Angelo's "case" having preceded Rex v. Scofield by a comfortable 180 years, we can safely acquit him from conviction under an "attempt" theory.

¹⁰¹ For evidence of the Elizabethan and Jacobean sensitivity to sexual defamation and slander, see Houlbrooke, 79-83; J. A. Sharpe, Defamation and Sexual Slander in Early Modern England: The Church Courts at York (University of York, Borthwick Institute of Historical Research: Borthwick Papers No. 58, 1980); Hair, 252-3.

¹⁰² C. H. Rolph, The Queen's Pardon (London: Cassell, 1978) 21.

¹⁰³ Dollimore, 72-87.

¹⁰⁴ M. Spufford, "Puritanism and Social Control?" Order and Disorder in Early Modern England, eds. Anthony Fletcher and John Stevenson (Cambridge, England: Cambridge University Press, 1985) 41-57.

¹⁰⁵ Sharpe, 1.

¹⁰⁶ George Elliott Howard A History of Matrimonial Institutions, 3 vols. (1904; New York: Humanities Press, 1964) 1:364-403.

¹⁰⁷ Hair, 239-242.

¹⁰⁸ Howard, A History of Matrimonial Institutions, 3 vols. (1904; New York: Humanities Press, 1964) 1:337-9.

¹⁰⁹ Howard, 1: 316.

¹¹⁰ Hair, 240-1.

¹¹¹ Henry Swinburne, Treatise Of Spousals or Matrimonial Contracts (London; S. Raycroft for Robert Clavell, 1686).

¹¹² Henry Swinburne, Of Spousals, paraphrased by Howard, 1: 379-80.

¹¹³ James I., 27.

¹¹⁴ For a sample of the way directors have approached this problem and how the meaning of the play is affected, see McGuire, pp. 79-93.

¹¹⁵ Frederic Jameson, The Political Unconscious: Narrative as a Socially Symbolic Act (Ithaca, New York: Cornell University Press, 1981) 80.

¹¹⁶ Rene Girard, Violence and the Sacred (Baltimore: Johns Hopkins University Press, 1972) 146.

¹¹⁷ See Girard; The entire book explores the use of the scapegoat.

¹¹⁸ Montrose, Adrian, "The Purpose of Playing: Reflections on A Shakespearean Anthropology," Helios, ns 7 (1980): 51-74.

¹¹⁹ Mark Kelman, A Guide to Critical Legal Studies (Cambridge, Mass.: Harvard University Press, 1987) 40-1.



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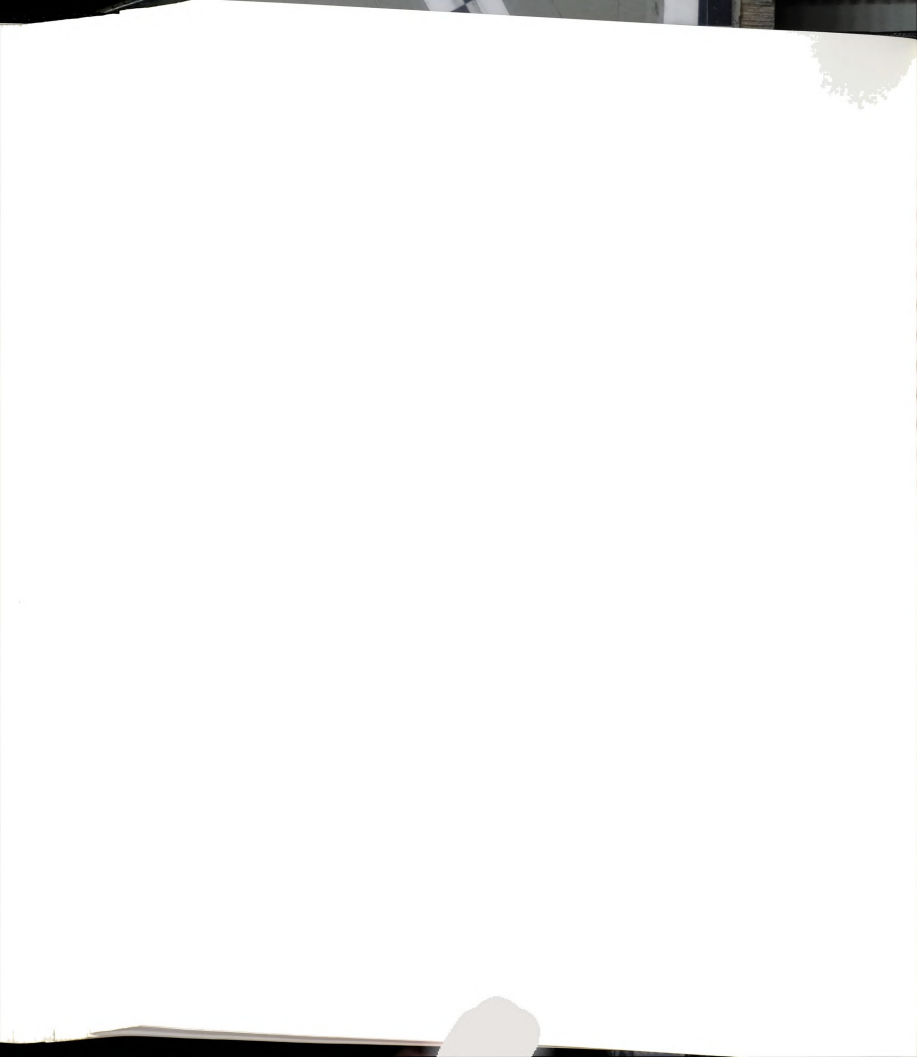
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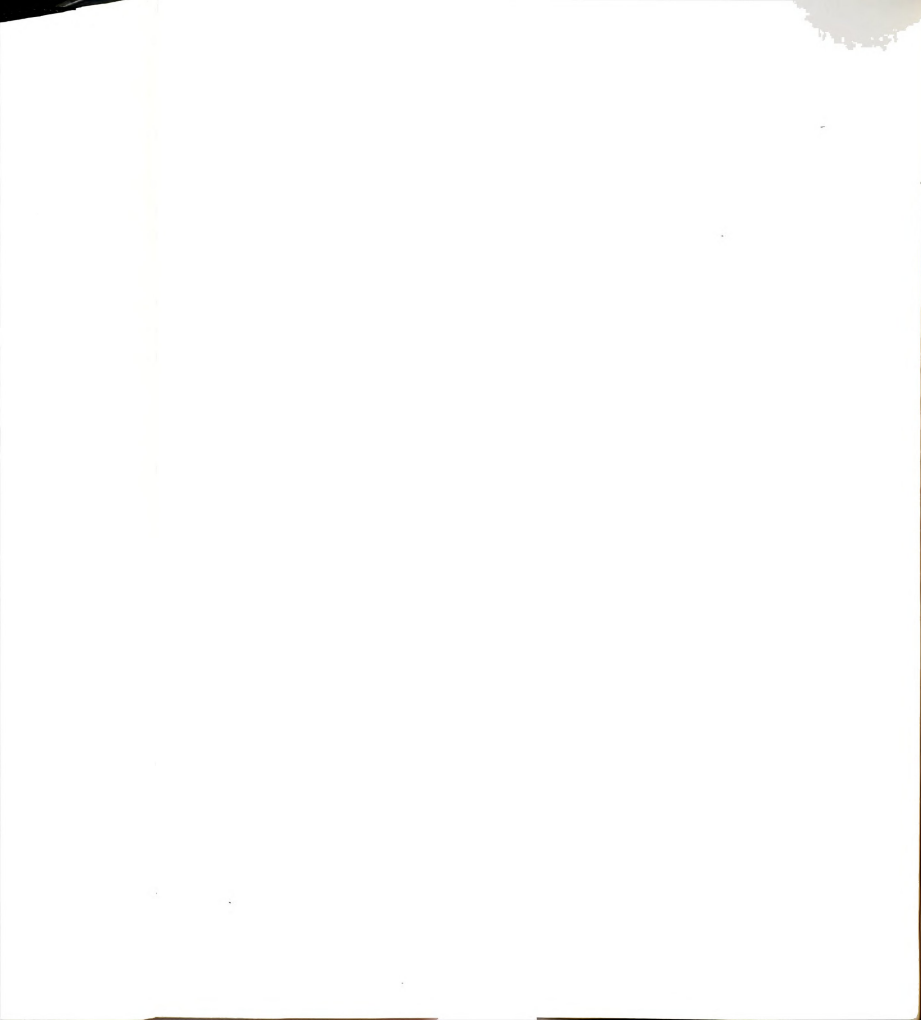
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TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER 1 Political Disintegration and the Trial Scenes of <u>2 Henry VI</u>	31
CHAPTER 2 Contexts of Play and Earnest: The Interpretation of Shylock's Bond	135
CHAPTER 3 Staging Justice: The Trial Scenes of <u>Measure for Measure</u>	170
NOTES	247
LIST OF WORKS CONSULTED	287



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TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER 1 Political Disintegration and the Trial Scenes of <u>2 Henry VI</u>	31
CHAPTER 2 Contexts of Play and Earnest: The Interpretation of Shylock's Bond	135
CHAPTER 3 Staging Justice: The Trial Scenes of <u>Measure for Measure</u>	170
NOTES	247
LIST OF WORKS CONSULTED	287

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