TAINTED PROOFS: STAGING WRITTEN EVIDENCE IN EARLY MODERN DRAMA

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ABSTRACT

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Tainted Proofs examines how drama presents stage properties, like letters, contracts, and wills, in the early modern theatre. I argue that the playwrights, William Shakespeare, Ben Jonson, and John Webster, depict these written documents in their false, illegal or illicit state to monitor the status of their culture. Within this period, these legal instruments develop an evolving sense of the importance as evidence, particularly written, as a means to reveal injustice and critique individual rights. At this time, the law, through its jurists and its court, privileges the place of written documents as a credible and reliable instrument used in many legal causes. However, the theatre highlighted their fraudulent and manipulated state—hence, they become tainted proofs. This study of written evidence builds on the work of Subha Mukherji and Lorna Hutson as they consider the rhetorical nature of evidence. In my chapter discussions of William Shakespeare's *Titus Andronicus*, *The Merchant of Venice*, and *Richard III*, along Ben Jonson's *Volpone*, and John Webster's *The Devil's Law Case*, I demonstrate that no matter what facet of society these plays explore, every piece of written evidence emerges as susceptible to a potential illicit taint, which interferes with attempts by the citizenry to obtain justice and by the sovereigns to embody truth. The pieces of corrupted evidence on stage—tainted and untenable—do not conform to the classical ideals of evidence used to levy justice to protect society. Nevertheless, they demonstrate how the jurists as well as people in society have to struggle to obtain, define, and safeguard justice via the use of written evidence through case law, statutes, and treatises. In each chapter, I focus upon how the conflicted object, both material and legal, intervenes with justice, pinpoints the existing flaws

in this burgeoning body of evidence, and demonstrates a system of deploying deficient written evidence. I argue that written evidence possesses several key moments in its material, legal life, like at the document's negotiation, creation, delivery, and presentation. Much like the courts, the theatres become "pushers of paper," including letters, legal briefs, bonds, wills, warrants, and indictments, which identify, define, and manipulate the relationships over which the documents reach. Ultimately, they serve as warnings, and remind their audiences of the need for further safeguards in the justice system.

In memoriam

"If I stand tall, I'm standing on the shoulders of those who have gone before"—African proverb. To the women on whose shoulders I stood and whose influence inspired my calling—planted by my grandmother, Clara Pittman Hall (1904-2002), groomed by my mother, Frankie Hall Barksdale (1937-2012), and expanded by my aunt, Dorothy "DJ" Barksdale (1945-2014).

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TABLE OF CONTENTS

LIST OF FIGURES

INTRODUCTION: TAINTED PROOFS

"And what follows then? Commotions, uproars, with a general taint Of the whole state…"

--Gardiner (5.2.61-63), Shakespeare & Fletcher's *Henry VIII (All Is True)* (1613)

In this dissertation, I examine early modern law and literature—specifically, English drama—to analyze how theatrical and historical moments interact, where written evidence functions as a legal instrument within the evolving legal and social structures in the period. My inquiry begins by exploring how drama represents and recreates the structures and the processes within the law of evidence, exposes its vulnerabilities, and contemplates its potential safeguards. In order to understand written evidence, I analyze its condition—legal and material—on the stage. My examination of the legal evidence analyzes its creation, its validity, and its authority, as it is represented on the stage and in those legal discourses of the period. In its material condition, I uncover the physical handling of written evidence, its movement from one space to another, and its exchange from one character to another. In following the material movement of written evidence as props, my discussion investigates several key moments in the plays in which the legal ramifications of the deployment of written evidence intersect with the imperatives of plot and character.

It is striking how many plays of the period—tragedies, histories, comedies, and tragicomedies—engage with situations that bring to life the early modern individuals' engagement

with the law and its legal processes. Thus, written evidence, a crucial aspect of the early modern legal system, affords the playwrights a novel way of dramatizing the pervasive use and perhaps more importantly, the potential flaws and pitfalls in presenting, literally a piece of paper with the force of law. Instead of representing truth, transparency, and authority, I demonstrate that these plays highlight the potentially fractured nature of legal evidence on the stage. By fractured, I mean the evidence, presented in written form, usually possesses some element of falsity, manipulation, illegality, or illicitness. While represented as ostensibly true and authentic, the legal instrument and the material property embody this "taint," which spreads across the stage, the scene, the act, and many times the entire play.

In this way, I find that following the path that this stage prop (and legal, written evidence) takes across the stage, scene, acts, and the play help to track where, when and how the document's corruption enters the drama and the plot.[1] While typically there arises one character, like Shylock and his bond, who arguably seems indelibly associated with the prop, I do not only focus on these characters, rather I show how the object, the prop, which is often handheld, becomes imbricated in the actions and the motivations of the characters. In this engagement, with the role of written evidence in the plays, I have illuminated the complexities of early modern laws governing written evidence and its uses—ranging from fraudulent uses of wills, indictments and warrants based on falsified evidence, among others. As I stated previously, these objects, as stage properties, move from space to place to character. Examining one particular character's association with the property would in essence deny the breadth and the depth of the stage properties' reach across the plays and this dissertation. Within these movements, I focus on key moments, where characters

[1] Within these chapters, I discuss written evidence in part as a stage property, so this project is in debt to the scholarship of Douglas Bruster, Jonathan Gil Harris, and Natasha Korda.

present and/or engage with written evidence as these props on the stage, and offer or confront these tainted documents. To be specific, written evidence serves as proof of murder plots in Shakespeare's *Titus Andronicus* (1594), treasonous plots in *King Richard III* (1597), broken contracts in his *The Merchant of Venice* (1598), exploited wills in Ben Jonson's *Volpone* (1605), or adultery and bastardy in John Webster's *The Devil's Law Case* (1623).[2] I emphasize some key scenes in each play that discuss, reference, create, deliver, exchange, and execute written evidence. The mobility of the stage prop emerges as a dynamic, conspicuous, and complex object in the drama. Each stop in the major events of its life history brings further complexity to the object, and its role in the unfolding legal, political, and personal drama.[3] Furthermore, these hypothetical enactments of the legal practices offer a lens for examining the complexities and pitfalls as they were negotiated in the various legal settings of the period. For instance, some characters plant written evidence in *Titus*, manufacture it in *Richard III*, falsify and duplicate it in *Volpone,* threaten to destroy or dismiss it in *The Merchant of Venice*, and tear it in *The Devil's Law Case*—with all these physical actions being played out on the stage. Specific moments materialize as similarly compelling where a character reads the document staged before a criminal or a civil court, staged in a soliloquy after an execution, or staged before a group of potential heirs in a will contest. Charting how the course of the objects unfolds across each drama, evoking reminders of how these objects have the force of law—offers a distinct way—whether false or illicit—to read each object, each play and further complicates the role of written evidence in the legal system in this

[2] For Shakespeare's plays, I use the date when the dramas were recorded by the Stationer's Register. For *Volpone* and *The Devil's Law Case*, I use the date when the plays were published. For all five plays, they have dates of performance, which precede their recordings and their publications. However, these dates seemed the most consistent among the critical scholarship.

[3] My discussions of these key moments of the stage properties as life events draws on the work of Arun Appadurai and Igor Kopytoff's work in *The social life of things*.

dissertation. In these unfolding engagements, the drama significantly explores and illuminates the complex and often problematic role written evidence plays within the legal practices of the period.

As I examine these disparate moments in the plays, I find that this analysis functions as a commentary beyond the current drama, but implicates this early modern society in England. At

Figure 1 Anonymous, Complaint and Lamentation of Mistresse Arden of Fervasham, 1633, Woodcut, © The British Library Board, RoxIII.156, EEBO, Wing / 2123.2:156-157.

this time, the law-courts became immersed in litigation, which involved disputes over these written pieces of evidence like wills, contracts, and indictments. The validity of these legal instruments became an important question during this period—from the cases to the statutes. Within the issues of validity, the written evidence, through its theatrical and legal embodiment, materializes as an instrument, which dictates both the personal and the professional lives of the early modern individual. What grows out of this project serves as a lens by which to study the cultural shift in how individuals conduct themselves in their personal correspondence, commercial transactions, estate planning (or wills), criminal prosecutions, and ecclesiastical proceedings. In this

dissertation, I have chosen various dramas from different playwrights whose Elizabethan and Jacobean performances span from 1590s to 1620s.

The use of legal plots to dramatize the affairs of the day on the early modern stage is remarkable in its frequent use. These early modern playwrights capture what seems as a mere detail to most, but as they imagine an entire tale of love, conflict, and intrigue. For instance, in the *Arden of Faversham* (1592), a wonderful tale is weaved surrounding several murder attempts, theft, adultery and ultimately, a successful murder.[4] The play crafts a convincing murder investigation, a large-scale manhunt to pursue its suspected murderers, and finally an arrest warrant to secure the criminals to await their judgment.

To understand my use of evidence, I should point out that the rules of evidence guide what type of evidence will be admitted for review by the courts. In some circumstances, the court finds that certain evidence cannot be accepted as (or admitted into) evidence, for it possesses some flaw, which might "taint" or prejudice the court. If the court does not find the evidence compromised, it will allow the evidence to be admitted and ultimately use to make a final judgment in a case. While I keep this understanding of evidence at the backdrop of this dissertation, I complicate my use of the word, "evidence," across these chapters. I consider specific written evidence, which appears on the stage across several dramas. These pieces of evidence may occur within the courts, but I also look at different settings, which present evidence in and around the courts, churches, theatres, prisons, and people within the early modern community. For instance, these different pieces of evidence implicate several courts functioning in the early modern period—like the common law courts, the Court of Chancery, the King's Bench, and the ecclesiastical courts. While common law

[4] The chief source for the story for *Arden of Faversham* was given in Holinshed's *Chronicles* (1577). See also Hutson's discussion of the play in her analysis of forensic techniques and dramatic narrative (259-262).

courts focused on the strict letter of the law, courts of equity like the Court of Chancery handled questions of equity, like fairness to the parties. Sometimes, they heard issues of contracts and other times they addressed issues of wills. This venue became the jurisdiction for many cases, which the common law courts declined to address.[5] Even ecclesiastical courts heard some contract cases, but their jurisdiction dealt mostly with more moral issues like adultery, bastardy, sodomy, and others, which concerned the church. Although I examine the intersection between these courts and these dramas, these plays do not exactly mirror the procedure or the judgment of these courts, but provide illustrative historical examples. I am also considering evidence in a more general sense when revealed to litigants, attorneys, court employees, servants of the crown, etc. In addition, I utilize moments where the evidence may not appear on the stage, but is discussed by those directly in contact or affiliated with the evidence and those who merely surround evidence, even if tangentially.[6]

Despite the strides that these early modern courts made in the field of evidence, some scholars maintain that while "there were few if any rules of evidence before the eighteenth century," a formal process was nonetheless burgeoning, which would see its ultimate fruition later (Baker 582) (Macnair 15-21).[7] During the medieval period, most evidence used in trial consisted of oral testimony, but the period also saw the emergence of predilection for writing (Macnair 92). The courtroom exhibits include proofs like "objective facts, testimonies, oaths, depositions, and confessions" (Mukherji 162-163).[8] And, in the late sixteenth century, the courts placed both an

[5] See Baker's discussion of contract suits in Chancery. Many litigants found redress in this court, which they could not find in common law courts (372).

[6] See Andrew Sofer's *Dark Matter: Invisibility in Drama, Theater, and Performance*.

[7] See also Hemholz at 243.

[8] Subha Mukherji's discussion on Webster's play, like Hutson's work, focuses upon the nature of evidence, though she does not focus upon written evidence (206-232).

emphasis on written evidence and an expanded nature of the trial proceeding where the summary trial (i.e. an abbreviated proceeding) was less typical (Bellamy 158-159). Given the development of the rules for writing, including the Statute of Frauds in 1677, there evolved "in equity proof a fairly marked general preference for writings over witnesses" (164).[9] Even earlier, there arose corroboration that written evidence, was alive and well as found in the Statute of Uses, which required written proofs for interests in land, in 1535 (Moffat, Bean & Probert 39).[10] Broadening the scope beyond land, the Statute of Frauds and the parol evidence rule required certain contracts to be in writing. In particular, the Statute of Frauds required that contracts must be in writing, which could not be performed in one year and contracts where one party served as a surety for another party's debt or obligation. After this point, common law jurisprudence became synonymous with a rigid reliance on proof in written form.[11]

To accomplish this study of written evidence, I investigate five different areas of the law—criminal, treason, civil, probate, and ecclesiastical—and five different pieces of evidence—letters in Shakespeare's *Titus Andronicus*, warrants and indictments in *Richard III*, bonds in *The Merchant of Venice*, wills in Ben Jonson's *Volpone*, and legal briefs in John Webster's *The Devil's Law Case*. Across these different fields of law, I demonstrate how these dramas create and recreate the law in drama from 1591 in the Elizabethan period to 1623 in the Jacobean period.

[9] The first draft of the Statute of Frauds was written by Sir Heneage Finch (later Lord Nottingham), which was intended to address the instances where there was no written proof as in Slade's Case (Baker 396).

[10] Though the text by Bedford, Davis & Kelly (204) states that the statute was passed in 1540, I will defer to Moffat, Bean & Probert's text as other texts also agree with this text on trusts law. See also Baker (283-295).

[11] Bacon defines common law as "no text law, but the substance of it consisteth in the series and succession of judicial acts form time to time, which have been set down in the books we term as yearbooks or reports' (12.85)" (Helgerson 76)

In each of the plays, I investigate this different areas of the law to study written evidence from different perspectives, settings, legal and material inquiries. These disparate fields of law raise issues, which interrogate and dramatize the workings of criminal law, like murder and treason, civil law like contracts, probate law like wills, and ecclesiastical law, like adultery and bastardy. While each field has its own distinct laws, they each require the use of written evidence to prove a case. They each require a critique of the evidence to determine its admissibility, validity, weight, and fairness. Ultimately, each piece of evidence will be useful in determining a judgment at the end of the case. However, for each of the plays, which I have chosen for this project, the written evidence arises in some defective state. By "defective," I mean that the evidence does not offer truth and accuracy, which we might assume when litigants present evidence before a court, church, or other institution. Each piece of evidence under review grows problematic during the course of its movement within each play. In spite of the reputed reliability of written evidence, each legal instrument arises as false, manipulated, or illegal.

Much like a docket on a court's calendar, each of these plays investigates a different type of scenario. In the criminal case, we witness the wrongful conviction of two brothers whose father's fame and heroism is incapable of either mounting a proper defense or appealing their guilty verdict before the newly placed emperor and his calculating empress; the falsely planted letter of confession functions as their death knell in *Titus Andronicus*. In the treason cases, we find two different men who are ultimately executed for acts, which neither commits; their lives are swiftly dispatched with a manufactured indictment and a secreted warrant in *King Richard III*. In the contract case, a dispute arises when the three-party surety agreement is broken; unable to resolve the matter, the injured party takes the matter to court for a decision before the Duke in *The Merchant of Venice*. In the probate case, the efforts of two men to steal the other's estate by

transferring their own property to another runs afoul when the plot become exposed by other wrongs, like attempted rape and a disinherited son in *Volpone*. The final case on this docket involves an adultery and bastardy case within an ecclesiastical jurisdiction; a legal brief summarizes the alleged illicit acts of the confessor, but facts unfold where she is not an adulteress, nor is her son a bastard in *The Devil's Law Case*.

Each of these disparate pieces of evidence—the letter, the warrant and the indictment, the bond, the wills, and the legal brief—reveal the individual plays as distinctive. The letter offers the audience an examination into socio-personal communication and how the document may be utilized for illegal reasons. The warrant and the indictment expose the problems with the procedure for adjudicating treason cases. The will demonstrates how these instruments may be manipulated by deceptive testators and heirs. The legal brief illustrates the compromised inner-workings of the law office consultation and the problems of professional ethics. These five different cases demonstrate that written evidence had a wide-spread and pervasive influence across the spectrum of early modern life, stressing the link between moral choices and institutional injunctions. Hence, how evidence is created, utilized, and presented in court becomes important and perhaps life-altering for some litigants.

For several reasons, I also tell the story of this dissertation through drama by investigating written evidence on stage in its physical manifestation as a paper prop. Across several fields of law like contracts, probate, criminal, treason, and ecclesiastical, I uncover what the legal instrument appears to represent—truth, authority, and validity—by contrasting what it actually presents as false, manipulated, and illicit. This study reveals the document's vulnerabilities, lack of safeguards, and susceptibility to tampering by those who circulate the evidence at key moments in its creation, its delivery, its exchange, and its execution. While analyzing this prop for the stage,

I find historical examples of bonds, wills, death warrants, and other evidence for comparative analysis and case law, commentaries, and statutes, like the Statute of Wills of 1540 and the Statute of Frauds of 1670. These materials help to illustrate the relationship between the legal and cultural work and discourses during this period.

One path of inquiry involves the evolution of this stage object with its material and legal attributes. On the stage, rather than within a pamphlet or piece of poetry, the audience may witness the trajectory—physical and legal—across the play. I am reminded of the physical concept, called "transference." Where an object tells the story of its past by the small elements, which it has accumulated along the way—much like the static cling in clothing. The same physical dynamic emerges in the drama for the audience. Some watch enraptured by these peculiar objects, which appear and disappear across the several acts of a play. These objects possess their own story, much like the characters, which move them.[12] In this project, I give the object prominence, particularly its legal implications, for it is this story within these dramas, which tell a story that one character alone cannot—for many times, this character has not travelled in all of the places and spaces, where the object has. While I examine the several characters, which shift in and out of the object's life, the object's presence—and sometimes its essence—persists with its material and legal moments throughout the drama.

Drama also allows the playwrights and his players to tell a story, or rather enact striking moments, or cautionary tales regarding the legal and illegal or the ethical and the illicit, which speak to the current socio-political climate. With their history plays, like Christopher Marlowe's

[12] See the discussion of the subject and the object for this period in Margereta de Grazia, Maureen Quilligan, and Peter Stayllybrass's *Subject and Object in Renaissance Culture* (1996). Where I place emphasis on the legal significance of the object, de Grazia, for instance, stresses its economic implications as she discusses Shakespeare's *King Lear* (17-42).

Edward II and Shakespeare's *Richard III*, playwrights remind the state why it is important that the sovereign is a good steward over his or her people; *Richard III*, in particular, reminds the audience of the covenant between a king and his subjects and how it can be subverted by distorting the legal process. With their revenge tragedies, like Kyd's *The Spanish Tragedy* or *Titus Andronicus*, the playwrights craft tales, where the sovereign makes a self-interested misstep in meeting the needs of his or her subjects. Notably, flaws in the sovereign, Saturninus, are exposed by his enemies, distort his legal judgment, and bring an end to his tenuous reign. Yet, in the comedy, like *Volpone* or *Much Ado About Nothing*, the people and their love for each other are celebrated through acts, which uncover their own individual foibles, like Volpone's greed, and Don John's envy, respectively. While in tragicomedy, like *The Devil's Law Case* or *The Merchant of Venice*, the playwright complicates the drama by mixing his narrative with the best qualities from each of the other plays; the result is a tension-filled drama, where characters are neither entirely pure, nor entirely dark. In *The Devil's Law Case*, wanton conspiracies by Leonora result in bastardizing the legal court for her own selfish agenda, yielding arguably flawed judgments, and markedly shifting life's course for several characters.

The representation of written evidence on the stage serves as an important phenomenon, showing how the legal transactions, which individuals are a part of, in society, develop a certain cache in the realm of the theatrical. As the contract is signed, or the will is drafted, the audience is there to "witness." They evaluate, much like the judges and the juries, the "live" transaction *before* its legal retelling in the courts. Even if the story is retold dramatically in the theatre or legally in the courts, the theatre brings an additional element—spectacle. Meaning, the entire matter is "re-enacted," displayed, and exhibited, not merely told. The drama is performed in a way that brings a *showiness* to these writings, which appear on the stage to prove or disprove a fact. In this sense,

written evidence functions as larger than a legal case. It becomes a part of a social presentation and conversation for the masses to critique, replicate, and potentially duplicate.

While my interest in the law of evidence began in law school, this interest came to fruition when I realized that its complexities could be further expanded in its application to litigation. This dissertation arises out of this merger of evidence and litigation. For this reason, I build this project on the work of Barbara Shapiro whose examination of evidence and its classical foundation amongst rhetoricians like Aristotle and Cicero. Her discussion of inartificial proofs, like written evidence, and analysis of the weight of such evidence with circumstantial evidence and the burden of proof highlight the distinctive role of evidence in her chapter, "Classical Rhetoric and the English Law of Evidence" (Kahn & Hutson 54-72). In a similar way, Subha Mukherji propels the discussion of this field of law into early modern literature with her work *Law and Representation in Early Modern Drama*. Remarkably, she reinforces the merger of law and literature, as she considers the geographical location and the "shared space" of the stage and the theatre; their proximity serves as sites of exchange between the law-courts, the law students and the theatres, the playwrights, and the players (175). Across several plays, Mukherji analyzes the representation of evidence in marriage law, adultery, and judgment. While her monograph emphasizes the representation of rhetorical evidence, she contemplates how the exchange of love letters reveal adultery and its process of dissemination within a community and its legal implications as proof in a legal proceeding (56-61). Within these discussions of adultery and the courts, Mukherji scurtinizes the role of women and their own access to this legal realm.

In addition, Lorna Huston marshals the law of evidence and critiques its presence on the early modern stage with forensic rhetoric in *The Invention of Suspicion*. She also finds a nexus between evidence and early modern culture, particularly in the expanded roles of both the Justices

of the Peace and the members of the jury. Even further, Hutson credits the gradual awareness of evidentiary concepts for creating a "new cultural centrality and moral exemplarity" in the common law investigative procedures (5). She also crafts a compelling reading of Warwick's speech at 3.2 in Shakespeare's *2 Henry VI* where she compares his monologue to a coroner's inquest, the early detective novel, the classic Aristotelian 'well-made' plot, and Sophocles' *Oedipus* as "an instance of an analytic plot, in which the crime is discovered progressively, yet always retrospectively" like Terrance Cave and John Kerrigan (Jordan & Cunningham 144-145). Hutson uses this analysis to examine the early modern play-texts across several genres. The way each of these scholars approached the intricacies of evidence by combining its classical Roman heritage along with early modern drama allowed me to arrive at this dissertation project on written evidence. I, like Mukherji, attempt to "reconstruct the physical realities of courtroom interaction and experience" (16). Yet, I also explore evidence beyond the courtroom and try to use the stage—and its distinctively theatricality—as a way of discussing institutional discourses, expectations, and struggles.

While his focus does not include evidence, the work of Luke Wilson in his analysis of contract law also influences this dissertation. He adeptly finds a way to intervene between law and literature, especially in his chapter on "Ben Jonson and the Law of Contract" (68-113). His discussion of Jonson's *Bartholomew Fair* opens new ways to think about contracts and comedy. In addition, the work of Rebecca Lemon's *Treason by Words* also shapes my understandings about the law of treason, particularly her examination of Henry VIII's statutes, which ultimately increased the jeopardy of individuals in this sovereign nation. Lemon makes this study come alive with her analysis of scaffold speeches, theatre history, and early modern drama. Her use of pamphlets and other historical artifacts broadened my research possibilities. Although several of

these scholars intervene with evidence and writing, none of these critical works have critiqued specifically what contribution written evidence makes to early modern jurisprudence, where written evidence reveals its place as both an identifiable safeguard and a problematic instrument open to manipulation within this period—both in the theatrical courts, and by implication the legal courts as well. My study emerges as unique where this analysis emphasizes only written evidence, enabling scholars to think anew about the range and variety of documents and papers, which constitute evidence across different hypothetical situations staged in various plays.

In this dissertation, I will emphasize how these dramas display compromised, written evidence, which yields false conclusions or "verdicts" against a person or persons within these dramas. Hence, with the phrase, "tainted proofs," I am arguing how evidentiary proofs find their way onto the dramatic stage in some kind of stained, sullied, disreputable, dishonorable, contaminated, corrupting, or depraved manner. The evidence's condition impacts each of these pieces of evidence in their separate contexts—both the plays and the evidence have contexts. Each context serves as a way to read the "cultural biography" (or life history) of the evidence, as it moves through different hands and locales (Harris & Korda 18). For the plays, these contexts include varied genres, in terms of tragedy, comedy, tragicomedy, and history. For the evidence, the contexts include the different types of proofs like letters, contracts, wills, warrants, and briefs. Each of these proofs, in a tainted state, complicates a perceived, legal status. This dissertation looks at how the dramatic finds a way to discuss, represent, and critique legal proofs.

To clarify the framework for *Tainted Proofs*, the order of this dissertation complicates this story of evidence in a provocative way. Several threads are addressed in the logic of its progress. In one of its initial threads, I divide the project between those chapters, which represent state action versus private action. The state action, through a king or his agents, addresses its fear—treason—

in Shakespeare's *Titus Andronicus* (1594) and *Richard III (1597)*. In these two dramas, there exists an identifiable state-sanctioned execution. While the sons of Andronici are explicitly tried for the murder of Emperor Saturninus's brother, there exists an implicit suggestion that their actions are treasonable offenses, not unlike the executions of Lord Hastings and the Duke of Clarence in *Richard III*. The battle of proofs for *Titus Andronicus* lies in the enormity of the vengeance that Aaron seeks in his well-crafted letter, yet for the history play, the indictments and warrants evolves as a function of power. These perilous plots rely heavily upon their state actors like Tamora Queen of the Goths former captured slave now Empress of Rome, and Richard, the maniacal, impatient brother in waiting and soon king.

The second half of this dissertation tells the story of written evidence from the perspective of the private action of the individual. In each of these remaining chapters, there exists an individual desire to defeat the opponent by using calculating means. This remaining portion of the story begins with the third and final Shakespearean drama, *The Merchant of Venice* (1598).[13] Unlike Aaron's letter in *Titus Andronicus* and the Scrivener's indictment in *Richard III*, Shylock's bond is not libelous, yet the calculating means manifest themselves in terms both unconscionable and malicious. The contractual terms of Shylock's bond are bloody, and arguably deadly. Yet, surprisingly, this tragicomedy concerns itself with terms of equity in its business and personal relationships. Within this second half of the dissertation, Jonson and Webster design their dramas, which reflect the Jacobean area, and possess attributes distinctive to this period. To start, Jonson's comedy *Volpone* (1605) combines a critique of personal relationships and financial advancement as well. Volpone attempts to advance his wealth by amassing fraudulent wills. His "con games"

[13] John Russell Brown, editor of *The Merchant of Venice*, Arden edition, Second Series (2001) discusses the potential date of play; he suggests that the play was written after 30 July 1596 but before 22 July 1598 (xxi-xxvii).

evolve as the crafty means to probate prosperity. The final drama, Webster's *The Devil's Law Case* (1623), uses the public space to distort reputations as well as to outwit the opponent. Leonora uses Sanitonella's legal brief to create a scandalous taint against herself and her son to divest him of his rightful estate and slander him within this Italian community.

In this dissertation, I argue that the period illustrates some persistent problems with the uses and the deployments of written evidence through the presentation of these stage properties across the works of three playwrights—Shakespeare, Jonson and Webster. The evidence is displayed in its stained, deceptive, and manipulated state. This dramatization of written evidence is further complicated by its material embodiment as a stage property with its own history, context, and relevance. In particular, each chapter demonstrates a different context: the personal letter during the course of a murder trial in *Titus Andronicus*, an indictment and a warrant for the executions of Lord Hastings and the Duke of Clarence, respectively, for treason in *Richard III*, Shylock's bond in a civil contract dispute in *The Merchant of Venice*, wills in probate proceedings in Jonson's *Volpone*, and a libelous brief in preparation for an adultery-bastardy case in Webster's *The Devil's Law Case*. Each chapter distinctively contributes to this argument; that is, each chapter possesses a specific rationale, which reveals a definite and individual personality.

Chapter 1: "How easily murder is discovered": Aaron's Letter, False Evidence, and Manipulating Wrongful Convictions in Shakespeare's *Titus Andronicus*

Within *Titus Andronicus,* I offer a critique of trial and appellate rights within several key scenes, which plays out this legal dilemma in individual and political moments of high drama. I argue that planting flawed evidence breeds conspiracy, admitting flawed evidence corrupts the trial court system with its summary conviction without any substantive advocacy on behalf of the defendants, and denying substantive judicial review by the law-maker, thereby dismissing valid

claims for redress as frivolous.[14] By following Aaron's letter, this stage property, from one scene from the other, this analysis suggests that false evidence, as both a legal and theatrical exhibit, is planted, presented, and appealed to achieve some identifiable way to seek justice. Through Aaron's letter, I render these scenes to ferret out the characters, critique their motives, unravel criminal conspiracies, and identify the seeds of trial advocacy (i.e. field to make attorneys and other advocates more efficient at court). These criminal conspiracies surround the production, the presentation, and the consideration of written evidence for trial and appellate review within the play. As the play conducts the trial and appellate review, we view the presentation and the reading of Aaron's letters, follow the trajectory of the letter in the midst of this trial, and watched Titus's failed advocacy on behalf of his sons, Quintus and Martius. After the unsuccessful trial, the aerial delivery of Titus's petitions for his sons also prove unsuccessful, but allow for a critique of the early modern appellate system.

Chapter 2: "Where is the evidence that doth accuse me": The Scrivener's Indictment, Apparent Authority, and Manufactured Treason in *Richard III*

In this history play, I argue that the Scrivener's indictment and Richard's warrant function as flawed documents, and expose how these legal and cultural instruments negotiate themselves within early modern England. At once, the indictment and the warrant in *Richard III* reveal the trouble with these documents of death in their construction, authority, and use to perpetuate treason, instead of functioning as a site for transparency (i.e. truth, justice, and liberty). With their legal and material presence, these documents expose the oppressive regime of Richard III and the early modern period, as it struggled against kingship and individual. These locales of site,

[14] Though beginning its prosecutions with an information, the Court of the Star Chamber tried individuals summarily—without a grand jury or a trial jury. By the Stuart era, the court focused on criminal acts and enforced a variety of imaginative punishments (e.g. slitting noses, severing ears, etc.) (Baker 137).

distribution, and execution evoke for these legal documents a separate, physical life from their creators, users, and distributors that function as both culturally and politically relevant. With the Scrivener's indictment, I address issues of performance and treason at 3.6. For Richard's warrant, I contemplate notions of reading, Richard's delivery of the warrant, and the surrender of the Duke of Clarence. I also consider the conspicuous request for the warrant by the assassins, the request for evidence by the Duke of Clarence, and the ultimate execution of the death warrant.

Chapter 3: "But none can drive him from the envious plea / Of forfeiture, of justice and his bond": Shylock's Bond, Playing Hardball, and the Law of Remedies in *The Merchant of Venice*

Within *The Merchant of Venice*, the representation of the contents and the usage of the written evidence, Shylock's bond, offers a strong critique of socio-personal, cultural, economic, legal and political relationships, through contract law, particularly at the stages of negotiation, breach, and litigation within the courts. While focusing upon written evidence, I demonstrate how the material life of Shylock's bond evolves as only part of this stage prop's life history. While moving between different people and places within the drama, I demonstrate how the bond emerges as legally, materially, and socially—as both a divisive and a unifying device. This piece of evidence is distinctive from the two previous chapters. Using Shylock's animus against Antonio, I expose the malicious intent of the bond's drafters without *actual* falsity within the bond itself. I examine the unique structure of Shylock's bond agreement with Bassanio, where Antonio serves as surety in Bassanio's 3,000-ducat loan from Shylock in this three-party contract. If Antonio fails to pay within three months, then Shylock receives a pound of Antonio's flesh, based on the bond's penalty clause. I address the nature of the bond agreement, the notary's seal of the early modern bond, Shylock's illicit penalty clause, and the methods of breaking the bond. I also compare

Shylock's bond with other English bonds during this era. As Shylock attempts to enforce the bond at the Duke's Court, I review the law of remedies, which offers several ways—from repayment of Shylock (i.e. restitution) to actual performance of the contract (i.e. specific performance)—for the court to find a resolution in the matter of *Shylock versus Antonio*. Finally, I consider the court's judgment against Shylock and the issues of equity (i.e. fairness) and whether the court successfully applies these principles.

Chapter 4: "What device is this / About a will": Proving Fraud in Will Contests in Jonson's *Volpone*

Within this chapter, I argue that the early modern will process was fraught with illegality—fraud, bribes, confidence men, and criminals. As designated by common law, land passed automatically to the eldest son, and could not be bequeathed by will. However, the Statute of Wills of 1540, passed by Parliament and accepted by Henry VIII, allowed land to be bequeathed by will for the first time.[15] Now, individuals could determine for themselves to whom they wished to devise their estates, yet within all of the will-making, problems arise. Ben Jonson represents the problematic results of will formation in his comedy, *Volpone.* Within the play, the written document, with legal and material properties, grows compromised and its fraudulent state exposes a defect in early modern jurisprudence and with individuals and their heirs. Jonson's play touches upon this very anxiety. I study the significance of the memorialization of the legal document, its compromise by fraud, and the intention of the parties to address this question. The will operates as a stage property and the key piece of written evidence on this Jacobean stage. I utilize key moments in the material formation of the will, like its creation, its exchange, its reading, and its

[15] See Oliver Arnold's discussion of the Statute of Uses and the Statute of Wills in his *The Third Citizen: Shakespeare's Theater and the Early Modern House of Commons* (245, note 21).

references. By investigating these moments in the life of the will, I reveal the evidentiary implications of this legal device. I analyze Volpone's testamentary intent, particularly his mental capacity. I unfold the multiple schemes and the legal and ethical question over bribes and gifts. I examine the contest of wills and the reading of the Volpone's will. Finally, I analyze the perpetration of fraud on the court by the will contest and the crimes and civil liabilities, which result, as I consider the two trials, which take place in this comedy, critique Ben Jonson's judgment of the characters as a response to the anti-theatrical critics, and determine how these moments effect the role of the will in this early modern era.

Chapter 5: "I'll tear your libel for abusing that word": Staging Sanitonella's Libelous Brief, Sexual Reputation, and Legal Advocacy in John Webster's *The Devil's Law Case*

I argue in this chapter that written evidence in the form of a solitary brief in *The Devil's Law Case* offers a critique of the ecclesiastical courts and its litigants. I maintain that practicing libel corrupts the ecclesiastical system, and exposes its weaknesses when it comes to the evidence upon which cases are litigated and the litigants and litigators who bring these actions to the court. By illustration, this argument suggests that, in several key scenes, false evidence, is produced, presented, and positioned as substantive evidence to fell the play's protagonist, Romelio. Within these scenes, characters contrive, collude, and manipulate evidence, specifically Sanitonella's legal brief to lie to the court. I examine Jonson's presentation of the practice of libel, the libelous motives of Leonora, Romelio's mother, the inner-workings of the lawyer-client consultation, professional ethics, and the character of the legal representation. I consider this case of Leonora versus Romelio, the discussion of adultery and bastardy, and the notion of precedent for this drama and the early modern era.

CHAPTER 1

"How easily murder is discovered": Aaron's Letter, False Evidence, and Manipulating Wrongful Convictions in Shakespeare's *Titus Andronicus*

Introduction

Through a presentation of false evidence, the court in William Shakespeare's *Titus Andronicus* (1594) wrongfully convicts Martius and Quintus, the sons of Andronicus, of murder with Aaron the Moor's libelous letter, as the key source of evidentiary proof.[16] In its handling of this letter, the court also demonstrates its flawed process in the review of evidence. Both the legal process and the written evidence emerge as defective and false.[17] Within the play, the letter gestures toward its own material defects. For example, written by Aaron the Moor, delivered by Tamora Queen of the Goths, now Empress of Rome, and accepted as truth by Saturninus, the newly appointed Emperor of Rome, the letter shifts what began as a family feud into quick demise for Saturninus. I argue that, as an instructive commentary upon this early modern period, this letter, as written evidence and a stage property, exposes murderous conspiracies at the heart of the throne.[18] While accepted as truthful, Aaron's letter evolves as false and manipulated. This evidence also offers a critique of the ineffective summary trial and the appellate rights for its subjects on the dramatic stage.[19] These swift proceedings unfold as "proceedings" in name only as no substantive

[16] See Bate's Introduction in his Arden edition of *Titus Andronicus* (69-79).
[17] See also the definition for "flaw," which includes "a defect, imperfection, fault or blemish" and in a legal document, "an invalidating defect or fault" and "a falsehood" (*OED*).
[18] I presented a portion of this chapter at the conference, "Bonds, Lies, and Circumstances: Discourses of Truth-Telling in the Renaissance," at the University of St. Andrews, Scotland in March 2013.
[19] From the Norman times to the thirteenth century, felons caught "red-handed" (e.g. with the stolen goods) could be summarily executed. This power was restricted by common law judges who required at least a summary inquiry

hearing nor review of the evidence occurs at either their initial judgment, or the later appeal mounted by their father, Titus. This drama highlights the denial of a defense for the accused, where their efforts and their potential legal advocate, Titus, are silenced by Saturninus, emperor and judge in this case of the empire of Rome against Martius and Quintus of the Andronici. This narrative and my analysis demonstrate the problematic state of the law of evidence where the courts inefficiently accepts, reviews, and weighs evidence without any apparent safeguards to protect the early modern subject. While appealing a case to a higher court should ostensibly provide such protections, this drama demonstrates the perilous path that awaits the individual litigant, who goes to court to contest his case during this period.

Serving as an example of a site for legal redress, Guildhall is a historic legal edifice located in the City of London and, like the Inns of Court, has a connection to Rome, as it served as an amphitheater in Brittania.[20] The building was physically connected to the church of St. Lawrence Jewry, which served as the burial grounds in the early eleventh century, where at least two coffins have been dated–one from 1046 and the other from 1066; here, at the graveyard was "a hedge or fence where at least one elder tree, which had been regularly [trimmed] during its lifetime," according to Nick Bateman (47). It has been suggested that Guildhall was the site of the place of Brutus of Troy.[21] Though no conclusive evidence exists about the fighting of gladiators and animals in this amphitheater, the vestiges of bones from indigenous wild animals, a gladiator's helmet, and a trident are among some of the items, which have been discovered; thus, it is not hard to imagine that, for at least two centuries, both men and animals found their bloody end in this

(or confession) before the offender was executed. In the fourteenth century, requirements developed for both a formal accusation and trial in regular court (Baker 573).

[20] Shakespeare mentions Guildhall twice—once by Richard III and the other by Buckingham—in Act 3.5 in *Richard III*.

[21] See Lister Matheson's *The prose Brut: the development of a Middle English chronicle (1998).*

London arena (39). These warring factions invoke images at once primitive, powerful, and bestial. Later, in the fifth century, the British revolted against Roman rule, abandoned Roman laws, and "took up arms" against the Romans (40).[22] Then, in the Middle Ages, the structure served as a cradle of English literature where scribes copied manuscripts for Geoffrey Chaucer's *The Canterbury Tales* and John Gower's *Confessio Amantis* (*Confessions of a Lover*).

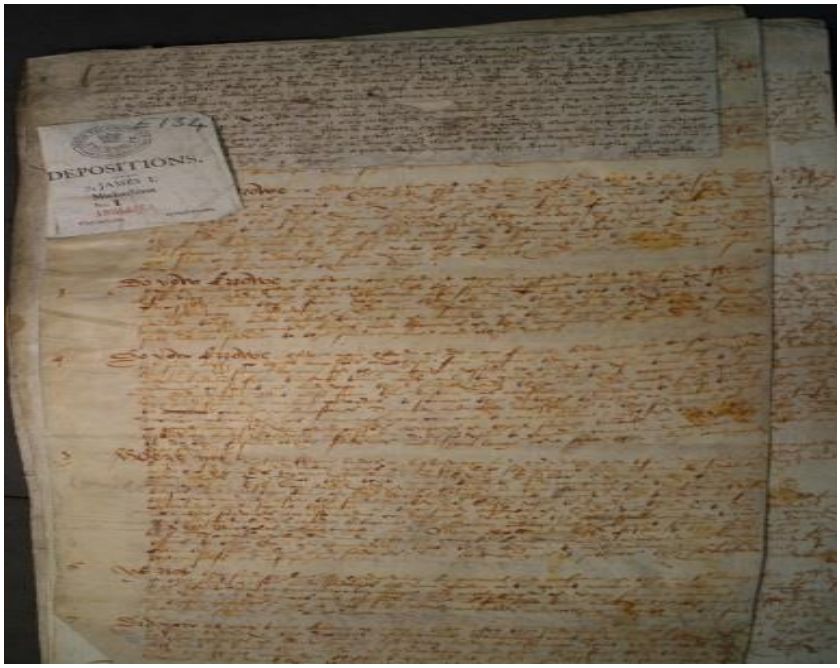


Figure 2 Nicholas Throckmorton Deposition, 1554, Paper, National Archives, Author.

Not long afterwards, in the 16th century, Guildhall functioned as the setting for different "battles." Not without some criticism, its legal courts held many famous treason trials during its early modern era. For the most part, these accused, who came before this court, were without the tools to mount a proper legal battle. Historically, the ability of these accused to confront successfully the judging body about the quality of the proofs set forth in a case was rare. Consider, for instance, Sir Nicholas Throckmorton's high treason trial (1554) at Guildhall, where among

[22] In *The End of Roman Britain* (1998), Michael E. Jones notes an interesting scholarly debate, which exists addressing whether Rome merely withdrew from Britain or whether the British expelled the Romans (138). He cites key chapters from *The Historia Brittonum* (1819).

several allegations, he is accused of imagining the death of Queen Mary I of England and giving aid and comfort to her enemies.[23] In particular, the *Throckmorton* trial relies almost entirely upon written depositions, and reflects an elaborate presentation of flawed evidence.

Commonly used in treason trials, the deposition is "a statement in answer to interrogatories, constituting evidence, taken down in writing to be read in court as a substitute for the production of the witness" (*OED*). Although the same evidence convicted his brother, John, Nicholas Throckmorton's examination, critique, and dissection of the *written* evidence serve as the source of his liberty. The many batches of depositions included the lengthy testimony of multiple witnesses, attested with several signatures, recorded at different times, and by multiple scriveners.[24] The trial "consisted almost entirely of written depositions and examinations of persons who were themselves under similar accusation, some…convicted…and others…executed for treason…." (Jardine 112-113). As David Jardine's report reflects, the trial, though unusual in its criminal advocacy on the accused's behalf during this era, illustrates the troubles with credibility, impartiality of witnesses, undue influence of the jurors, and the material character of written "proofs."[25] Over the course of the trial, the court allowed Throckmorton to cross-examine witnesses, and make arguments against any of the deficient proofs. While denied his own counsel and witnesses, the accused challenged the supposed reliability of the depositions, and convinced a

[23] In this project, I use the location of certain courts and the cases presented within them to make connections with the drama that I am discussing; for instance, here in my chapter on *Titus Andronicus*, I use Nicholas Throckmorton's case at Guildhall and its connection to Rome as I begin this project in writing the story of England through written evidence; for *Richard III*, I find useful Essex's case at the Tower of London and treason cases; and, Walter Raleigh's case at King's Bench at Westminster with its connection to writs, courts of appeal, and commercial courts serves my discussion of *The Merchant of Venice* in chapter three.

[24] In 2013, I took a photograph of one such piece (below) at The National Archives in London; it illustrates several long sheaves of faded parchment where the ink bleeds in a reddish hue in one of the forty-four batches of depositions taken during Throckmorton's trial. I will incorporate further discussion these depositions in the *Throckmorton* case in this project. The batch pictured is Batch No. 1, taken on July 25, 2013.

[25] Because of the immateriality of the oral testimony, it was difficult to challenge the proofs against an accused; the proof of the "tainted" record is exposed more blatantly in the written record.

jury of his peers that this written evidence emitted an identifiable taint of untrustworthiness in the prosecution's case.[26] Drawing upon Throckmorton's methodical dissection of the evidence, I argue that these legal proofs manifest themselves as different "pieces" of manipulated written evidence. Such evidence was often represented throughout the early modern dramatic works, as in *Arden of Faversham* or Thomas Kyd's *The Spanish Tragedy*, and other times serving as the sole written "exhibit," as in Thomas Heywood's *A Woman Killed With Kindness* or Christopher Marlowe's *Tamburlaine the Great*. These legal exhibits many times operate to advance the playwrights' conspiracy plot, but also, in their duplicitous states, reveal the complex nature of written evidence, as evident in Throckmorton's trial.

In spite of those moments in the sixteenth century when an accused, like Throckmorton, was acquitted because of deficient proofs, the trouble with the sufficiency of evidence persisted. The literature of the period took up this issue, and served as a vital source of replication, edification, and exposition upon the ways in which these early modern individuals governed their lives. From plays, pamphlets, to poetry, these writers found a way to critique subtly and other times to inveigh fiercely against ineffective governance, specifically as it manifested itself in the corrupted creation and these deployments of written legal evidence.

Before I examine how the complications and the issues relating to written evidence unfold in early modern drama, it will be useful to elaborate upon the dynamics and the workings of evidence in legal discourse, especially cases and statutes dealing with written evidence in the period. As described above, the Throckmorton case operates as an evidential anomaly within its meticulous examination of evidence during Mary I's reign, and offers an illustrative precursor to

[26] The jurors were incarcerated after finding Throckmorton not guilty of treason—though eventually released.

the later demands during the Stuart era for written evidence, as in the parol evidence rule and the Statute of Frauds (Jardine 113-114). The parol evidence rule and the Statute of Frauds provide some safeguards to legal documents. For instance, in the *Countess of Rutland* v *Earl of Rutland* (1604), Lord Chief Justice Edward Coke emphasized that every contract or agreement should be controlled by writing to avoid "the uncertain testimony of slippery memory" from witness testimony, thereby establishing what is called "the parol evidence rule" (138). In this way, the parol evidence rule prohibited the use of any oral agreements promised prior to the written contract, but not included in the document. The rationale for this rule is the assumption that any important part of the agreement would have been included in the contract. In the same way, the Statute of Frauds requires memorialization in writing of any agreement involving land, marriage, guarantors, sale of goods, executors, or one year of performance (A.W. Simpson 96, 599-601). These cases and statutes built their foundation upon a premise articulated earlier in *Lord Cheyney's Case* (1591), where the courts found that proofs by witnesses were not sufficient in cases concerning wills, testator's intent, and real property (i.e. land) (Macnair 137).

Thus, whether used in treason, property, or estate matters, written evidence evolves as a much more significant legal focal point during the early modern period. The courts and statutes bear out this fact, and the theatres serve a similar function. For example, the dramatic forum allowed the players, the playwrights, and the audience to enact and react to societal concerns, like bearing false witness against one's neighbors, questioning the trustworthiness of legal papers, and ensuring the reliability of courts, as a site of redress upon the stage. Much like the courts, the theatres developed as "pushers of paper," including letters, wills, contracts, bonds, briefs, and indictments. These papers operate to identify, define, and manipulate the relationships among characters whom these documents reach, and affect in personal and professional ways. Still, these

papers were not without their own defects. Like the memory lapses for which Coke was concerned with witnesses, on the stage too, papers expose their own innate difficulty with proving authenticity, accuracy, and intentions. Hence, another level of safeguards becomes crucial to protect the very documents, which serve to secure early modern socio-cultural and commercial relationships. If, in the courts, written evidence possesses legal consequences for the society's equilibrium as a whole, then, in plays, written evidence mediates quite remarkably and distinctively between the personal, the familial, the sexual relationships—and, legal and political transactions. As I will show in my reading of *Titus Andronicus* in this chapter, sexual intrigue that produces false evidence also has larger political ramifications.

Before returning to *Titus Andronicus*, a brief history in the evolution of written evidence is warranted here. Although the courts during the medieval period expressed a growing concern with the discretionary use of written evidence by individual judges, it is only during the early modern era that such evidence became legally mandated by case law, rules, and statutes (Macnair 134, 137). Therefore, there remains an important gap in the critical scholarship. Actual legal mandates for written evidence signal a vital shift in how cases were not only pleaded, but tried and successfully litigated in the courts. Some sixteenth century courts, like the Court of Chancery, a prerogative court, even began to transform their trial procedure for recordkeeping, which included how they used and preserved evidence (Horwitz 3).[27] While common law courts had a reputation for being too stringent in their requirements of written evidence, equity courts like the Chancery demanded written evidence, in some instances, where even common law courts did not (Macnair

[27] Prerogative courts emphasized the importance of the "sovereign's conscience" and power of the king's royal prerogative as opposed to common or civil law (Lockey 9-10).

149).[28] Still, written evidence became a key point of contention for issues of jurisdiction and competition between the courts.[29] For instance, these courts debated over what evidence would require writing and whether this requirement would be demanded across several courts. Moreover, the increasing presence of the legal document in the early modern courts provides insight into the origins of the rules of evidence (i.e. standard for admitting proofs), the process of evidence gathering, and ultimately of exhibiting the legal documents before the courts.[30] This process had the potential of affecting every aspect of early modern law whether the case concerned contracts, torts, property, or criminal law, or whether the jurisdiction was in a common law, equity, or ecclesiastical court.[31]

The importance of the legal document, that is, written evidence in and around the courts, is vital. Even more, its presentation on both the theatrical and legal stages also possesses an identifiable cultural significance. While letter writing arose as a cultural phenomenon at Hadrian's Wall by Roman soldiers in the first century (Fields 48), the spread of this practice sits squarely within this early modern moment—this moment includes the effects of the invention of the printing press and the burgeoning litigation in the courts.[32] Hence, this exchange of cultural and legal

[28] Lockey also notes that "common law was seen as closely related to unwritten English custom" (10). For instance, the common law courts would accept an oral (or nuncupative) will, but equity courts would not; see Egerton's *Observations* where it is reported that "he would never abide a nuncupative will nor give any favor unto it." Yet, the Star Chamber in 1596 rejected this rule (Macnair 147).

[29] Simply put, jurisdiction involved, which court would hear certain types of cases, like ecclesiastical matters.

[30] There has been some debate about the origins of the rules of evidence. I agree with Macnair that statutes, case-law, including the State Trials, and treatises contains those origins. I disagree with Langbein that we only see its origins in the eighteenth century (Macnair 19).

[31] For the most part, I discuss the case in terms of common law, as was appropriate in treason cases. While this case against Titus's sons is couched in terms of treason, I pay considerable attention to the criminal aspect of the case—murder. Still, I later discussion notions of equity in terms of the appellate case in the latter portion of this chapter. Such ideals would not have been considered in the typical treason case at common law. See Bellamy's *Tudor Law of Treason* (210, 233).

[32] These Roman soldiers also wrote secret letters in contravention to the rule against having wives and families (Davey & Moses 40-41).

material in and between these two courts—legal and theatrical—suggests not only a socio-cultural and political utility, but a discernible mobility as well. Notably, Subha Mukherji observes:

> The worlds of Westminster and Southwark, of the Inns and the private theatres, jostled against each other more substantially than prescriptive, Puritan writing about London would suggest. 'Paul's Churchyard' stood in the middle-a space shared by sermonists and their audiences; printers and sellers of popular cheap print; crowds flocking to the 'bawdy courts' in St. Paul's Cathedral; scriveners' stalls from which newsbooks speedily circulated far and wide; students from the Inns; and sellers and buyers of lawbooks and legal texts. (175)

This description illustrates the life of people, writing, performance, and representations of legal evidence between the courts, the theatres, and the churches. Though this project is grounded within the drama of the theatres, I will use the law courts as a way of demonstrating that other sites likewise emphasized the tension created by legal documents as evidence.

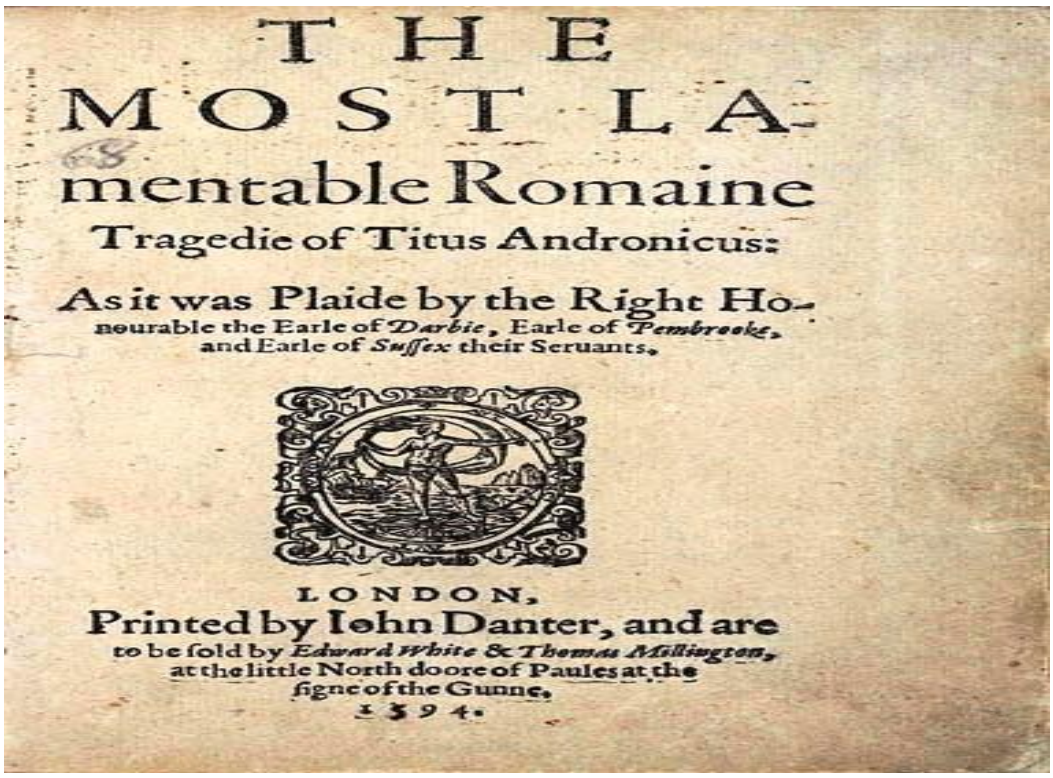


Figure 3 Frontispiece for Shakespeare's The most lamentable Romaine tragedie of Titus Andronicus, colour applied later, 1594, Paper, Folger Shakespeare Library, EEBO STC/718:03.

As an example of the cultural circulation of this drama, it must be considered that Shakespeare writes *The Most Lamentable Romaine Tragedie History of Titus Andronicus* for Henslowe's Rose Theatre on the Bankside, yet, because of the plague, the show's performance in January 1594 was abbreviated. Nevertheless, the play moves from performance at the Rose to printing by John Danter in the Stationers' Register. Later, *Titus* would be sold by Edward White and Thomas Millington at the little North door of St. Paul's under the sign of the Gun, as indicated by its frontispiece (*below*). Serving as evidence of the play's cultural significance, the frontispiece displays not only the play's title, printer, date, and place of sale, but includes the playwright's patrons, the Earles of Darbie, Pembroke, and Sussex. From here, the play shifts from the printers to a much larger audience. Jonathan Bates notes that even if the public could not see the play performed because of the epidemic, they could read this Roman tragedy as both a play and a ballad,

with the same name, printed by Danter.[33] White and Millington, these cultural and political merchants of paper, could sell these plays and ballads in close proximity to the courts, the churches, and the theatres. Later, in June 1594, the play was also performed at Newington Butts, a theatre across St. George's Fields and beyond the City of London's jurisdiction for at least two performances. After the theatres on the Bankside reopened, and the plague's momentum had subsided, the Chamberlain's men established *Titus Andronicus* as their company's property. Even as late as 1596, the play was performed privately in Rutland (37, 69-71). In essence, the play with its concern about written evidence, particularly letters, becomes a carefully crafted vehicle to explore the performative nature of written evidence, and its substantive legal implications across early modern London's environs.

This chapter builds on the work of Lorna Hutson in her examination of *Titus Andronicus* and its displaced trial, the use of rhetorical evidence, and early modern jury service. She reads the play as presenting "political tyranny as the refusal of an open hearing of the evidence," thereby requiring an examination of evidentiary "signs and probabilities by the revenge hero/dramatic plot" (91). Hutson favors a forensic analysis of dramatic plot structure, using detection and evidence evaluation found in jury trials, rather than Foucault's spectacle of the scaffold (i.e. spectacles of legally inflicted pain as demonstration of sovereign power). She also uses *Titus Andronicus* to distinguish between the participatory open and the adversarial jury trial from the inquisitorial system Foucault describes (e.g. crown-operated versus individual-based accusations) (66, 68, 71). Likewise, Subha Mukherji's discussion of rhetoric and the geography between the

[33] See also Bruce Smith's chapter entitled, "Ballad Futures," in Patricia Fumerton, Anita Guerrini, and Kris McAbee's *Ballads and Broadsides in Britain 1500-1800* (317-318). Shakespeare's drama was composed before the ballad (transcribed 1600-1603), as John Lewis Walker discusses in his *Shakespeare and the Classical Tradition: An Annotated Bibliography, 1961-1991* (684).

law courts and the early modern theatres also opens up the remarkable exchange between these two locations of performance. She notes "the affinity between the theatre and the law court…inheres in their shared evidentiary and representational concerns" (175). This shared concern of these two locales is vital to my project as well.[34] While concerned with written representations, Alan Stewart's work with letters within the breadth of Shakespeare's dramatic works cannot be overlooked, as he considers the diverse interventions that the letter plays. He observes that "although Rome and ancient Britain, to the Wars of the Roses, to the sixteenth-century Venice, the letter-writing culture [Shakespeare] represents is emphatically of the late Elizabethan and Jacobean England," with the exception of *Titus Andronicus* (5). Though each of these scholars make interventions with evidence and writing, none of these works have examined specifically what contribution written evidence, particularly the letter, makes to early modern jurisprudence, where written evidence reveals its place as both an identifiable safeguard and a problematic tension within this period in the theatrical courts, though shared by the legal courts as well.

The forged letter functions on the one hand as a legal document, but on the other hand, in plays like *Titus Andronicus,* the letter shows a sign of human duplicity that is played out in familial and sexual relationships. It is neither simply a legal document, nor a mere stage prop, but also functions as a lethal weapon in personal, often violent, dramas on the stage. From the battles fought by the gladiators in Roman and British amphitheaters to those fought by the accused before their

[34] In addition, Richard Helgerson's argument that the writing of England's history becomes indelibly linked to the writing of the law in the battles between Bacon and Coke as justices and the writing of theatre through early modern playwrights like Shakespeare. Though Bacon favored the king and Coke favored the law, both legal scholars agreed on the project of writing the law (74). Helgerson also argues that "Shakespeare helped establish the new genre of the national history play and then gave that genre a singularity of focus that contributed at once to the consolidation of central power, to the cultural division of class from class, and to the emergence of the playwright—Shakespeare himself—as both gentleman and poet" (245).

judges, the wounds are no less striking. Yet, like the depositions in the Throckmorton case, the wounds in *Titus Andronicus* come in the form of lethal letters. Similarly, lethal letters appear elsewhere in Shakespeare, from Edmund's forged letter in *King Lear* to Pisano's forged letter at 4.2 in *Cymbeline*. I insist that the complicated place for the forged letter reaches its pinnacle in *Titus*. It is important to show that in *Titus Andronicus*, the dramatist illustrates Saturninus as Rome's emperor, who has rejected the rules of law, particularly evidence. Without the rules of evidence or some semblance of "order," there exists chaos, and his reign over Rome fails—most fatally by a letter. Hence, this play grows significant in its usefulness as a critique of the administration of early modern trial rights, and addresses the importance of defending those who are accused as well as acknowledging the burgeoning rules of evidence that the prosecutor, or here Saturninus the law-giver, must follow. Not unlike the battlegrounds of the courtroom, the early modern stage functions as an experiential locale by which to contend with this transitional crisis between spoken and written authorities, falsity and truth, character and credibility, conflicts and relationships—both private and public. Within the play, the testimonies and rhetorical defenses of Titus on behalf of his sons Martius and Quintus work to no avail, yet the fraudulent papers presented illegally, and perhaps unethically, by Tamora, the law-giver's wife and the letter-writer's lover. In furtherance of a vindictive vendetta, the letter inflames pre-existing personal animosities of Tamora and professional jealousies of Saturninus to the dysfunction of this Roman realm.

I maintain that within several key scenes, written evidence within *Titus Andronicus* offer a critique of trial and appellate rights, as they function within criminal law and their appeals. Even further, written evidence plays out this legal dilemma in individual and political moments of high drama. My argument submits that planting flawed evidence breeds conspiracy, admitting flawed evidence corrupts the trial court system with its summary conviction without any substantive

advocacy on behalf of the defendants, and denying substantive judicial review by the law-maker, thereby dismissing valid claims for redress as frivolous.[35] In following one scene from the other, this analysis suggests that false evidence, as both a legal and theatrical exhibit, is planted, presented, and appealed to achieve some identifiable way to seek justice. In this chapter, I render these scenes to investigate trial advocacy (i.e. a field designed to require more efficiency by attorneys and other advocates in the profession) not only within the play but its emergence, and at times its possible regression, within this early modern moment—specifically, its courts, its culture, and its critical commentary.[36] Because of its silence, the audience, I imagine, serves as more co-conspirator than witness—not unlike Aaron and later Tamora. The audience watches as ultimately Titus's sons, Martius and Quintus, are judged, convicted, tortured, and decapitated. As these events unfold, it is in silence that Aaron too, as co-conspirator/witness gleefully watches, as these dramatic acts take place, Tamora collaborates with her sons as well, and she finds her own judgment eventually at the hands of Titus.

In each of these key scenes on written evidence, Shakespeare delivers in the play a moment to consider how the evidence is subverted, manipulated, and ultimately summarily accepted as truth. There are three important scenes that this analysis will consider. In the first scene, the ever-mercurial Aaron produces written evidence fraudulently in an inspired act of villainy at 2.2.46.[37] The letter is compromised, where Aaron exposes his desire for vengeance against the Andronici, yet it is given to Tamora. In the second scene, Tamora plants the falsely written proofs in the hands of her husband, Saturninus, who conducts this summary trial in the atypical wooded lands where

[35] Though beginning its prosecutions with an information, the Court of the Star Chamber tried individuals summarily—without a grand jury or a trial jury. By the Stuart era, the court focused on criminal acts and enforced a variety of imaginative punishments (e.g. slitting noses, severing ears, etc.) (Baker 137).
[36] John Langbein suggests that the adversary system involves attorney conducted criminal trials (1).
[37] I use Q1 scene division, instead of the Folio scene divisions for this chapter. See Bate's note at line 500 (158).

they hunt. Aaron's letter is accepted as truthful, in spite of the glaring evidentiary issues presented by the document. In the final scene, Titus appeals to the emperor for judicial review of the summary trial and to the Greek gods for redress. I argue that this scene illustrates the significant worries with early modern appellate review becoming nothing more than a procedural process, rather than a substantive review.

Now, I will begin with the first scene where Aaron's problematic letter first appears, reveals the motives of his character, his criminal conspiracies (including the murder of Bassianus), and his co-conspirators, like Tamora.

FIRST SCENE: 2.2.1: The Introduction of Aaron's Letter

What's here? A scroll; and written round about? (Demetrius 4.2.18)

This moment, at 2.2 when the letter initially appears, provides a way for the audience to examine the characters, critique their motives, and unravel their criminal conspiracies, which surround the production, the presentation, and the consideration of evidence for trial and appellate review in later scenes. Before Act 2, General Titus has conquered "the warlike Goths" (1.1.560), brought prisoners to Rome from these fallen people, namely Tamora, Queen of the Goths, her three sons Alarbus, Chiron and Demetrius—and her servant, Aaron the Moor. Titus has, with Roman ritual on his side, sacrificed one of Tamora's sons, Alarbus, the eldest, as satisfaction for the twenty sons whom he has lost in this long battle against the "barbarous Goths" (1.1.28). Unfortunately for Titus, Saturninus, the new Emperor of Rome, has decided to accept "the subtle Queen of Goths" (1.1.397), Tamora, as his new wife. This convenient coupling occurs, just as Titus's sons have spirited away his daughter Lavinia. While forestalling the emperor's offer of marriage to the "gracious Lavinia, Rome's rich ornament" (1.1.55), this calculated interference allows this Roman

treasure, Lavinia, to marry her intended, the emperor's brother, Prince Bassianus (1.1.429). Now, the play shifts, from war to weddings, and then to hunting. Here, at 2.2.1, Aaron enters, and while bending over to place the money-bag under the elder tree to be "found" later, he begins his soliloquy:

> He that had wit would think that I had none,
>
> To bury so much gold under a tree
>
> And never after to inherit it. (2.2.1-3)

Here, Shakespeare presents a moment where the audience views Aaron on the stage alone, and in this monologue explains the reason for his stealth-like behavior. Presently, the audience catches Aaron committing an illicit act in the middle of this criminal conspiracy, yet Aaron "the devil" (5.1.145), in this sinister figure, which he exudes, postures as one without guilt. Within this scene, the audience learns of Aaron's character, his plan for Tamora's sons to kill Bassianus and rape Lavinia, his affair with Tamora, and his scheme for the letter. Always with a plan, Aaron plants a money-bag of gold, and gives the letter to Tamora to deliver to the emperor. Within this plot, he misuses the false letter, which later turns into the lynchpin for the wrongful convictions of two of Titus's sons, Martius and Quintus. Here, Aaron's "fatal-plotted scroll" (2.2.47) becomes visible for the first time in the play.

Along with the letter, Aaron reveals to the audience his motives. Like the well-placed money-bag, the letter turns into as "a very excellent piece of villainy" (2.2.7). This poison pen letter functions as a product of Aaron's desire "to do some fatal execution" (2.2.36). This blood-thirst that he shares with Tamora is embodied in his later proclamation to his Tamora: "Vengeance is in my heart, death in my hand, / Blood and revenge are hammering in my head" (2.2.38-39). In

this moment the audience learns that Aaron is no one's lackey. He is fierce in his desire for revenge, and eager to begin as he will not be sated with one "complot" (2.2.265). Although Aaron has planned this "day of doom for Bassianus" and Lavinia, "his Philomel" (2.2.42-43), his letter turns into the key to achieving more deaths for the Andronici, namely Martius and Quintus. It is with his "deadly-standing eye" that he delivers the dangerous device to Tamora (2.2.32).

Filled with Aaron's dangerously ocular gestures, this scene exposes the ramifications of "planting evidence" to implicate his prey in "the court of Rome" (1.1.551). In legal terms, planting evidence marks a vital aberration of the law, but it also has a great significance in the affective economy of the play, where it heightens the unraveling of the Andronici family. Here, the play presents a compelling moment where a character is actually "concealing" evidence—a difficult task where "the emperor's court is like a house of Fame, / the palace full of tongues, of eyes, of ears" (1.1.626-627). This device of concealment conveys deadly signals, where most characters are "hunting" prey—some animals, and others, like Chiron and Demetrius, people—in these woods, so "ruthless, dreadful, deaf, and dull" (1.1.628). Yet, there exists even further drawbacks to deception in this deceitful use and "placement" of key evidence beyond the dramatic stage.

In early modern society, planting evidence takes all manner of forms. For instance, when read broadly, from "scurrilous ballads" written as mere character assassination (Weir 18) to statutes passed to "quash the false, forged, scandalous, seditious, libelous, [and] unlicensed Papers [broadsides], Pamphlets, and Books that plagued the capital to the great Defamation of Religion and Government" (Raymond 257).[38] In particular, two treason cases illustrate the dilemmas incited

[38] An ordinance was passed by Parliament 14 June 1643 regulating nefarious printing. See also Bruce Smith's chapter entitled, "Ballad Futures," in Patricia Fumerton, Anita Guerrini, and Kris McAbee's *Ballads and Broadsides in Britain 1500-1800* (317-318). Shakespeare's drama was composed before the ballad (transcribed 1600-1603), as John Lewis Walker discusses in his *Shakespeare and the Classical Tradition: An Annotated Bibliography, 1961-1991* (684).

by deceit. In the first case, allegations of forged evidence (i.e. letters) presented to court abound, but in the latter case, the accused suggested that the evidence (i.e. depositions) is defamatory.

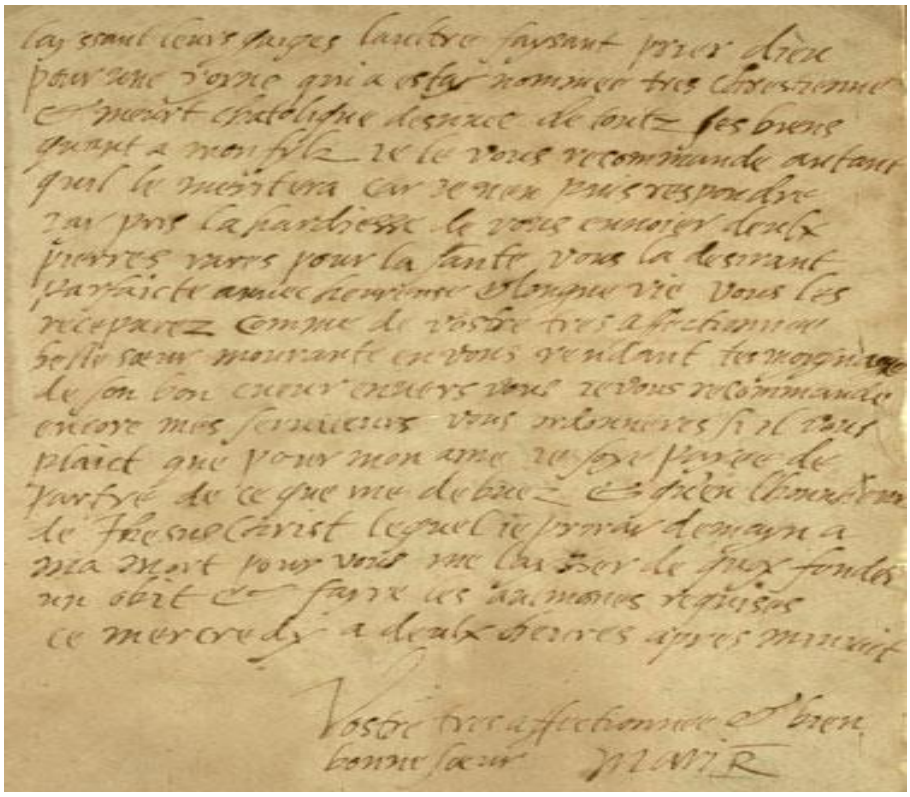


Figure 4 Mary Queen of Scots Letter to Henry III of France before Execution, 1587, Paper, National Library of Scotland, NLS Digital Gallery.

First, in the case against Mary Queen of Scots, serious allegations about seven forged and "planted" letters, implicate this queen as an accomplice in the murder of her previous husband, Henry Stuart Lord Darnley, and in a "criminal amour" with her current husband, James Earl of Bothwell (Tytler 66, 72, 74).[39] Traveling from one country to another, the "spurious" letters first appear at a Secret Council on December 4, 1567, and are stealthily planted in the hands of her most staunch enemy Scotland's Regent George Buchanan, the Earl of Murray. Eleven days later

[39] Tytler, William. *An inquiry, historical and critical, into the evidence against Mary Queen of Scots and an Examination of the Histories of Dr. Robertson and Mr. Hume, with respect to that Evidence*. Fourth Edition. Volume 1 of 2. London: Printed for T. Cadell in the Strand and W. Creech Edinburgh, 1790.

on December 15, 1567, the letters appear in an act of Parliament to detain the Queen of Scots against her will on this matter. At one point in this intrigue, Mary Queen of Scots escapes with Bothwell to the Castle of Borthwick, but is tracked, pursued, and apprehended by Lord Hume at the head of a healthy military arsenal of 800 horsemen. Later, she requests, but is denied access to the letters; ultimately, she is incarcerated, convicted, and executed without having ever viewed the written proofs (19, 62, 77, 82-83). In addition to the now revealed love letters, her alleged affair, murder conspiracy, judgment and execution parallels the life of Tamora the Queen of Goths and Empress of Rome in *Titus*. The cunning Tamora conceals her affair with Aaron the Moor, conspires to commit murder, rape, mutilation, and treason with her lover. Lucius, Titus's lone surviving son, renders a judgment and a special manner of her execution for her deeds. Yet, where Tamora plants Aaron' letter mid-conspiracy, Mary Queen of Scots denied the ownership of her odious, "casket" letters.[40]

In contrast, during the Nicholas Throckmorton case, discussed above, the treason charges were incapable of being substantiated; after scrutinizing the written evidence, the case appeared to contain so much manufactured (or "planted") evidence. Of the forty depositions, Throckmorton found a way to dismiss each examination as false. In this way, for both cases, the accused alleges that nefarious hands manipulated evidence against them; here, in *Titus*, the audience witnesses Aaron's guilty hands. The Queen of Scots, like Throckmorton, insisted that the "love letters" were manufactured. Whether one believes Mary Queen of Scots's allegation of forgery or not, undoubtedly those individuals, who proffer these maligning letters have issues of credibility,

[40] Here, letters were apparently seized in a casket in June 1567 (1). See A.E. MacRobert's *Mary Queen of Scots and the Casket Letters*.

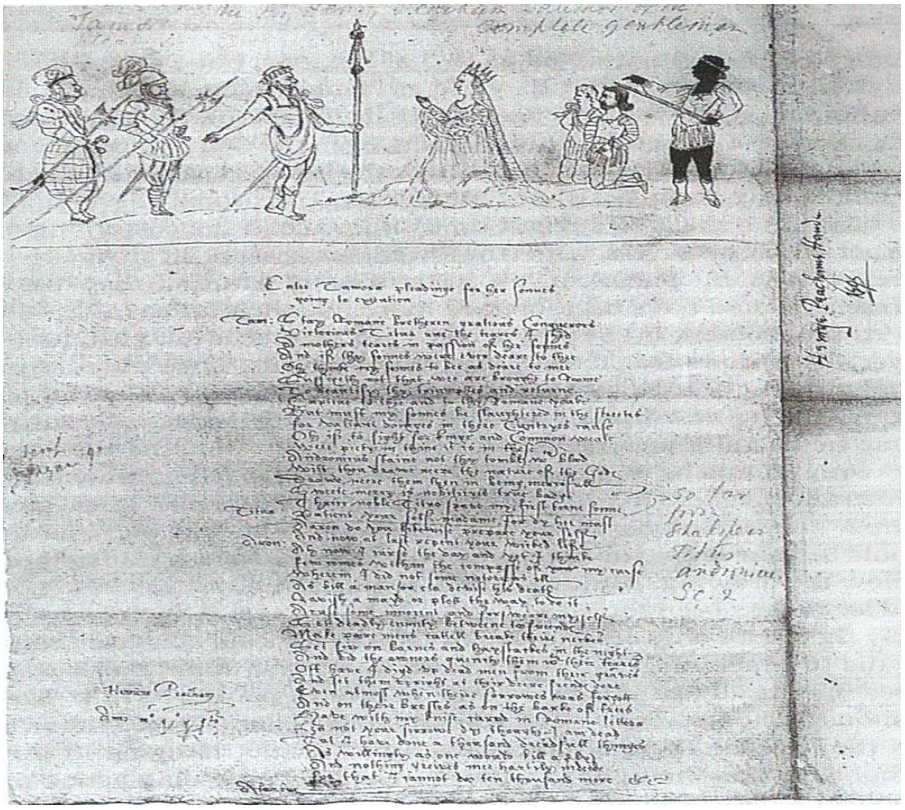


Figure 5 Henry Peacham, The Peacham drawing, 1595, Paper, vol. I from f. 159 of the Harley Papers at Longleat, Library of the Marquis of Bath at Longleat, library.oxfordjournals.org.

which might suggest a cause for suspicion.[41] For example, with his alleged pre-existing animus against the Queen of Scots, the Earl of Murray's proffer of evidence might infer a "taint." Likewise, before this audience, Aaron reveals his pre-existing animus, as he tells the audience in the soliloquy why he is "to bury so much gold under a tree / and never after to inherit it" (2.2.2-3). He explains his ego-maniacal motives. In these motives, there exists a significant problem for Titus and his sons where Aaron plants false evidence and Tamora presents false evidence at court, much like the allegations of Throckmorton and Mary Queen of Scots. These malignant motives, for several reasons, impede justice for the Andronici: 1) Titus, for his popularity as a general, poses a

[41] See Barbara Shapiro's discussion of suspicion in her chapter, "Classical Rhetoric and the English Law of Evidence" (Kahn & Hutson 54-72) and Lorna Hutson's commentary in *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (2007). See also Subha Mukherji's discussion of probability in her book, *Law and Representation in Early Modern Drama* (2006).

threat to Saturninus; 2) Lavinia rejected the emperor's offer of marriage; 3) Titus's sons kidnapped Lavinia to prevent the marriage to Saturninus; and, 4) Titus killed Alarbus, son of the new Empress, Tamora. At every turn, the emperor's position seems weakened because of the Andronici.

Though Tamora's presentation of evidence to the courts is an important moment in the legal life of the document, the earlier exchange of the letter from Aaron to Tamora represents an attempt to inject a "taint" into the system of jurisprudence with the use of flawed evidence that is both visual and symbolic.[42] This handling of potential trial evidence has a visceral effect in the play. I explore here the physical biography of this letter, which is separate from its legal biography, not unlike Igor Kopytoff's distinction between an object's physical and economic biography (Appadurai 68). Here, within this scene between Tamora and Aaron, a physical exchange occurs between this diabolical couple that allows the audience to read further into their connection as lovers, as co-conspirators, and as vengeful killers. The physical transfer of this document imitates their sexual and bloody lives as well. Though we witness their murderous conspiracies on the stage, we never see them engage in the sexual intimacies of love-making or the violent act of murder. For this reason, the letter serves as a substitute for other physical tendencies—both carnal and fierce. The letter and its exchange evolve as important like the frontispiece for the play and its socio-political and cultural exchange within the early modern community.

Similarly compelling, the significance of its visual component may be found in Henry Peacham's illustration of a production of the play in 1595 (*above*). This visual piece operates as a

[42] Instructive for this analysis was discussion about the material life of cultural object, particularly Appadurai's "life histories" and Igor Kopytoff's "social career." Where Appadurai emphasizes the distribution of knowledge in economic terms, Kopytoff stresses the spheres of exchange in moral terms (41, 66, 71). See also Sofer's discussion of the material life of theatre objects—though most of his discuss centers on non-written stage properties

physical precursor to Aaron's manufactured letter, but portrays another physical exchange where Tamora, her sons and Aaron exchange their freedom for Roman imprisonment. It is dynamic in its symbolic display of the dichotomy that exists within the play at the site of both Aaron and Tamora's entrance into the jurisdiction of Rome. Here, Titus's spear evenly divides the illustration between the characters, Goths and Romans. As they exist in the drawing, this pair remains ideologically as polar opposites with Roman society. Much as the playwright portrays them, Tamora, her barbarous Goths, and Aaron the Moor's characters are depicted as dishonorable, in contrast to the Romans, like the Andronici, who are esteemed as honorable. Jonathan Bate suggests that the illustration does not depict any particular scene, but "offers an emblematic reading of the whole play" (41). In this drawing as in most of the play, the Goths and the Andronici remain at odds, in battle, and always enemies.

Like the representation of drama, the representation of legal culture provided a powerful source of imagery for early modern society. The trials themselves offer scintillation in the form of information and the presentation of legal props, which excited the early modern imagination. For instance, in the high treason case involving the "Trial of Lieut. Collonel John Lilburn" in 1649, the prosecution read from Lilburn's pamphlets as proof of his guilt, as Saturninus reads Aaron's letter, but unlike Martius and Quintus in *Titus*, Lilburn is found not guilty. As a tool for political activism, his pamphlets were known for their calls for freedom from "insufferable, unjust, tyrannical monopoly of printing" (Raymond 260). Along with others, John Lilburn was incarcerated because he, through his pamphlets, charged this early modern society to change with socio-political material, like legal equality, religious freedom, and election reforms, to incite individual conversation.[1] Such conversations garnered sufficient attention, as some of the texts were published by Lilburn, in which he cited the Magna Carta, public proclamations, remonstrates,

orders of Parliament, and declarations. Though his wife petitioned for his released based upon family hardship, no relief was granted. However, this confinement did allow for more acclaim for his pamphlets. The popularity of his work was immense.

Commemorating the legal victory, an engraved frontispiece depicts how he defends himself at court while holding a copy of *Coke's Institutes* to invoke the legal education that he received is instructional (227-229). Even more compelling, the frontispiece in *Coke's Institutes* (see image below) demonstrates the cultural and the societal value that these texts had not merely for the lawyers but the defendants and the society at large. Likewise, Aaron's letter and its exchange in *Titus* seek to work against this role that law and evidence play in early modern society. Within the drama, a setback results in the denial of access to a substantive trial and appellate process for the Andronici, both of which I will discuss later. Yet, not only for Lilburn's trial, but for Shakespeare's drama, the iconic representation of *Coke's Institutes* emphasizes this legal deficit when examining evidence. Hence, this visual representation of the pamphlet and the acclaim of this pamphleteer demonstrate the commerciality, the social and the political value of these texts. Indeed, the inclusion of Sir Edward Coke's *Institutes* engraved on the frontispiece also highlights the legal system by which Lilburn was charged or castigated, depending upon whether one was a fan or a foe to this pamphleteer. As much as the state tried to stop these publications, this clever pamphleteer found a way to make the system by which he was tried and convicted, but others were executed became a part of this commerciality—with all its repugnance and its popularity. Of particular significance, this attempt to control the publication of the legal text may be likened to attempts to conduct summary trials without a proper vetting of the evidence, including written evidence, which I discuss further in the next section of this chapter.

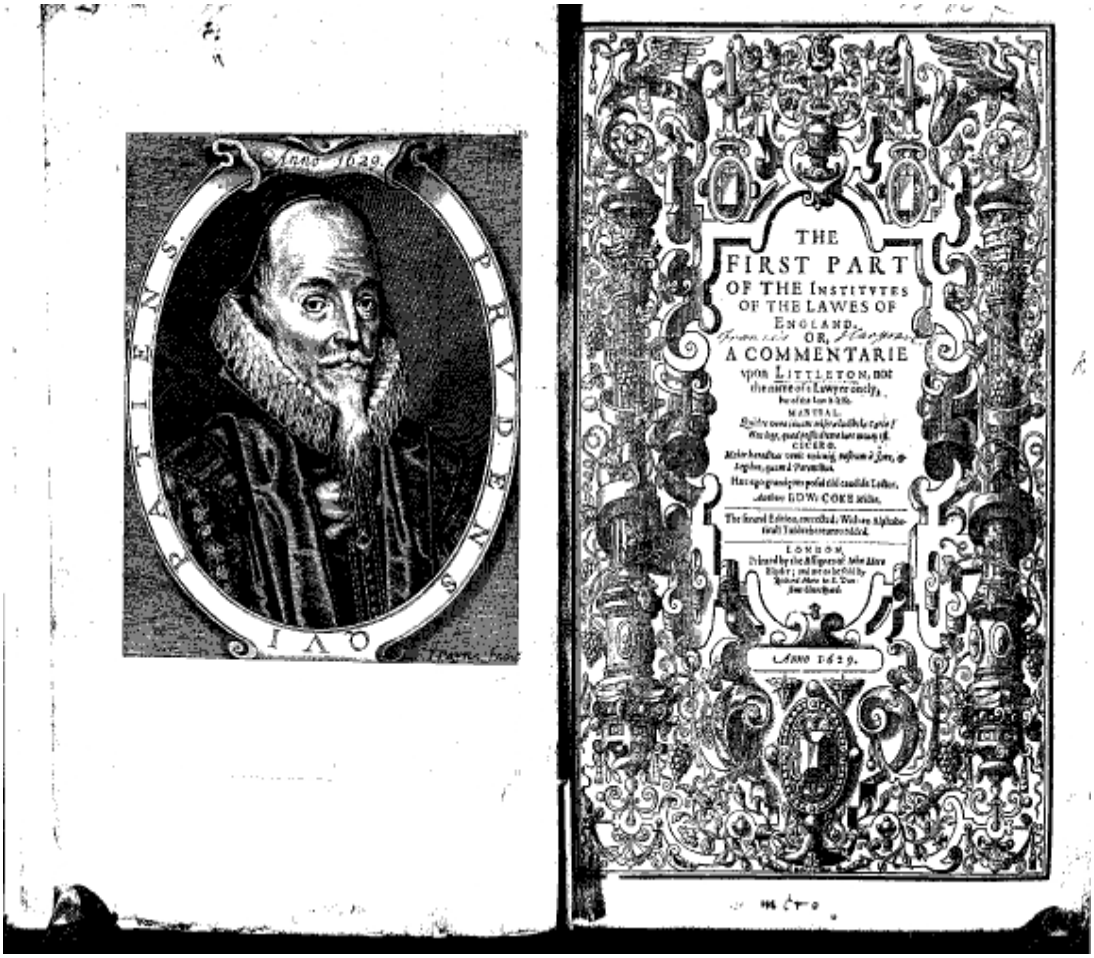


Figure 6 Edward Coke, The first part of the Institutes of the lawes of England. Or, A commentarie upon Littleton, not the name of the lawyer onely, but the law it selfe, © The British Library Board, 508.g.16, EEBO STC/770:04.

Perhaps representing the abundance of early modern concern for that which is illegal, immoral, and unethical, this "tainted letter" in Shakespeare's tragedy functions to subvert the system of justice in Rome through producing this false letter with the intent of bringing about the deaths of the family of the Andronici and the fall of Rome, or rather its sitting emperor, Saturninus. Within the play, the letter is portrayed as a libelous letter, yet signals deeper ethical and moral dilemmas within this Roman Empire. At its unethical level, Aaron's motives are to use the letter as evidence against Martius and Quintus for the death of Bassianus, the king's brother and Lavinia's husband. The "taint" of the letter will thereby spread against the entire Andronici family,

where Titus, celebrated general and honorable citizen of Rome, will fall swiftly from grace. At an illegal level, Aaron wishes to create "unrest" (i.e. treason) within the state of Rome (2.2.8), thereby felling Saturninus, for Aaron collaborated with Tamora and her sons against the Andronici, but ultimately the fall of Rome was in their purview.[43]

Simply put, the letter does not seek to reveal truthful evidence.[44] From its core, the purpose of the letter is to execute Aaron and Tamora's plan to destroy Titus and his family.[45] Destroying

[43] To create civil unrest, the play uses acts of writing and legal judgment, which has perilious consequences: "what is written shall be executed" (5.2.15). Meg Pearson insists that Aaron uses reading and writing to teach in the play, particularly Tamora's sons, Chiron and Demetrius. To execute his plans, Aaron "relies upon the literal written word and his capacity to read, interpret, and rewrite the actions of others that helps him to maintain his dominance." Eventually, Titus learns that "writing is the medium of power" (35-36):

> Aaron understands how writing functions in Rome. He writes, as David Bergeron has argued more generally for the period at large, 'to communicate, comprehend, create, and control' ("Introduction" 18). Written, official language alone can 'wound…to the quick' (4.2.28). Aaron deploys his words via credible media, such as scrolls and official announcements, lending his malicious articulations more weight and credence. He composes the letter that convinces Saturninus of the Andronici boys' guilt in 2.3, and later plays the false herald of Saturninus, offering the boys' lives in exchange for Titus's hand in 3.1. (Pearson 38)

Here, the letter serves Aaron at an immoral level. Yet, this project maintains that Aaron uses writing to affect political power in the letter's legal capacity as evidence in the successful perpetration of crime. Aaron's writing becomes a mode to extinguish simultaneously Saturninus's competition and Tamora's enemies. Eventually, the letter works to "write" the Andronici out of favor with the Emperor. Though the emphasis on reading and writing in *Titus* for Pearson has pedagogical significance, I submit that writing possesses a quality, which echoes Richard Helgerson who connects the writing of the law to Coke's *Rutland* case. More than protection against the "slippery memory" problem that he addressed in the *Rutland Case* (1604), Coke's intentions were broader. His reports "now had a polemic purpose," which could protect the English system of jurisprudence against humanists (Helgerson 80).

[44] Arguably, the use of Rome to critique early modern England was a highly charged political contrivance, especially where the writer's efforts are not sufficiently subtle. Those writers who failed to cloak their critique of the realm faced stern consequences. As the tragedy *Titus Andronicus* uses the subject of Rome, Henry Carr's "The Weekly Pacquet from Rome" becomes quite relevant where Carr was tried for his barely veiled criticisms about the execution of justice in England (Raymond 340). At his trial at the Guildhall of London for Libel, 32 Charles II A.D. 1680, the court referred to the pamphlet as "a certain false, scandalous and malicious book," meaning the book was alleged to have been intentionally and unlawfully printed; the court accused that Carr intended to scandalize the laws and hold the kingdom of England and justice in contempt by the book's publication, where he wrote in criticism of the Catholic and Jesuit faiths: "The virtues of it are strange and various. It will make justice deaf as well as blind, takes out spots out of deepest treasons, more cleverly than Castile-soap does common stains" (1112). Apparently, Carr sought to communicate "Romish Fopperies," the superstitions, the errors, and the usurpations of the Bishops of Rome (1113). The jury found Carr guilty and was praised the by court for doing so.

[45] At first glance, the dark characters and bloody violence caused some scholars to view *Titus Andronicus* as the basest sort of play, yet this early modern moment mirrored the tragedy's bloody existence with the torture and

Bassianus, Martius, and Quintus, the letter creates both scandal and sedition. First, interlopers like Aaron and Tamora, through their flawed characters, use the letter to exert their ill-will as a conquered people who endure a perceived wrong and as enemies enact their innate desire to embody evil. Second, the letter is camouflaged as real or truthful evidence in the court of Saturninus, thereby corrupting the trial system. Third, the letter exposes a lack of obtainable justice in the realm because of its flawed appellate system. To advance their scheme, Tamora takes the letter in 2.2 from Aaron because he is one of her many co-conspirators. This empress, who is at one with ruling men as her main means of conducting conspiracy, uses many actors in furtherance of her own malignant machinations, much like Iago in *Othello*. However, unlike Iago's dupes, most of Tamora's agents are fully aware of her 'end-game;' they know she seeks to destroy the Andronici, for the death of her son, Alarbus. Hence, just as Aaron plants the money-bag of gold, Tamora endeavors to "plant" the letter in the hands of its intended, Saturninus, the Emperor of Rome.

In searching for the truth, Aaron's soliloquy, which reveals his own truth, is delivered to the audience, which arguably operates as both complicit co-conspirators and watchful witnesses. Several scholars have noted this complex relationship between theatre/audience and witness/juror. At first glance, the audience serve as "witnesses" to Aaron and Tamora in this Roman drama (Umar 73). Nevertheless, more persuasive is the argument that the audience functions more as jurors (Mukherji 136). Does the space between the play and the audience function as a vacuum of

execution of its people, attempted kidnappings of its sovereign, James I, and other behavior, which might be deemed scandalous. Hence, this Carr case provides a wonderful comparison to Tamora and Aaron, as they scandalize this realm with their affair, a child born of this affair, and their criminal conspiracies. Essentially, Carr critiques this kingdom through his book. He finds that flaws exist in the administration of justice within this realm. Similarly, Titus lays such charges against the kingdom of Rome, and appeals to the gods for redress. Later in the chapter, when the speeches of Saturninus are examined more closely, it can be said that the scandalous nature of Titus's charges of injustice may be laid for comparison as well.

knowledge and corruption, which somehow embody the complexity of jury service at this time, as noted by Lorna Hutson and John Langbein? Does this space thereby make the defendant susceptible to a wrongful verdict, as in the Throckmorton treason trial? Though Aaron's letter functions to "disguise" the truth, the audience plays the role as witness, jury, and justice of the peace, both witnessing, examining, and judging the "testimony" before it in this supposed legal effort at truth-seeking. Some resonance for this argument may be found in the Sir Walter Raleigh case and his self-authored pamphlet, "The arraignment and conviction," where he was tried initially and found not guilty; then, apprehended again, convicted privately, and executed. Using Raleigh's case as a guide, if the state does not like the verdict, it may always re-try the defendant, without a jury. Hence, the early modern process does not always foster truth (or transparency), in spite of the witnessing of the audience, the deliberating of the jury, or the judging of the justice of the peace. Most importantly, this "taint" of false evidence implicates character, credibility, conspiracy, treason and sedition in this initial scene.

Aaron's Letter Investigates the Problems of Character

This scene functions effectively to illustrate the motives behind manipulating potential vital written evidence. This opening scene at 2.2 describes in detail the character of Aaron the Moor, Tamora's lover, and the play's machiavel, which is revealed in even the briefest of phrases: "My silence and my cloudy melancholy" (2.2.33). It is in these moments of the scene, that the character of Aaron, in his stealth sadness, may be truly examined, for it is here that Shakespeare imparts to the audience inferences into the causes and the nature of his acts and the character of this unscrupulous charlatan.[46] Aaron exudes the resolve to exert bloody vengeance against his

[46] See Shapriro's discussion of inferences (Kahn & Hutson 55).

purported enemies, the Andronici. In spite of his affair with Tamora, he is unflappable, and will not allow her venereal signs to supplant his intentions. Even further, Aaron is unwavering to see the "destruction" of the lives of the Andronici (2.2.50). As if to demonstrate his evil design bodily, Aaron likens his hair to a snake where his:

> fleece of wooly hair that now uncurls
>
> even as an adder when she doth unroll
>
> To do some fatal execution. (2.2.34-36)

The image brings to mind the mythological Medusa whose hair is covered with the serpents, which gives her, like Shakespeare's Aaron, a sinister and treacherous demeanor.

Though Act 2 reveals the malevolent tendencies of these two characters, an earlier aside to Saturninus in Act 1 imply Tamora's motives, where she vows to destroy Titus and his family:

> I'll find a day to massacre them all,
>
> And raze their faction and their family,
>
> The cruel father and his traitorous sons
>
> To whom I sued for my dear son's life,
>
> An make them know what 'tis to let a queen
>
> Kneel in the streets and beg grace in vain. (1.1.455-460)

This aside implicates both her character and credibility in later scenes in this analysis.[47] It is in this moment where it is difficult to view Saturninus without deeming both his action and inaction as complicit with his new wife, Tamora.

For both of these characters, this scene exposes the quandaries with credibility, which develops as relevant in later in the play, where Titus, on behalf of Martius and Quintus, will be denied an opportunity to confront the witnesses on the issue of their credibility. Because Tamora and Aaron both seek the downfall of the Andronici family and the state of Rome, the reliability of any evidence proffered by this calculating couple should be called into question. Here, they reveal to the audience their affection for each other, their affinity for lying, and their aversion to the Andronici. As I consider their later role as oath-helpers (Kahn & Hutson 38-67), the significance of weighing their 'suspicion' turns problematic when considering, among other factors, motives, speeches, purposes, habits, and manner of life of character, thereby implicating credibility. Here, prior to the submission of the corrupted letter, the conflict, which Tamora and Aaron bring to this verdant legal forum must be acknowledged.

Aaron's Letter Invites Criminal Conspiracies

While Aaron's character creates the sinister demeanor for an antagonist, the secret conspiracy and treasonous behavior of Tamora and Aaron are the initial crimes revealed in this evocative scene, and provide the perplexing conundrums with compromised evidence and without any allegiance to truth-telling. Tamora and Aaron function in a relationship of secrecy "that which…would hide from heaven's eye" (4.2.60). In particular, most of the court is unaware of

[47] In both the *Riverside Shakespeare* 2nd edition (1997) and the Arden edition (2002) of *Titus Andronicus*, the editors note in the stage directions that this aside is "to Saturninus." In essence, the emperor can be read as passive, if not direct co-conspirator.

their relationship until Tamora gives birth to a child, Aaron's child, where the Nurse exclaims: "She is delivered, lords, she is delivered" (4.2.62). Actually, this relationship, which is cloaked in darkness, also works against obtaining truth. In its "covenant of secrecy," the Star Chamber heard many of their cases in early modern England, like Sir Walter Raleigh's treason case, mentioned above; the case was rich in its complexities.[48] In the second case, in 1603, as he was tried multiple times, was adjudicated in secret with Sir Francis Bacon and other commissioners. In spite of the sentiment of the public, which would make up a potential jury, and the public writings circulated during his imprisonment, secret councils determined the end of Raleigh's story. The Raleigh case serves as a sharp contrast to the one-sided secret writing by Johann Wigand in 1576 with its non-legal, but highly religious emphasis (Raymond 64). This secreted trial proceedings of Raleigh and the writing of Wigland parallel the secret relationship of Tamora and Aaron. Chiron, Tamora's son, says: "Aaron, I see thou wilt not trust the air / With secrets" (4.2.171-172). For the "good Aaron" (3.1.162), criminal conspiracies are best left hidden.

[48] See language describing the duties of the cleric during Vicar's Case in *Reports of cases in Courts of Star Chamber and High Commissions*, England & Wales, Court of Star Chamber (226).

Figure 7 William Vavasour's untrue statement written in presence of Lieutenant of the Tower, 23 March 1605-6, Paper, The Identification of a Strange Writer of the Anonymous Letter to Lord Monteagle, Project Gutenberg.

Nevertheless, can they obtain "truth" in this lush locale, where both hunters and lovers stalk their prey? Here, Tamora and Aaron plot the downfall of Bassianus, Lavinia, and the rest of the Andronici with accuracy, while Saturninus, Emperor of Rome, Titus, General of Rome and great hunter, and the rest of the court supposedly hunt prey of the four-legged variety without success. At 2.1, Titus proclaims, "The hunt is up, the morn is bright and grey, / The fields are fragrant and the woods are green" (2.1.1-2). Even more ironically, while Titus unknowingly hunts, he and his family find themselves reduced to the hunted, where many unfrequented plots there are / fitted for rape and villainy" (1.1.615-616).[49] They walk right into the bloody traps that Aaron, Tamora, and her sons, Chiron and Demetrius, have laid for them, which include death, destruction, dementia, dismemberment, and rape.[50]

[49] I use Q1 scene divisions—not the Folio scene division for this entire chapter. See Bate's note at line 400 (158).
[50] Beyond the normal criminal conspiracy, there exists a certain seditious and scandalous nature to the acts of Aaron and Tamora within this play, which initially inculcate Saturninus, Chiron, and Demetrius. At once their sexual affair rises to the forefront before this early modern audience, yet the seditious acts involved with the "found"

Although not unheard of in this early modern era, the sexual dimension to this discussion of conspiracies yields another way to address notions of character and credibility, which seems imbued with tensions grounded in gender and sexuality. Several conspiracies impart evocative examples. For instance, the case against Mary Queen of Scots has as its chief allegation that one of her letters, included a love-sonnet with a promise of marriage from the Earl of Bothwell. The premise for this conspiracy charged that if Bothwell, her alleged lover, would kill her husband, Lord Darnley, then he could usurp Darnley's role, and appear as her new husband; hence, the murder, their affair, and the legitimacy of her crown arise as bound into one larger sexualized conspiracy. The perception of the Scottish queen's choices as influenced by her sexuality and her gender contribute to her downfall, as it does Tamora. It is only when Tamora must hide her illegitimate child with Aaron, her lover turns upon her, and reveals, at the end of the play, her role in this deadly conspiracy. As Aaron turns against Tamora, so does fate; she is judged harshly by Lucius at 5.3. He is most disturbed by the paucity of this once empress's character:

> As for that ravenous tiger, Tamora,
>
> No funeral rite, nor man in mourning weed,
>
> No mournful bell shall ring her burial,

letter are an extremely provocative tension within this drama. As mentioned previously, the Nicholas Throckmorton's treason trial becomes significant in the manner in which he adeptly dismisses the written evidence against him in his treason trial. Throckmorton, a nobleman, reverses the roles in his trial. With precision, he cross-examines the judges before him, and questions every piece of evidence that the judges use to implicate him, including written depositions. Throckmorton, in essence, decimates the evidence raised against him. The jury returns a not guilty verdict and is immediately punished for their effort. Thereafter, Throckmorton flees to France. This court at Guildhall again confirms the disparaging reputation for which these courts in the seventeenth century earn with their now, infamous and "increasingly discretionary and exemplary" choices in rendering judgments (Martin 203). In *Titus*, Martius and Quintus become unable to investigate the evidence that is laid before them. With stern outrage, Saturninus commands their silence, and accepts the evidence, the letter and the gold, as truthful. Based on the dialogue and stage directions where "Attendants pull Quintus, Martius and Bassianus' body from the pit" and "Exeunt [some taking the body, some guarding the prisoners']" (2.2.306), it is unlikely that these sons of Andronici even see the actual letter—the most compelling evidence against them.

But throw her forth to beats and birds to prey:

Her life was beastly and devoid of pity,

And being dead, let birds on her take pity. (5.3.194-199).

Significantly, this judgment against Tamora, formerly Queen of Goths and Empress of Rome, become the last words of the play. Such a decisions would make her more culpable than Aaron—she, like the Queen of Scots, may be judged for her sexuality and gender as well.

In fairness to the judgment against men, a scandalous trial, which almost rivals *Titus* in its debauchery, involves the pamphlet written on Mervin Touchet, Earl of Castlehaven, who was tried for rape and sodomy in 1631. In this case, the facts dilute the issues of character and credibility of the accused, the witnesses, including the character witness, the earl's sister. In particular, the most egregious of charges included the rape charge where the rape victim's husband aided the earl in the violent act. Apparently, the allegations also touch the earl's servants, but is it not clear whether they were co-conspirators, who were uncharged or whether they were victims in this case. The earl's sister vehemently protested, as she believed in her brother's innocence in this matter. She was convinced that "her brother had been the victim of a miscarriage of justice." Record of the trial, the execution and the scaffold speech at the time were only available in manuscript (Raymond 125-126). In spite of the disturbing circumstances in the Touchet case, the character witness staunchly attested to the earl's character and innocence, while other witnesses cannot be believed because of their own potential culpability.

We find similar circumstance arise in our tragedy by Shakespeare. In *Titus*, Aaron goads Tamora's sons, Chiron and Demetrius, to rape Lavinia. In this case, it is never revealed publicly that Aaron set them on this course of rape, though this machiavel admits the contemptible act to

Tamora, as part of their conspiracy against the Andronici. In this criminal and sexual conspiracy, even Tamora does not object where she tells Chiron and Demetrius:

> Farewell, my sons; see that you make her sure.
>
> Ne'er let my heart know merry cheer indeed
>
> Till all the Andronici be made away.
>
> Now will I hence to seek my lovely Moor,
>
> And let my spleenful sons this trull deflower. (2.2.187-191)

Like the Castlehaven case, this drama has multiple crimes committed by the co-conspirators. Yet, in *Titus*, Chiron and Demetrius are never tried for the role that they played in the abhorrent rape and dismemberment of Titus's daughter. Aaron and Tamora are never convicted of conspirators of rape. Nevertheless, Titus, the old general, does issue his own judgment against the foul pair where he chops them up, cooks them, and serves them to their mother, Tamora.

Despite the appeal presented by this sexual scheme, Aaron's letter functions within an identifiable convention of using letters to instigate conspiracies, in general. Arguably, the letter fosters further collusion between Tamora and Aaron beyond the bedroom. Aaron's letter introduces Tamora's sons to the conspiracy; though intellectually ill-equipped, Chiron and Demetrius are physically competent. The letter removes the remaining draughts of honor from this early, but brief reign of Saturninus, and fells the patriarch of this great warrior family in the Andronici, thereby leaving Rome vulnerable to her enemies. Unmistakably, the potential power of the letter possesses to weaken a realm sits squarely within the Gunpowder Plot against James I,

where another letter inserts itself to the center of the conspiracy, and resembles the work that Aaron's letter performs in this tragedy:

> Monteagle's anonymous letter functions as one of the languages of treason that produces the Gunpowder Plot. It is, as the state lawyer Sir Edward Coke claimed in his prosecution of the plotters, "the means" through which we know the plot. "Considering the admirable discovery of this treason," he writes, "the means was by a dark and doubtful letter." The letter exposes the plotters and the gunpowder, but it also, even more fundamentally, stands in for the event itself. The woodcut on this book's frontispiece—the image of an eagle delivering Monteagle's letter to Cecil and James—testifies to the letter's role as a signifier of both the event and the providential discovery. Like the subsequent stories of treason, the letter disseminates information about the plot that never happened; it shapes it in the imagination rather than represents it based on eyewitness accounts." (Lemon 3)

Like the Monteagle letter (see also image at page 51), Aaron's letter is false. This document is "a dark and doubtful letter," and seeks to perpetrate fraud and conspiracy. Though at 2.2, the audience can only speculate as to the real work that this letter-writing plot has on the lives of the Andronici.

In the next scene for examination, the audience learns how Aaron and Tamora use the letter to achieve their vengeance in a rather diabolical plot against another pair of Titus's sons.

SECOND SCENE: 2.2.246: Saturninus's Sylvan Court

"There is enough written upon this earth to stir a mutiny in the mildest thoughts" (Marcus 4.1.84)

Encapsulating the breadth of legal intervention, here, at 2.2.246, Shakespeare crafts an elaborately complex scene where the crime scene is discovered, a search is conducted, the evidence is collected, the court is adjudicated, a judgment is passed, and the convicted felons are removed for torture and execution at an unnamed location. Initially, the scene evokes the activity that one might have recited in a courtroom where the witnesses to the crime, the prosecutors, and the alleged culprits would gather to flesh out the details of this morbid cause. Similarly, here in *Titus*, the viewing the body does not transform into the most central moment in the scene where the body of the newly wed Bassianus, the emperor's brother, is found, rather the focus of the scene turns to Saturninus's "discovery" of a letter from an alleged conspirator in this murder plot. The "found" letter reads as if the listeners have caught the culprits in mid-conspiracy, as the emperor stands over the intended grave. The written evidence emerges as the item that is viewed with heightened attention in this moment. With his limited deductive skills, Saturninus devours the fabricated evidence and the fabricated tale that it weaves. Whereas, for Lorna Hutson, the forensic discussion of the body develops into the impetus for "an outbreak of popular rage against the law itself" in *2 Henry VI* (Jordan & Cunningham 147-148), in *Titus Andronicus*, the written evidence evolves as the key to the conviction of Titus's sons, Martius and Quintus, and eventually Titus's rage with Saturninus's own arbitrary judgments and thinly veiled corruption.

Presenting Aaron's Letter

A closer look at Aaron's letter is invaluable. Notably, a cursory examination of the written evidence affords this system of jurisprudence no substantial means of challenging proofs. The

early modern courts encouraged the memorialization of important information in writing, yet this documentary evidence also needed to be trustworthy. In this scene fraught with bias, fraud, and illegality, Saturninus, Emperor of Rome, reads neither a proclamation, a statute, nor a law that he has newly devised for his realm. Here, in the middle of this hunt, the emperor reads the eight lines of the writing detailing an alleged conspiracy. Apparently, these lines deliver identifiable geographic markers within this wooded locale, where gold is found "among the nettles at the elder tree," like the tree found at the graveyard at Guildhall, as mentioned at the outset of this chapter, and Bassianus's body in "the mouth of that same pit" (2.2.272-273). These words, for Saturninus, reveal the center of a murder orchestrated at the hands of the sons of his late competitor for the throne, now enemy, Titus. Noticeably, the forged letter does not name the conspirators of this dastardly scheme, yet the target of this operation is none other than the brother of the emperor, Bassianus, lately in league with the Andronici. At the moment of the discovery of the Andronici sons in the pit with his murdered brother, Saturninus does not make any discernible hint that he believes Martius and Quintus are responsible. In this brief search for "the huntsman" who murdered Bassianus, Aaron immediately "finds the money-bag," according to the stage directions at 2.2.280; then, the body is removed from the this "subtle hole" (2.2.198).

In spite of its seeming anonymity, the letter bears the guilt, perhaps by the nature of the brothers' proximity to Bassianus's body, along with the found money-bag. After the letter is read and the bag of gold discovered, Saturninus feels armed with sufficient proofs to blame these sons of Andronici--these sons and their father who have been the blame for the emperor's woes since the outset of the play. In his mind, one set of sons escape with his newly proclaimed intended, Lavinia, and now another set of sons warm the dark cold pit where the body of poor Bassianus is discovered. Is Saturninus's review of the evidence sufficient? By the early modern expectations,

the emperor's review is indeed insufficient.[51] These jurists expressed some valid concerns about forged documents and fraud that brought about safeguards for written proofs through the implementation of the Statute of Frauds and the Star Chamber, though not yet inactive at the time of this Shakespeare's play, represented an enforcement bureau against presenting such illegal documents before the courts (Macnair 151, 153, 161). Here, Saturninus does not express any concerns about the veracity of the unsigned document, planted by Aaron, offered by Tamora, and, swiftly confirmed by Titus.

This moment—where Aaron's letter is presented—is charged with political and legal economies at work. The trickster Aaron, whose words are brief, choreographs this complicated scene well, as he brings the Emperor Saturninus to the crime scene that he has just constructed with the help of his agents, Tamora, Chiron, and Demetrius. Then, he directs Saturninus's attention to the planted "bag of gold" (2.2.280), which has both legal and political consequences for the Andronici. Martius and Quintus are in legal jeopardy with this possible capital crime; what political capital can Titus spend with sons accused of killing the emperor's brother? In this moment, Aaron's role alters from private passion to public passivity. Aaron, this sinister tactician, allows his masterful work to move these men as if they were marionettes where this Moor, this foreigner and servant, holds the strings. In hearkening to his earlier soliloquy at 1.1, the words foretell this moment of seeming triumph. He ousts his "slavish weeds and servile thoughts" (1.1.517) to "be bright, and shine in pearl and gold" (1.1.518) as he intuits that Tamora "will charm Rome's Saturnine / And see his shipwreck and his commonweal's" (1.1.522-523). In this instance,

[51] Some scholars might argue that the sufficiency of the evidence depends upon the jurisdiction in which the trial occurs. Here, I read this chapter as an examination of the criminal law and its appeals. One might want to read this case as one would treason. However, in the next chapter, I read the law of treason as I analyze written evidence in Shakespeare's *Richard III*.

Aaron exudes self-satisfaction where he has achieved political mastery over Titus—this once victor over the defeated Goths. While engineering the "fatal writ" (2.2.265) boldly but cleverly into the hands of Saturninus, Tamora delivers a wonderful performance that embodies naiveté, anguish, and compassion.

With the assistance of this forbidden power couple Aaron and Tamora, the scene is also filled with foreboding immediately as Saturninus approaches the "gaping hollow of earth" (2.2.249), where he finds the "fell curs of bloody kind" (2.2.281) that is Martius and Quintus. Saturninus's words evoke the gruesome, finality of the scene: "Poor Bassianus here lies murdered" (2.2.263). The words become reminiscent of the epithet that one might find on a gravestone. Though Saturninus transforms as "gride with killing grief," his grief shifts toward anger and then vengeance, as he looks on the sons of Titus (2.2.260). Despite his emperor's volatility, Martius defends: "we found him dead" (2.2.258). While at once humble and unguarded, the statement unfortunately ripens into the admission of guilt upon which Saturninus and Tamora may rest their own bloody desires—the death of more sons of Andronici. Martius is quite right when he refers to the "most unlucky hour" (2.2.251) at which he and Quintus find Bassianus. Similarly telling are the repeated caustic appellations by which Saturninus refers to these sons of Andronici, as fell curs and "whelps," and forecast the doom that they will share with Bassianus who just an hour earlier was on the "north side of this pleasant chase" (2.2.255). This ruin inextricably parallels Aaron's earlier prognostication, where, before giving her possession of the letter, he emphatically proclaims to Tamora: "This is the day of doom for Bassianus" (2.2.42). Martius, Quintus and Bassianus share this deadly designed destruction. Ironically, Bassianus, this "handsomely Sweet huntsman" (2.2.268-269), according to the letter, finds himself, like Titus, the hunted. A huntsman

found buried in the very earth where he sought a less deadly prey than "gentle Aaron" (3.1.158) and his "high-witted Tamora" (4.4.35).

Aaron's letter reaches its penultimate form, where heretofore it has been planted, exchanged, and then delivered, but now it is read before this wooded court to contrive the convictions of the Andronici by Aaron and his Tamora.

Critiquing This Lethal Letter

An analysis of this lethal letter reveals a corrupted document surrounded by corrupted characters. In spite of its illegality, perjury is uncontested in this summary trial, where Saturninus convicts these sons of Andronici without an indictment and without a trial by jury (Baker 583). Although Titus does not confront the lovely but barbarous Tamora (3.3.118) about the intrigue surrounding the letter, this battle-worn general realizes that he has no expectation of sympathy from this "proud empress, mighty Tamora" (5.2.26). In his Arden edition of the play, Jonathan Bate at note 293-294 (185) addresses this moment where Tamora blames Titus as the finder of this errant letter, by suggesting that Titus decides not to quarrel with Tamora. Still, he also observes an inconsistency in the plot because later in the play at 5.1.106 Aaron blames Titus for discovering the letter. Offering a different theory, Karen Cunningham suggests that Titus is not lying here.[52] Whether this moment is an oversight by Shakespeare or not, this deflective move by Tamora is not surprising. However, what is surprising is Titus's failure to object strongly in the face of the allegations against his sons, Martius and Quintus. Here, not only does Tamora commit perjury, but Titus colludes with the empress by confirming that he "did take it up" (2.2.294). This collusion further steeps this letter in a mire of lies, deceit, corruption, and political maneuvering.

[52] Cunningham, Karen. "Greetings." Message to Lisa Barksdale-Shaw. 5 March 2015. E-mail.

Because the truth is far afield, this scene captures the increasing obstacles in the seventeenth century in "the sanctity of oaths and a *perceived* growth in oath-breaking;" this hurdle helped to usher in both writing requirements and its restrictions (Macnair 152). The letter interferes with the trial rights as the process for reviewing the validity and the reliability of the letter, as documentary evidence proving the payment and the pit as acts in furtherance of this matter of murder. Based upon his politically expedient silence, Titus's perjury arguably develops as the real catalyst in the decapitation of his sons. It is his sons who went against the emperor on Bassianus's behalf at the outset of the play, yet here and now, one act later, Saturninus embraces the idea that these sons have now murdered their sister's husband? Was this 'kangaroo court' merely cloaking itself in the appearance of the legal process to satisfy the Roman citizenry, its judges, and its tribunes when the sons of the celebrated hero, Titus, are blamed for the murder of the emperor's brother, Bassianus? In spite of Titus's actions or inactions, there is strong reason to believe that the emperor, this partial law-giver, had made his decision already. Politically, an immediate judgment gives Saturninus a perceived strength.

Much like an architect, Tamora boldly frames the reception of the written evidence with her description of "this fatal writ, / The complot of this timeless tragedy" (2.2.264-265). She behaves as if she is amazed at the "wonder greatly that man's face can fold / In pleasing smiles such murderous tyranny" (2.2.266-267). These words are spoken even before Saturninus can read the letter—the key document in this scene. She "taints" the Emperor's perception or reading of the letter with her words of human fallibility, duplicity and dastardly deeds. She is as blood-thirsty as her Amazonian counterparts.

After his wife's effective persuasion, Saturninus reads the letter just as Tamora maneuvers him, and relies upon the flawed evidence that he finds contained within this fatal writ. Like the

locales on a map, the emperor makes the connections that the letter directs him between the pit, the elder tree, the gold, and the body of Bassianus. In clear language, the contrived letter implies a previously agreed upon conspiracy secured with a financial transaction in gold. Interestingly, Saturninus does not look for the writer of the letter, because he is seemingly satisfied that he has the culprits. The matter is neatly packaged much like the culprits who are found within the gaping hollow in the middle of this courtly hunt. The case seems too convenient, too simplistic, and quite suspicious.

Immediately, Tamora responds to Saturninus's anger for his loss. Her words are at once inquisitive and accusatory: "What, are they in this pit? O wondrous thing! / How easily murder is discovered" (2.2.286-287). Her utterance may initially be perceived as if these circumstances are fortuitous or mere happenstance, yet she follows swiftly with a pronouncement that rings soundly with Saturninus's desire to "devise / Some never-heard-of torturing pain for them" (2.2.284-285). This "new-made empress" (1.1.519) summarizes the evidence almost as succinctly as Aaron's well-crafted letter. Essentially, Tamora confirms for the emperor that he has indeed found a murder and its murderers. Her statement hastily comports with Saturninus's own accusation that Martius and Quintus "have bereft my brother of his life" (2.2.282).

In addition to Tamora's reading of the crime scene, the import of this sequence is thoroughly grounded in the assumption that the courts considered how evidence was acquired, as essential. The problems with documentary evidence could be endless, but Saturninus does address this issue of safeguarding evidence and its sources when he later asks Tamora from where she obtained the letter and she blames Titus, who does not object. While Jonathan Bate proposes a viable explanation at note 293-294 (185), as discussed above, but his argument does not sufficiently address the legal implications, particularly as they relate to written evidence.

This notion of safeguarding evidence by tracing its sources, now called "chain of custody," develops as a part of the requirements for authenticating documentary evidence. Some documents were self-authenticating like public documents, but the 1599 rule concerning private documents like Aaron's letter required proofs if they were to be proved both true and original (Macnair 114). In *Titus*, Aaron delivers the letter to Tamora, and instructs her to deliver this missive to the emperor. Saturninus "authenticates" the source of the letter through Tamora, and Titus does not object. At this point where his sons are found next to the dead body of Bassianus, the Emperor's brother, Titus could have reasonably objected. Still, if he had objected, this general would have riled the already enraged Saturninus, and possibly caused more Andronici to fall into immediate jeopardy with this emperor and his empress. Undoubtedly, Tamora is bold in her decision to blame Titus for the letter.

Here, where Saturninus has the final judgment, the source and the author of the letter are vital. The answers to such questions of authorship would invite concerns about the motivations of the agents who produce the document, and such questions would implicate the emperor himself. On behalf of Martius and Quintus, Titus will be denied an opportunity to confront the witnesses on the issue of their credibility, and Saturninus's refusal to allow additional proofs means that Titus will be unable to challenge the dilemmas with credibility. Because Tamora and Aaron both seek the downfall of the Andronici family and the state of Rome, the reliability of such evidence and the character of the proponents of this evidence may be called into question. This newly minted emperor would not stand silently for such a challenge to his power to punish, nor his wife's motives to murder. Although Cicero found that "motives, speeches, purposes, habits, and manner of life of character," along with other factors, influenced credibility (Kahn & Hutson 55), questioning character and credibility is no concern to this woodland court—described by Quintus as "A very

fatal place" (2.2.202). In such a place, Saturninus does not function as an objective law-giver who pursues proofs other than those, which have been plotted and planted, like Aaron's letter. Yet, this inquiry does pursue the truth of proofs, and exposes the problem with the safeguarding of evidence.

Truth-Telling Toppled by Failed Advocacy

Within this Roman woodland, no identifiable system of trial advocacy presents the principles of justice and equity upon which the system of legal jurisprudence is based. Saturninus's swift hand of hollowed justice impedes any advocacy for the defendants. For example, Titus's "defense," which realistically emerges as a half-hearted attempt at speculation, falls deafly upon a law-giver's ears, which are unwilling to hear the possibility of his sons' innocence. The mere mention of proving fault (2.2.291) is inane to Saturninus—for him "[fault] is apparent" (2.2.292). After Tamora blames the discovery of the letter upon Titus, Saturninus is content. The question of suspicion, mere allegations, or fault becomes inconsequential. John Langbein asserts that "the rhetoric of English criminal procedure claimed that 'truth-seeking was the objective.'" Even with this proviso, the early modern court system's attempt at an adversarial trial, like this Roman court, was more concerned with winning cases rather than ferretting out the truth of the matter (331-332). In actuality, the truth is what Saturninus says it is. The case is, as has been said, "Open and shut." The emperor has proclaimed: "the guilt is plain" (2.2.301).

After this unrefuted prosecution, the egregious impact of the Aaron's letter increases the criminal penalties for the sons of Andronici. Hence, Saturninus has suggested that if he could do more than torture or execute them, then he would. Although Titus seeks and is refused bail on behalf of his sons, the rationale is simple for Saturninus, where there is no need to bail culprits who are presumably caught in a pit with the body to which a supporting letter describes with incredible accuracy. Later, in execution of the sentence, the decapitated heads of Martius and

Quintus are delivered to Titus. Lorna Hutson suggests that a confession could not be obtained without torture whether the torture was private or public, for torture was a substantial tool in the production of truth (72). Yet, here, Saturninus seeks neither the truth nor a confession. Rather, for a play that concerns itself with hunting four-legged prey, the body parts of several characters are littered throughout this bloody tale. Saturninus's denial of bail and hunger for the tortured blood of Martius and Quintus are explained by the grief-stricken Titus, later at 3.1, where he notes that:

> Rome is but a wilderness of tigers?
>
> Tigers must prey, and Rome affords no prey
>
> But me and mine. (3.1.54-56)

Here, in the wilderness within the wilderness of Rome, Titus finds no balm for the tiger's bite where Martius and Quintus fall prey in this unruly court.[53] This hurried judgment against the sons of Titus reflects more of Saturninus's animus against Titus than concern for obtaining the true story of Bassianus's murder. Yet, the early modern efforts by jurists to prevent false imprisonment yield a stark contrast where here in this wilderness of Rome written evidence is taken on its face, and the emperor looks for no justification to offer bail, as he scoffs at old Andronicus.

Within the calculating machinations of Tamora and Aaron, there exists a sparring of legal principles between Saturninus and Titus. This scene evolves in an evidentiary manner between arguments for potential circumstantial evidence and against the "perceived" direct evidence of the letter. While Saturninus represents the argument for direct evidence of guilt, Titus advances a defense of circumstantial evidence of his sons' guilt. The entire sequence vacillates between that

[53] For a more extensive discussion on the tiger imagery, see Lois Potter's *The Life of William Shakespeare: A Critical Biography* (2012), especially her chapter entitled "Tiger's Hearts" 1592-1595—for references to Titus Andronicus, see page 104.

which might be proven explicitly and that which might be disproved implicitly. As stated previously, Saturninus accepts Aaron's letter as truth, whereas Titus allows for the possibility of further proofs to substantiate its truth, with the conditional phrase: "If the fault be proved in them" (2.2.291). Given Saturninus's escalating ire, Titus tentatively clings to the assertion that the written evidence before this sylvan assembly is mere supposition. This emperor and this general are ideologically at war with what the meaning of the evidence that exists before them. Saturninus is the prosecutor, judge, and jury, but Titus transforms, however reticently, into the defender of the accused, the voice for the speechless, and an access to justice. Barbara J. Shapiro explains that direct proof involved witness testimony and indirect proof, or circumstantial evidence, involved "fame, suspicion and signs." Though she notes that presumptions were "strong enough to constitute proof," Coke warned against using bare presumptions in cases involving life where "incorrect inferences" drawn from circumstances might result in convicting the wrong person (Kahn & Hutson 68-69). Here, at this particular moment in the play, justice involves an objective review of the written evidence. What is the source of the evidence? What do the accused know of the letter or the gold? Martius's story about merely happening upon the dead body of Bassianus appears almost implausible, yet the accused are silenced here where Saturninus orders: "Let them not speak a word" (2.2.301). Malcolm Gaskill notes that the Treason Act of 1696 required the accused to have defense counsel, yet here in Rome, like much of early modern England, the accused did not have a legal defense. Still, much earlier, there were those cases where the defendant had access to legal counsel, advice, or may have himself or herself had some legal training, like Nicholas Throckmorton. That is unfortunately not the case in *Titus*. In order to satisfy his own whimsy and burgeoning blood-thirst, Saturninus declines any additional proofs, which

might advance truth. Instead, this emperor relies upon flimsy presumptions, which result in the wrongful convictions of Martius and Quintus.

Toward the end of this tree-covered travesty of a trial, the preliminary attempts to set aside the verdict grow fruitless, which make the possibility of overturning a verdict in homicide almost unobtainable. After judgment is passed against Martius and Quintus, Tamora's statement that she "will entreat the king" (2.2.304) on behalf of Titus's sons garners no assurance from Titus, who leaves with Lucius as the body of Bassianus is removed, and his sons are taken as prisoners. In part, Tamora, "ravenous tiger" that she is according to Lucius (5.3.194), has achieved her vow of vengeance, which she proclaimed at the outset of this play after her son, Alarbus, became Titus's bloody sacrifice in the Goths's defeat against the Romans. To the public, she adeptly plays the middle where she supports the now sanguine Saturninus in his desire to see the fall of Titus, and she emanates a sympathetic demeanor with Titus while relishing in her incandescent desire for Aaron.

Dissatisfied with the emperor's judgment, Titus seeks redress for his sons in the following scene at 4.1.

<u>THIRD SCENE</u>: 4.3 and 4.4: Titus Appeals

"Of my word, I have written to effect; There's not a god left unsolicited" (Titus 4.3.61)

As we shift from the trial and the judgment of Quintus and Martius, this final part of the chapter takes up the questions of what happens if an individual believes that the trial courts are unjust, and seeks redress at an appellate level. Here, in Shakespeare's play, Titus takes his appeal to the gods, but interestingly, his written petitions, delivered by the many arrows of the Andronici, "land" in the hands of an outraged Saturninus who sees this appeal as a political affront to himself,

as emperor of Rome. The foregoing sections have supplied the impetus, "tainted evidence" of Aaron's letter for Titus's appeal, but this part of the analysis will look at the written petitions, their delivery, and their reception in Rome. This argument suggests that these moments in the play at 4.3 and 4.4 yield a way to consider the appellate process in early modern England and the foibles, which have been exposed in its courts. In response to his grievances, Titus literally launches an appeal, which further exposes the defective rule of Saturninus. The emperor is either unable or unwilling to offer a substantive response to old Andronicus. His ineffectiveness is evident in taking council from his barbarous empress and languishing in his crippling impotence in the face of the legal appeals by the Andronici. These factors essentially deny Titus any identifiable judicial review of his sons' conviction, and the assorted crimes and misdemeanors committed against his family.

Nevertheless, during this period in which Shakespeare is writing, the courts make concerted efforts to identify those tangible bases upon which injured parties could appeal, thereby decreasing the seeming capriciousness of the courts' judgments. By launching such appeals, family members on behalf of litigants help to establish a standard. For example, in 1600, a shopkeeper became so enraged with a customer who 'flirted' him on the nose that the shopkeeper hit the customer so hard that he died; he was convicted of manslaughter. However, the widow appealed, and the conviction was upgraded to murder where "there was insufficient cause to start a quarrel;" thereafter a statute of 1604 removed the ability to seek benefit of clergy where the deceased had no weapon drawn (Baker 602-603).[54] Thereafter, the appellate courts begin to hold the trial courts to standards that expected an investigation, and examined criminal intent, provocation, and substantiated defenses. Yet, Titus's petitions do not receive such scrutiny, for Saturninus's

[54] Over the years, clerics have asserted immunity from temporal authority, where papal authority was held supreme. This immunity from temporal courts has been asserted in different types of cases including homicide, treason, and other crimes (Baker 148, 600-606).

reception to this expectation of redress fails to meet the reasonable objectives of early modern judicial review.

Fortunately, the early modern appellate process provided a proceeding *in error* where a party could appeal. At this time, a writ of error was provided that involved transferring the prior written record of the conviction, including the indictment, the information, or the inquisition, by which a judgment had been pronounced. However, this record did not consist of any evidence of witness testimony or any evidence upon which the decision was based, including the judgment (Stephen 195-197). This process was merely procedural judicial review. In this way, the record was unlike that which is offered by the Throckmorton case where the knight was allowed to provide an exhaustive critique of the prior witness testimony. Throckmorton criticized the "recapitulation of all the Depositions and Evidences given against the prisoner and either for want of good memory or good will, did not fully recite the prisoner's answers." Thereupon, Throckmorton immediately objects to the Lord Chief Justice impartiality and corrects the record and "the bad memory of the Judge" (105). Later, this appellate process, the proceeding in error, was eliminated for an appeal, in favor of a procedure, which gradually involved more considerations of equity, fairness, and the entire record of the trial court or tribunal (Baker 154-171). This task of confronting inequitable conditions, particularly in the written record, reveals a battleground, which was revisited throughout this early modern era.

As Shakespeare's drama reflects, the process for obtaining an appeal was a difficult one. Titus determines to appeal the wrongful conviction of the Andronici, including Martius and Quintus who have been tried and found wanting by an "ungrateful Rome" (4.3.17). In spite of the convictions, Titus attempts to 'redeem' his convicted sons, banished son, tortured daughter, and

disparaged family.[55] The once decorated general, now fallen in his emperor's esteem, entreats the heavens and the underworld because "*Terras Astraea reliquit*" (Justice has left the earth) (4.3.4). Titus declares that he seeks to gain the attention of the goddess of Justice, Astraea, or the god of the underworld Pluto (4.3.13). He rallies his kinsmen with bows and arrows to mount his appeal. Titus instructs Publius and Sempronius to "deliver [Pluto] this petition. / Tell him it is for justice and for aid" (4.3.14-15). Though Astraea (Justice) is reputed to dwell in the heavens, Titus plies the underworld as well for succor from his sorrows. For Titus, Saturninus alters into "this wicked emperor" (4.3.23) who now serves to interfere with Justice. The good general believes that Saturninus may even "have shipped" Justice away from Rome so that the Andronici must resort only to "go pipe for justice" (4.3.24) without any serious hope for obtaining its benefits.

When citizens are left without recourse, seeking revenge develops as the inevitable response to the desperate, the down-trodden, and the disenfranchised.[56] While Titus seeks relief from his plight from Astraea in heaven and from Pluto in the nether regions, Marcus seeks vengeance. He tells his kinsmen:

> let us live in hope that Lucius will
>
> Join with the Goths and with revengeful war
>
> Take wreak on Rome for this ingratitude,
>
> And vengeance on the traitor Saturnine. (4.3.32-35)

[55] Lucius reports his banishment by the judges because he tried to "rescue my brothers from their death" (3.1.49-51). Lavinia's rape and torture are revealed to Marcus, the brother of Titus at 2.3.11.

[56] See Deborah Willis's discussion of revenge and *Titus Andronicus* in her article, "The Gnawing Vulture": Revenge, Trauma Theory, and *Titus Andronicus*" (23).

Marcus looks for a more earthly solution to the sorrows of this family. Earlier at 4.1, the Andronici exchange vows of vengeance to achieve redress after learning of the rape and the dismemberment of dear Lavinia. This vow echoes a tradition of the bloody oaths from some of Shakespeare's other Roman plays, *Julius Caesar* and *Coriolanus* as well.[57] Here, in *Titus*, each member swears an oath to avenge the wrongs that have been committed against the family, particularly the execution of Martius and Quintus. While Roman plays immerse the audience with revenge, the early modern period was filled with warnings against seeking vengeance; most notably, Bacon's essay, "Of Revenge":

> This is certain, that a man that studieth revenge, keeps his own wounds green, which otherwise would heal, and do well. Public revenges are for the most part fortunate; as that for the death of Caesar; for the death of Pertinax; for the death of Henry the Third of France; and many more. But in private revenges, it is not so. Nay rather, vindictive persons live the life of witches; who, as they are mischievous, so end they infortunate.[58]

From Bacon's perspective, the state must endeavor to keep the wrongs that it suffers from festering and avoid insulting and angering ambitious men, for the private subject's interests are also the state's interests. Symbiotically, the well-being of the one becomes vital to the other. In this drama,

[57] In *Julius Caesar*, Brutus discusses blood oath at 2.1 and Cassius at 5.3. In *Coriolanus*, Cominius discusses binding oaths at 5.1 and Tullus Aufidius discusses breaking them at 5.6.

[58] For the initial discussion of Bacon's essay, see note i. Bacon notes that "REVENGE is a kind of wild justice; which the more man's nature runs to, the more ought law to weed it out." Although both occur in the same year in 1601, I am uncertain whether Bacon wrote this essay before or after the Essex trial. It is quite possible that Bacon have been considering this concept of revenge as he pursued his prosecution of Essex and his co-conspirators.

Lavinia, like her brothers Martius and Quintus, functions arguably as one of the most affected victims in this gruesome gambit by Aaron, Tamora and her sons, Chiron and Demetrius. Yet, after taking such vows, Titus still seeks the help of the gods, for he believes that the Andronici are "wrung with wrongs more than our backs can / bear" (4.3.49). The wise old Andronici understands, like Bacon, that the path of vengeance is decadent and other worldly. Nevertheless, like Marcus, he is impatient for justice.

As Henry Peacham's 1595 illustration of the play divides with a staff the visual portrayal of the Romans and the Goths, so too is Titus ideologically divided by his desire for justice, a legal redress, and its illegal alternative, revenge. In this divided state, Titus pleads:

> …sith there's no justice in earth nor hell,
>
> We will solicit heaven and move the gods
>
> To send down Justice for to wreak our wrongs. (4.3.50-52)

The deeds committed against this family, for Marcus and Publius, require bloody requite with the show of military force, which is, after all, the family business. At the head of such an army, Lucius would actually place an Andronici at the head of Rome, which was Marcus's desire at the outset of this drama. In her discussion of *Titus*, Deborah Willis outlines several markers of the revenge tragedy, which includes the citizen's struggle between revenge and justice and his reactions to wrongs where the gods are silent, and the state is either too weak or corrupt (23).[59] In spite of this struggle, this drama yields more than an examination of the length and breadth of revenge. This

[59] In his essay, "On God's Slowness To Punish," Plutarch observes that some people act upon private revenge because they cannot abide the waiting that they must do to see God's vengeance manifested (241). Still, Lily Campbell argues that, according to Renaissance philosophy of revenge, "all private revenge" proceeding from envy, hatred, and anger is prohibited because this action merely renders "evil for evil" (287).

play incorporates notions of justice by way of critiquing the application of the law to its Roman citizenry, even more the famed Andronici family and the actions of the conquering hero Lucius at the helm of the army of the Goths. By illustration, at several moments of criminal offense, Titus is drafting, contesting, or transmitting written evidence to forge justice. This old general attempts to rise above revenge. In his treatise *On Politics*, Aristotle provides relevant commentary on Titus's dilemma:

> The ends sought by conspiracies against monarchies, whether tyrannies or royalties, are the same as the ends sought by conspiracies against other forms of government. Monarchs have great wealth and honour, which are objects of desire to all mankind. The attacks are made sometimes against their lives, sometimes against the office; where the sense of insult is the motive, against their lives. Any sort of insult (and there are many) may stir up anger, and when men are angry, they commonly act out of revenge, and not from ambition (Book V, Part 10, 141).

Aristotle insists that revenge may be derived from two possible motives: insult and ambition. Here, Titus experiences the insult, but eschews ambition, as illustrated in his refusal in the contest for emperor at the outset of this drama. After considering Willis and Aristotle, the play arguably possesses sufficient markers of revenge to establish the nexus for a specific theory of justice at work. For instance, one right that is denied the defendants is the access to truth-telling, the swearing of oaths to truth and to testify as to the truth of a matter—in this case, a criminal matter. The lack of truth-telling impugns the validity of any judicial decision.

In spite of the identification of the obstacles to truth-telling within *Titus*, the early modern appellate process was likewise fraught with problems, as if it was almost impossible to obtain an appeal from the trial court. Armed only with the charging documents like the indictment, the information, or the inquisition, the appellate court, for the most part, would confirm the lower court. Still, this process was investigated to inject more equity into the appellate court's secondary review of the lower court's decision. In essence, Titus, the appellant on behalf of Martius and Quintus, argues for a new process without the arbitrary and the capricious nature of the current standard of judicial review in Saturninus's Rome. Here, at 4.3, the entire Andronici clan attempts to overturn the verdict by appealing to a higher court. After rallying his kinsmen, Titus decides to deliver his petitions to the heavens and the underworld by bows and arrows. With Titus's hope of salvation, these kinsmen launch these petitions to one god after another:

> 'Ad Jovem', that's for you; here, ad Apollinem';
>
> 'Ad Martem', that's for myself;
>
> Here, boy, 'to Pallas'; here, 'to Mercury';
>
> 'To Saturn', Caius – not to Saturnine:
>
> You were as good to shoot against the wind.
>
> To it, boy; Marcus, loose when I bid.
>
> Of my word, I have written to effect:
>
> There's not a god left unsolicited. (4.3.54-61)

In this instance, Titus calls upon an army of gods and goddesses to aid the family in the search for justice in Rome, and notes that such justice cannot be had with the current emperor, Saturnine.

Such efforts are "as good to shoot against the wind" (4.3.58). The impotence of Saturnine's realm eliminates any identifiable example of justice. Even, early modern poet Richard Johnson observes the old general's suffering and appeal in his "*Titus Andronicus* complaint": "I shot my arrows towards heauen high / And for reuenge to hell did sometimes cry" (95-96).[60] The appeal is grave, and directed toward a source, more ethereal and god-like. Hence, an interesting moment happens after the kinsmen of the Andronici shoot their arrows for a godly answer to their family's woes, and Marcus suggests an additional delivery: "Kinsmen, shoot all of your shafts into court; / We will afflict the emperor in his pride" (4.3.62-63). The "court" is the locale from whence the Andronici were wronged by the executions of Martius and Quintus, and where Empress Tamora and her minions, Aaron, Chiron and Demetrius, hibernate after committing the violence against Lavinia and Bassianus for which the Andronici have found no rest.

In an even more direct path to the court, Titus enlists the Clown to deliver a "supplication" (4.3.108), a letter according to stage directions, to the emperor, but embedded within the supplication is a knife. Here, no longer tormented between redress and revenge, Titus "cuts" the friendship or ties that he has with Saturninus in a message that is evocative and deadly. This delivery of the knife is quite similar to the delivery of arms by young Lucius to Chiron and Demetrius. This delivery of weaponry wrapped in verses by Horace operates as the opening gambit in a new hunt where the hunted, Titus, now self-aware, knows that he is being hunted by his enemy, and gives his enemy, now *his* prey, the gesture of warning. This hand-to-hand delivery of Titus's appeal at first glance furnishes Saturninus an opportunity to re-examine his earlier death sentence

[60] The poem is from *The golden garland* (1620). 6 March 2013. http://lion,chadwyck.com.proxy1.cl.msu.edu.

upon Martius and Quintus, but the presence of the knife, like the gift of weapons to Chiron and Demetrius, carries along with it a visible threat, both deadly and powerful.

During this early modern era, the courts debated quite frequently over which courts had the right to hear appeals (i.e. jurisdiction) and whether such appeals should be heard. Within the play, the use of written petitions by Titus for an appeal is similar to the practice of written supplications during the early modern era where "the right to petition guarantees direct access to the monarch or authority, but the access was most commonly through written address" (43). Ellesmere and Coke both conducted some rather contentious debates on this particular issue. Some jurists believed that if there was a chance that the defendant was innocent, where the evidence was not clear, the defendant must be released (Baker 166). In this drama, after having received the petitions delivered by arrows to his court by the kinsmen of Titus, Saturnine must decide how to perceive these "appeals" to justice. Decidedly, the emperor protests:

> Why, lords, what wrongs are these! Was ever seen
>
> An emperor in Rome thus overborne,
>
> Troubled, confronted thus, and for the extent
>
> Of equal justice used in such contempt? (4.4.1-4)

Saturninus staunchly defends his execution of Martius and Quintus for the death of Bassianus. An interesting parallel may be drawn between the execution of Mary, Queen of Scots, and her appeals to Queen Elizabeth I and the English and Scottish commissioners; here, the Scottish queen and her defenders provide a strong example of the problem of granting an appeal where the subject matter

was a threat to the English throne (Tytler 95-110).[61] Within the play, Saturninus considers these appeals having been brought by mere:

> …disturbers of our peace
>
> Buzz in the people's ears, there nought hath passed
>
> But even with law against the wilful sons
>
> Of old Andronicus. (4.4.6-9)

For Saturnine, the petitions are baseless appeals, not substantive. Now, these disturbances develop into a political scandal, and threaten his power—and ultimately his throne.

Instead of addressing the validity of the claims, Saturninus immediately attacks the character of the appellant, Titus, "old Andronicus." In a strategic move of deflection, the emperor argues that Titus has a mental deficiency:

> And what and if
>
> His sorrows have so overwhelmed his wits?
>
> Shall we be thus afflicted in his wreaks,
>
> His fits, his frenzy and his bitterness?
>
> And now he writes to heaven for his redress. (4.4.9-13)

Saturninus sets forth a plausible characterization of Titus. Since the opening of the play, Titus appears after having served Rome valiantly on the fields of battle; then, after having lost many

[61] Mary was tried for treason even though premised on the murder of former husband Lord Darnley. Here, I examine this chapter in terms of criminal law and appeals; again, I will discuss treason in the next chapter.

sons to the concerns of this realm, the general transforms into a dysfunctional man. This mental affliction, for Saturninus, has now turned into a problem of Rome, thereby a problem of the emperor himself. Earlier, Marcus and his son Publius interpret Titus's actions as madness. They seek to entertain him in his current "humour" and distracted state (4.3.26, 29), where Publius encourages Titus that "Pluto sends word / if you will have Revenge from hell, you shall" (4.3.38-39).

In this early modern period, legal cases provide some examples for the challenges against a litigant's mental illness. For instance, the case of Dr. William Parry's treason trial imparts a striking illustration of how the characterization of an accused as mentally ill changes his perception by the audience or the jurors. Though Titus's behavior pales in comparison, Parry's previous record included committing a violent act against a creditor, fleeing the jurisdiction, serving as an inept spy, threatening the life of Queen Elizabeth, behaving in a bizarre fashion at his arraignment, and possessing incoherent letters from his prison cell—all of which, including allegations from witnesses, invoked an image of madness (Jardine 251). Here is a litigant who in some respect has a few similarities with Titus in that both his family and Saturninus determine that he suffers from madness after the execution of his sons and the rape of his daughter. The covert history of Dr. Parry poses as an anomaly, but Titus's service as a general at the head of the Roman army makes these latent allegations as similarly startling, though not beyond reason.

Within society, illegality must be confronted with fierce opposition, particularly in the courts. Without much deliberation, Saturninus shifts his argument against Titus to a legal judgment with more gravitas. The emperor insists that the allegations contained in these "[s]weet scrolls to fly about the streets of Rome" (4.4.16) are libelous, and asks: "What's this but libeling against the senate / And blazoning our injustice everywhere?" (4.4.17-18). Saturninus scoffs at that thought

that “in Rome no justice were” (4.4.20), and, in his rage, declares he shall not only rebuff these petitions by Titus, but the general’s:

> feigned ecstasies
>
> Shall be no shelter to these outrages,
>
> But he and his shall know that justice lives
>
> In Saturninus’ health, whom, if she sleep,
>
> he’ll so awake as she in fury shall
>
> Cut off the proud’st conspirator that lives. (4.4.21-26)

Jonathan Bate, citing E.M. Waith, suggests that Saturninus’s reference to Justice as a woman absolves any questions of the emperor’s impotence in his own mind, yet the cuckoldry, which has turned public continues to keep Saturninus aground in his personal and public prowess (note 24-25). In actuality, there, beside him is the “proud’st conspirator that lives” in Rome, Tamora, yet she continues to direct this plot. In another example of unethical behavior, Alan Stewart examines Bacon’s guilty verdict in April 1621, where he was found guilty of having accepted gifts in money and goods from various petitioners, against whom he nonetheless then ruled in cases brought to the court of Chancery. This charge provided an opportunity to implicate Bacon’s professional efficacy, create a scandal, and oust him from his public, legal life (Kahn & Hutson 138). Likewise, Saturninus embodies a perceived incompetence in his personal life, with his unquestioning trust in ill-intending flatterers like his wife Tamora and his incursion of the hatred and contempt of his enemies—both of which violate Machiavelli’s tenets in his treatise *The Prince* (63, 81).

While consumed with personal outrage and public perception, neither Saturninus, nor Tamora express a desire to look at the case on the merits of Titus's claims. Shakespeare crafts some of the most powerful asides in the play for Tamora. Early in the play, she delivers her own oath of vengeance against the Andronici. Here, she "glozes" to Saturninus again in his distress at the tiresome Andronici, and muses how she will dispose of Titus:

> But, Titus, I have touched thee to the quick;
>
> Thy life-blood out, if Aaron now be wise,
>
> Then is all safe, the anchor in the port. (4.4.36-38)

Tamora relishes her apparent victory over Titus. In order to assure her triumph, she must ply her lover, her enforcer, and her machiavel, Aaron, to bring Titus's life finally to a close. In their past skirmishes with the Andronici, Aaron has helped Tamora, "empress of [his] soul" (2.2.40), with Titus, so for this empress, the key to removing Titus is not the emasculated Saturnine, but her dear Aaron. In the midst of her personal and political crisis, Tamora still relies upon "[her] lovely Aaron" (2.1.10), her lover, to get rid of her troubles. Likewise, in the inquiry into the written evidence against her, Mary Queen of Scots is portrayed as a crafty queen who uses men for her political and sexual gratification in William Tytler's *An Inquiry, historical and critical into evidence against Mary Queen of Scots, vol I.*[62] Her letters, in spite of their allegations of forgery, write their own story for the Scottish queen's ultimate demise, much like Tamora.[63]

Upon seeing the knife that Titus delivers by the Clown, his second, Saturninus orders the immediate execution of the Clown. Is Titus's latent supplication a genuine appeal to Saturninus,

[62] See also Weir's *Mary, Queen of Scots, and the Murder of Lord Darnley* (4, 203).
[63] Tytler 20, 89, 98, 100.

or merely intended to elicit this visceral response? The emperor's monologue is heated and provides one of the most unguarded moment that the emperor has in the entire play. Because the emperor is incredulous that Titus posits himself as having endured "despiteful and intolerable wrongs" (4.4.49), Saturninus considers the very public appeal by Titus as offensive and unforgivable. Contemplating the effects of Titus's acts, he asks two rhetorical questions here: "Shall I endure this monstrous villainy" (4.4.50) and:

> May this be born as if his traitorous sons,
>
> That died by law for murder of our brother,
>
> Have by my means been butchered wrongfully? (4.4.52-54)

These questions evolve as critical decisions for Saturninus—as critical as the moment at the beginning of the play when he confronted the challenges to the Roman throne. Now, having assumed this seat of power, he must handle what he deems as another threat, or rather affront, to his reign. With impunity, the emperor orders:

> Go, drag the villain hither by the hair:
>
> Nor age nor honour shall shape privilege.
>
> For this proud mock I'll be thy slaughterman,
>
> Sly frantic wretch that holp'st to make me great
>
> In hope thyself should govern Rome and me. (4.4.55-58)

Decisively, Saturninus handles the matter much as he did with Martius and Quintus where the show of any respect for the Andronici disappears. Neither public displays of etiquette nor political posturing exist. The knife and the public appeals have transformed these engagements from the

secret ploys and the semi-public feuding to an outright war to the satisfaction of his empress, Tamora. In this sequence, Saturninus displays his continued fear of Titus as better servant of Rome and a more capable emperor for Rome and her people. Along with this fear and the outrage, Saturninus's inferiority complex bolsters him to make an ill-conceived political move against Titus and the Andronici, which ultimately results in his own downfall. In this way, this emperor is unsuccessful in either retreating from his hostile actions against the Andronici, or parleying with Tamora and her sons who serve as seconds. The fate of Tamora's sons, who appropriately personify Rapine and Murder, meet their end much as the Clown who serves as Titus's second.

It is unclear whether Titus is looking for retributive justice here, as restitution, or restorative justice is impossible with executed sons, a violated daughter, and a slandered reputation. In this complicated wrongful conviction of his sons, what type of justice would be appropriate—distributive justice or procedural justice? In both Book I and Book II of *Utopia*, Sir Thomas More endeavors to negotiate a concept of justice. For his discussion, he focuses on the punishment of crimes. In Book I, More argues that "the aim of punishment is to destroy vices and save men" (16-17), and in Book II, insists that men are deterred from crime by the enforcement of penalties (63). However, Saturninus's punishment of Martius, Quintus, and the Clown neither destroys vice, nor saves men. While Saturninus's assessed penalties against the family of Andronici achieve an insidious effect, they simultaneously create a schism in his rule from which the emperor becomes unable to recover. The arbitrary nature of his rule does not meet the goals of justice, whether restorative or distributive justice. In effect, Saturninus's execution of the Clown dismisses Titus's appeal, with fatal consequences for this reckless ruler of Rome.

Conclusion

"And what is written shall be executed" (Titus 5.2.15)

At every turn, Saturninus, the play's law-giver, eschews the legal process that would foster trial and appellate rights, which would encourage truth-telling and expose lies, deceit and conspiratorial relationships within this Roman realm. As factions rise and fall, Aaron's letter persists as a vehicle to arrive at the truth and uncover these conspiracies, where it moves from its appearance on the stage with Aaron to the abbreviated court before Saturninus in Act 2. Within the scenes of this drama, warring ideologies, theories of evidence, and notions of punishment function at the epicenter. Most problematically is that this realm is filled, especially in the wooded locale of this summary trial, with characters who create, covet, and collude in the obstructionism, which advanced Martius and Quintus to their bloody deaths. In spite of the intrigue, which surrounds the Saturninus and Titus, the wrongful conviction of two relatively minor characters emerge as the centerpiece in this revenge tragedy, and an effective critique of early modern criminal law and subject rights.

As Aaron and Tamora show themselves unfriendly to the Andronici through elaborately planted false evidence, Titus is essentially ineffectual as he shifts from heroic military general of Rome to ill-famed patriarch to this tragic family. While struggling to find a voice for either himself or his wrongfully executed sons before Saturninus, his legal burdens effectively expose the fractured legal establishment in Rome. Indeed, Aaron's false letter functions to not only uncover his murderous conspiracies with Queen Tamora and her sons, but this written evidence adeptly dismantles Saturninus's short-lived rule.

As this Shakespearean tragedy struggles with the issue of written evidence and how to safeguard its integrity, the early modern era likewise struggles to find its way as it begins to mandate against fraud, forgery, perjury or "oath-breaking." For example, legal institutions, like the Star Chamber though once the central force and the arbiter of perjury cases, grow passé in the growing complexities of jurisdiction, equity, and individual rights. This early modern legal community rests its confidence on the later enactment of Statute of Frauds, the parole evidence rule, and a vigilant body of jurists, like Coke, who zealously defend the sanctity of written proofs. Hence, the debate over the function of written proofs and the burgeoning field of trial advocacy operate within *Titus* and in culture to guide an effective critique evidence in its early modern condition.

CHAPTER 2

"Where is the evidence that doth accuse me": The Scrivener's Indictment, Apparent Authority, and Manufactured Treason in *Richard III*

Introduction

In this chapter, I argue that the Scrivener's indictment and Richard's warrant function as flawed documents, and expose how these legal and cultural instruments negotiate themselves within early modern England. The indictment and the warrant in *Richard III* (1597) reveal these complex and flawed documents of death in their construction, their authority, and their use in the act of treason, instead of functioning as the means for transparency (i.e. truth, justice, and liberty).[64] With their legal and material presence, these legal instruments expose the oppressive regime of Richard III and the early modern period. In following the journey of written evidence within the play, I reveal a realm trying to define the role of the king as a ruler and the role of the subject as an individual.[65] These dramatic sites of creation, distribution, and execution evoke for these legal documents a separate, physical life from their creators, users, and distributors that arise as both culturally and politically relevant.[66] Within the play, Richard, not unlike Iago in Shakespeare's *Othello*, maneuvers several different treasonous plots. The two most compelling for this dissertation, *Tainted Proofs*, include the manufacture, the delivery, and the execution of the Scrivener's indictment for the execution of Lord Hastings and Richard's warrant for the death of

[64] A portion of this chapter was proposed and accepted at the conference, "Shakespeare in Performance," at the University of Maine-Farmington, May 4-6, 2012.
[65] See Kantorowicz's *The King's Two Bodies: A Study in Mediaeval Political Theology* (1997).
[66] See Andrew Sofer's chapter, "Dropping the Subject," in his book *The Stage Life of Props* (89-116). See also J.K. Curry's *Theatrical Symposium, vol 18: The Prop's The Thing: Stage Properties Reconsidered*.

his brother, the Duke of Clarence. In each of these complots, the actors follow Richard's behest or that of other agents to eliminate all barriers to the throne for Richard. Within these moments at 1.3, 1.4 and 3.6, I examine how Shakespeare's places these legal instruments on display to provide a way of understanding the nature of evidence during this era.

At once these staged properties, the warrant and the indictment, evolve in their material significance, as I consider the life of the documents over the course of the play, and place particular emphasis on the performative notions, which surround these objects on the stage. This analysis further identifies and explores the strong, recognizable parallels from cases on the legal stage as well. While I utilize the letter to examine criminal and appellate law in *Titus Andronicus*, in this history play, *Richard III*, I analyze the law of treason with its minimal compliance with rules through the warrant and the indictment.

These particular legal documents, the warrant and the indictment, have found their way onto the early modern stage in several of Shakespeare's play. In these dramas, we shift from mere verbal references to the warrant by Slender at 1.1 in *Merry Wives of Windsor* and the Duke of Milan's use of the phrase "upon this warrant" at 3.2 in *Two Gentlemen of Verona*. Then, we move toward the physical presentation of warrants by Brandon at 1.1 in *Henry VIII* and the reading of indictments by Leontes at 3.2 in *The Winter's Tale*. Other representations emerge as complicated where the warrant, though referenced grows invisible. For example, at 2.2, the Gaoler mentions not having a warrant in *The Winter's Tale*: "Madam, if't please the queen to send the babe, I know not what I shall insure to pass it, Having no warrant." In even their invisibility, these documents arise as mysterious, evocative, and significant for this culture.[67]

[67] See Sofer's *Dark Matter*: *Invisibility in Drama, Theater, and Performance* (2013).

For instance, before we explore their workings in the play, let us turn to a brief description of these interrelated documents and their usage in the period. The indictment, by the fourteenth century, became "the technical expression for a written accusation, which was…the outcome of a solemn enquiry into the commission of offenses."[68] As of the 1360s the practice was to "draft written accusations (known as bills of indictment)." The finding of a true bill, or finding the accusations true, was not tantamount to a conviction, or guilt, but it was the method "to initiate proceedings between the king and the accused person to try the issue of guilty." In essence, the indictment developed as the manner in which a prosecution began (Baker 576-577).[69] These charging documents commenced the prosecution of an individual, normally for a criminal offense. By contrast, the "warrant" had a much broader meaning. On the one hand, the "warrant" could refer to the writ or the order issued by some executive authority giving a ministerial official authority to make an arrest, a seizure, or a search—as well as execute a judicial sentence. On the other hand, the warrant could also represent "a writing issued by the sovereign, an officer of the state, or an administrative body, authorizing those to whom it is addressed to perform some act" (*OED*). During this early modern period, the document could be referred to as a "letter of warrant" or a "death warrant."[70] The document's use as a death warrant, in the executions of Lord Hastings and the Duke of Clarence, arise as the type of warrant, which this chapter analyzes. Cleverly, Richard chooses the indictment and the death warrant as the method in which to hide his assassinations of the Duke of Clarence, his brother, and Lord Hastings, loyal to King Edward IV,

[68] The indictment is also the legal document containing the charge; 'a written accusation of one or more persons of a crime or misdemeanor, preferred to, and presented upon oath by, a grand jury' (Blackstone). The bill of indictment is the written accusation as preferred to the Grand Jury, before it has been by them either found a true bill, or ignored (*OED*).

[69] If defendants raised objections arising out of the indictment were based in law (Langbein 26).
[70] The document has also been referred to as a search warrant or bench warrant as well (*OED*).

Richard's eldest brother. In this way, Richard ignores the legal processes for an authorized state execution, exploits their loopholes, and privately dispatches of these men. These legal instruments demonstrate their own defective, or manufactured, condition as the props in Richard's larger conspiracies to gain the throne. These pieces of false evidence erect a façade of Richard as a reluctant sovereign to replace his felled brothers. Manipulated like Richard's many agents, the warrant and indictment parallel the tenuous condition of the realm. At key moments in the life of these documents, the audience witnesses their laborious and false creation, their cloaked delivery, their nefarious service, and bloody execution.

To highlight one of these key moments, I maintain that the service of the warrant grows significant where the legal document shifts from its creation to its physical transfer for use in an illegal practice of imprisoning English subjects. Appadurai uses the phrase, the "social life of things," in his analysis of material culture, and Igor Kopytoff utilizes an economic lens for his critical study of the cultural object. However, in the final phase of the stage object, I track the legal *and* material life of the Scrivener's indictment and Richard's warrant in the executions of both Lord Hastings and the Duke of Clarence. Following the life of the warrant tell the audience something crucial about this sovereign state in which they live, the laws and rules, which guide their lives, and the people who serve both. Crafting this "cultural biography" of the indictment and warrant exposes the state of this sovereignty that is controlled—or rather usurped by Richard III.[71]

In spite of the strides that these early modern courts made in the field of evidence, some scholars maintain that "there were few if any rules of evidence before the eighteenth century (Baker 582). Still, a formal process was evolving, which would see its ultimate fruition later

[71] See Appadurai's "Introduction: commodities and the politics of value" and Kopytoff's chapter, "The cultural life of things: commoditization as a process" in Arjun Appadurai's *The social life of things* (2008).

(Macnair 15-21).[72] Most evidence used in trial during the medieval period consisted of oral testimony, but the period also saw the emergence of predilection for writing (Macnair 92). Within the courtroom, these exhibits include proofs like "objective facts, testimonies, oaths, depositions, and confessions" (Mukherji 162-163).[73] In the late sixteenth century, the courts placed both an emphasis on written evidence and an expanded nature of the trial proceeding where the summary trial (i.e. an abbreviated proceeding) was less typical (Bellamy 158-159). Given the development of the rules for writing, including the Statute of Frauds in 1677, there evolved "in equity proof a fairly marked general preference for writings over witnesses" (164).[74]

To complicate the reading of *Richard III*, my use of the word "evidence" in this dissertation evolves as perhaps broader than merely proofs that are presented before the courts, which I address in other chapters in this project, as in my discussion of the letter in Shakespeare's *Titus Andronicus*, the bond in *The Merchant of Venice*, and the will in Ben Jonson's *Volpone*.[75] I am also considering evidence in a more general sense when revealed to litigants, attorneys, court employees, servants of the crown, etc. These documents, like the indictment and the warrant here in *Richard III* and the legal brief in *The Devil's Law Case*, develop as important vehicles to supply different entities (i.e. courts, churches, theatres, prisons, and people within the early modern community) with information—many times, false. Though these entities utilize the indictment and the warrant to bring charges against an accused or authorize an execution, in this chapter, I explain how the

[72] See also Hemholz at 243.

[73] Subha Mukherji's discussion on Webster's play, like Hutson's work, focuses upon the nature of evidence, though she does not focus upon written evidence (206-232).

[74] The first draft of the Statute of Frauds was written by Sir Heneage Finch (later Lord Nottingham), which was intended to address the instances where there was no written proof as in Slade's Case (Baker 396).

[75] Evidence is defined as "[i]nformation, whether in the form of personal testimony, the language of documents, or the production of material objects, that is given in a legal investigation, to establish the fact or point in question" (*OED*). This project focuses upon this "language of documents" to comment upon early modern culture.

Scrivener's indictment and Richard's warrant insert themselves within the main action of this play, as a way to read Richard's treasonous plots. The warrant and the indictment exude an apparent authority, which possesses the power of the state of England. In spite of this assumed authority, Richard adeptly prostitutes the process for his own ambition and the ultimate falling of the house of Plantagenet. This play provides an excellent example of how even at the highest levels of actors, kings and princes, the safeguarding of written evidence, particularly warrants and indictment, must be protected. The requirement of proofs in writing becomes insufficient in the face of multitudinous plots against the state's royals and subjects alike. *Richard III* exposes the enormous gaps in the warrant and indictment process. Within this drama, the audience witnesses no hearing, no sealing of indictments, and no opportunity for the accused to plead his case publicly.

Historically, the scholarship on *Richard III* amasses an extensive body of work. Yet, those scholars who consider the play in terms of law and literature are more finite. For instance, the work of Katharine Eisaman Maus delves into notions of inwardness, proofs, and prosecution in *Inwardness and Theatre in the English Renaissance*. Most importantly, Maus's discussion of Richard III and his role as a stage machiavel unfold as fruitful in her dissection of his character and motives. While her discussion does not include the Scrivener's indictment for Lord Hastings, nor Richard's warrant for the execution of his brother Clarence, she reads these moments of proofs, conscience, and prosecution as both legal and dramatic in this play. In her chapter on *Othello*, she discusses Othello's demand for "'ocular proof'–the strongest kind of evidence in both English and Continental courts" (118). Her discussion emphasizes proofs in terms of the identifiable standards of proof, like circumstantial evidence (112).[76] Strikingly, Richard III's tyrannical character ignores

[76] Barbara Shapiro notes that indirect or circumstantial evidence included "fame, suspicion, and signs. Circumstances were thus the incidents of an event or particularities that accompanies an action and resulted in presumptions of varying levels of certainty' (Kahn & Hutson 68-69).

the laws by manipulating proofs, and thus, embodies falsity. Maus observes that "the true interior is conceptually separated from the visible exterior, problems of evaluating the truth of any claim about the interior immediately arise" (50-51). She notes the analogies between courts during the early modern period and now where "material proofs…are unavailable." For her, "a flagrant contradiction between the complaint and the public comportment of the accused cannot absolve him: like Alexandro's detractors in *The Spanish Tragedy*." She investigates the cultural forms of

Figure 8 16th Century Scribe, Woodcut, Luminarium Encyclopedia Project.

personal inwardness in which early modern England grapples, like "heresy inquisitions, treason trials, ecclesiastical court proceedings, five-act tragedies acted on open platforms" (214-215). Her examination, though important, does not emphasize the material and the legal proofs in terms of written evidence, as I do here.

Shakespeare shares the early modern stage with several other playwrights who focus on the figure of the Scrivener (see above image). Quite notably, Ben Jonson begins *Bartholomew Fair* with the Scrivener, who in the Induction serves the primary function of highlighting the drama as

a play, where the audience will be entertained. Still, this figure raises the stakes by promising the audience satisfaction at the end of the tale (0.57-140).[77] Thomas Middleton, however, takes the role of the Scrivener a little further than Jonson with several comedies, *The Phoenix*, *A Trick to Catch the Old One*, and *Michaelmas Term.* Each of these comedies brings to bear, like Shakespeare's Scrivener, the problem of the written document to the vagaries of people and politics. These scriveners highlight the vulnerability of the legal document by focusing upon its materiality and construction. Each play focuses upon the nature of debts, bills of sale, and bills of release. These commercial contractions emphasize the complications with their forged, perverted, and fictional status (Gordon 181-182). Yet, here within Shakespeare's historical drama, *Richard III*, the Scrivener and his indictment, serve a more significant role in highlighting the nature of the legal vulnerabilities for the early modern indictment.

This chapter examines the construction, the distribution, and the use of legal documents, and their apparent and perceived legal authority as a tool for executing judgment against the subjects of the English realm. The audience infers, or rather Richard assumes, a politically authoritative air to which the audience—and the English subjects—respond. Based upon this assumed authority, these documents evolve in the moment of their creation, service, and execution. For this dissertation, these moments grow important in the life history of these instruments and props. No real challenge to their substance and credibility in the law emerges—unless we include the failed attempts by the imprisoned Duke of Clarence in the final moments of his life. In remarkable fashion, Shakespeare complicates this expectation of truth and transparency. The playwright presents scenes where even in the face of death, the perceived authority and validity cannot be substantiated through these warrants and indictments. Though the Scrivener and Richard

[77] In this reference to Jonson's play, I use The Yale Ben Jonson, edited by Eugene M. Waith (1963).

initially appear with the indictment and the warrant as the drama develops, the documents expand beyond the force and the power of these men and transform as entities, as important tools for the theatres and the courts, unto themselves—though fallible, corrupted, and tainted.

Specifically, the first part of the chapter critiques the Scrivener's indictment as a flawed embodiment of the law where this document works against the rule of law. In examining the Scrivener's indictment against Lord Hastings, I delve into the moment of the document where it is drafted as a legal instrument at 3.6.[78] I look at the nature of the construction and the requirements for an indictment during this era, and consider how this document fails to meet those standards. As I contemplate the performative and treasonous qualities of the Scrivener's indictment, I consider several implications for the "handling" of this seemingly obscure scene. For instance, in some more recent productions of Richard III, the scene at 3.6 disappears and reappears. Also, I discuss how the soliloquy at 3.6 implicates the early modern understanding of treason, for every agent who acts on Richard's behalf in this indictment emerge as co-conspirators.

The second part of the chapter analyzes the presentation and the distribution of the warrant, particularly Richard's delivery of the warrant for the Duke of Clarence to the Murderers and how this flawed presentation of this charging document also illustrates the question with this flawed system of justice at 1.3.84-98. I explore the service of the warrant by assassins and its reading by Brackenbury, the Lieutenant of the Tower and the surrender of Clarence to these assassins, as part of this vexed presentation.

[78] I explore here the physical biography of the Scrivener's indictment and Richard's warrant, which are separate from its legal biography, not unlike Igor Kopytoff's distinction between an object's physical and economic biography (Appadurai 68).

Finally, the third part of the chapter dissects the execution of the warrant by the Murderers against the Duke of Clarence, the request for Richard's warrant by these assassins, the request for evidence by Clarence, and his ultimate murder at 1.3.339 and 1.4.99-260.

In these moments, I critique the apparent legitimacy of these legal instruments and how they infect the entire realm, even while they carry the weight of the king's authority, which remains unchallenged.

SCENE ONE: 3.6: The Presentation of the Scrivener's Indictment for the Duke of Hastings

"Is ink and paper ready?" (King Richard III 5.3.76)

At 3.6, Shakespeare introduces the audience to both the Scrivener and his indictment. This brief moment offers an explanation for the dilemma at the crux of this history play: the problem of the Scrivener's indictment. The scene encapsulates what the indictment embodies in this one soliloquy by a character, a Scrivener, who according to the stage direction discloses, with a paper in his hand:

> Here is the indictment of the good Lord Hastings,
>
> Which in a set hand fairly is engross'd,
>
> That is may be today 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 liv'd,
>
> Untainted, unexamin'd, 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 naught
>
> When such ill-dealing must be seen in thought. (3.6.1-14)

Here, the Scrivener presents to the audience the treasonous indictment for Lord Hastings, who has as late as 3.4 fallen out of favor with Richard. Consistent with the law, the indictment explains the justification for his execution. Specifically, this scribe uses a "set hand," which was a distinctive style of writing for this professional writers. With "engross'd" writing, the Scrivener asks the audience to "mark how well the sequel hangs together." In essence, he highlights the enlarged conspicuous manner of the handwriting in a moment that is, as Alan Stewart argues, "something richly theatrical (41). On the stage by himself, the Scrivener presents the story of this document to the audience. According to his monologue, he received the original document, "the precedent," from Catesby last night. Because the precedent was "as long a-doing," the Scrivener explains how he spent "eleven hours" writing this document "over." This professional scribe expends much energy, as evidenced by his constant references to the indictment as the act of writing, the act of falsifying, which implicitly functions as the act of falsifying England's story here for the audience. In one line after another, the Scrivener underscores the importance of this document—the key "piece" on the stage and the center of the dilemma for this play.

In addition to its past, which the Scrivener describes in detail, the document also has a future, where the indictment of Lord Hastings "may be today read o'er in St. Paul's" Cathedral. Ironically, he began writing this indictment of Lord Hastings *before* his execution, "within five hours Hastings liv'd," where he was "untainted, unexamin'd and free." Now, this document alone condemns him—without a hearing, without any preexisting charge. Essentially, the Scrivener observes forlornly, "Here's a good world the while!" Ironically, he finds the "good Lord Hastings" is executed in this good world. In this realm, his consternation and outrage grow as he asks: "who is so gross / that cannot see this palpable device?" This device, Hastings's indictment, lacks any credibility. In spite of its visible "taint," the Scrivener further inquires, "who's so bold but says he sees it not?" Because no one will admit its falsity, this scribe forewarns: "Bad is the world, and all will come to naught." Nothing good will come from these "ill-dealings," particularly when people within this state of England cannot admit these wrongs openly—they may only say such things privately. After delivering these fourteen lines in the play, the Scrivener is neither seen nor heard by this audience again, yet his soliloquy offers an explanation, both legal and cultural, for this particular document in his hand and its proof in the state of England.[79] While this scene unfolds as startling in the revelation of corruption, the most conspicuous part of this scene emerges not from the contents of the Scrivener's description, but the method of drafting this false indictment for Lord Hastings. The Scrivener describes his labor in the numerous hours to create this final version of the indictment, including its multiple drafts. Emphasizing his artistry, he applauds the writing, the size of its characters, the placement of the sentences. The Scrivener mentions the indictment's

[79] See Alan Stewart's analysis in *Shakespeare's Letters* (2008) at pages 40-41. Gary Watt briefly refers to the Scrivener's soliloquy, at pages 202-203, in his book, *Equity Stirring: The Story of Justice Beyond the Law* (2009). See also Bradin Cormack's discussion of the indictment in his chapter "Paper Justice, Parchment Justice: Shakespeare, *Hamlet* and the Life of Legal Documents," pages 44-46, in Donald Beecher, Travis DeCook, Andrew Wallace, and Grant Williams's edited collection *Taking Exception to the Law: materializing Injustice in early modern English literature* (2015).

public and private life, and finally its deadly consequence for Lord Hastings. Ultimately, he describes a document of legal, political, and cultural consequence.

The indictment performs a work for this play that develops as separate and distinct from its traditional role as an appendage to the subject, here the Scrivener. This chapter examines how the indictment in *Richard III* materializes as a legal document, which cannot be trusted. This scene demonstrates Richard's flaws in his twisted perversion of ambition, dominion, and glory. Here, this moment illustrates the agency of those individuals who for diverse reasons, including fear, intimidation, and perhaps an allegiance to the Plantagenet line, follow Richard's orders in his treasonous conspiracy.[80] Yet, beyond the play, the document possesses meaning, power, and authenticity outside of its current stage in its dramatic biography. Though it begins as a means for Richard to propel his conspiracy to usurp the throne, these legal instruments and theatrical props evolve as proofs that the very notions of representation, appropriation, and mimicry may supersede the present historical moment. In effect, they create a larger cultural dynamic, and present significant political and legal troubles for this sovereign state.

From his own explanation, the Scrivener, this professional drafter, emerges as one of many actors in the life of this piece of paper. In this one moment the Scrivener's soliloquy, as enraptured and brief as the moment is, suggests a type of agency as he reveals the past, the present, and the future of this indictment. At once, this document itself embodies qualities, which are temporal, physical, legal, cultural, and perhaps performative. The document is temporal in that it possesses a brief history with another character, for "yesternight by Catesby it was sent to" the Scrivener (3.6.6). It is physical because it moves from one character and one space to another—it shifts from

[80] Eight generations, approximately 245 years, of the Plantagenets ruled England in an unbroken succession from Henry II in 1120 to Richard III in 1399, as Dan Jones observes in his *The Plantagenets: The Warrior Kings and Queens Who Made England* (2014) (245).

Catesby to the Scrivener, and later someone else will "today read o'er in Paul's" (3.6.3). The indictment is legal because in its creation it operates as the charging document, which will latently justify Hasting's death. In an earlier scene, dear Hastings loses his head, which Lord Lovell and Sir Richard Ratcliffe display for the audience (3.5.18). The indictment is cultural because the Scrivener's act and discussion of writing has a distinctive social significance. This professional writer evokes references to several facets of document—from legal to personal—in this society. Finally, the indictment reveals performative qualities where the document becomes dynamic, not static, and its other qualities—visual—heighten our senses. Still, there unfolds a performative element to its legal characteristics as well—in essence, this prop performs a legal and political objective for Richard in his ambitious plot to rule England.

The Question of Performance

The Scrivener's indictment possesses performative qualities. This stage property exists in this solitary moment with this solitary character where nothing exists except this scribe, who stands alone with Lord Hasting's indictment.[81] This prop is supported by none else but the Scrivener's hand.[82] On this barren stage, the Scrivener has, without equivocation, admitted that this document is flawed in that it operates as a cunning tool.

At face value, the Scrivener's indictment embodies a legal document, which orders the execution of Lord William Hastings for his allegedly treasonable acts against the future throne of King Richard III. Yet, this soliloquy informs the audience that things here in this British realm are

[81] Ericka Lin offers a discussion of physical proximity in terms of *locus* and *plateau* or center and proximity to critique the placement of Richard on the stage during his soliloquies as Duke of Gloucester as opposed to his soliloquies as Richard III. She argues that it is difficult to discuss "proximity" where there is little evidence of this aspect in staging in early modern texts (28).

[82] For Douglas Bruster's discussion of hand props, see pages 95-119 in his book *Shakespeare and the Question of Culture: Early Modern Literature and the Cultural Turn* (2003).

not what they seem, documents are not they say, and people are not as Richard himself discloses "safe" (1.1.70).[83] In this way, the Scrivener's soliloquy parallels Richard's opening soliloquy of the play—it warns us of the treacheries, past and future. Notably, the word, "perform" and its other form, "perform'd," occur only twice in this drama—both are spoken by Richard. At 1.1, Richard says to his brother, George, the Duke of Clarence and Sir Robert Brakenbury, Lord of the Tower:

> We are the Queen's abjects, and must obey.
>
> Brother, farewell. I will unto the King,
>
> Were it to call King Edward's widow 'sister'—
>
> I will perform it to enfranchise you.
>
> Meantime, this deep disgrace in brotherhood
>
> Touches me deeper than you can imagine. (1.1.106-112)

With seeming passion and sincerity, Richard delivers this speech on the eve of Clarence's imprisonment—another part of Richard's conspiracy to seek the throne.[84] Clarence, as elder brother to Richard, would supersede him to the throne, according to the rules of primogeniture.[85] Richard says that they are "the Queen's abjects, and must obey." The word, "abject," has an etymology from Middle French and in one of its early meanings, from 1460, references a "wretched, despicable, self-debasing" *immaterial* object (*OED*).[86] Its meaning shifts from both

[83] For a discussion of Richard Duke of Gloucester's role and ultimate force to ascend the throne as Richard III, see pages 234-244 in Rebecca Fraser's *The Story of Britain: From the Romans to the Present: A Narrative History* (2005).

[84] See discussion of Clarence's ghost seeking revenge against Richard for his murder in Kristen Deiter's *The Tower of London in English Renaissance Drama: Icon of Opposition* (2008) (85, 134).

[85] Seee Baker 303, 306.

[86] See also Anthony Hammond's discussion of "abjects" and "abjections" as a parallel to "subjects" from line 106 in the Arden edition; he also notes the phrase, "abject object" from Shakespeare's *Henry VIII* at 1.1.127 (132).

person and object. In Richard's line, he suggests that they are indeed the Queen's objects—to be both debased and obedient. So too, the Scrivener and this indictment serve Richard to be both debased and obedient—catering to his will. In this moment of "debasement," Richard promises to "perform" by securing Clarence's release from the will of their brother King Edward or his future widow. In this moment, Richard acts as one who suffers from this obedience, for in the stage directions, Richard "embraces Clarence, weeping." In contrast, the Scrivener, without weeping, delivers the soliloquy in a true conflict between obedience and disobedience—each with dark consequences.[87]

Like the Scrivener's indictment, the dark consequences find no end. The appearance of the next reference to performance finds Richard requiring an unfathomable undertaking. In this scene at 4.2, Richard commands Buckingham:

> O bitter consequence
>
> That Edward still should live—true noble prince!
>
> Cousin, thou wast not wont to be so dull.
>
> Shall I be plain? I wish the bastards dead,
>
> And I would have it suddenly perform'd.
>
> What say'st thou now? Speak suddenly, be brief. (4.2.15-20)

A conspicuous preparation for the performance of murder permeates both this scene between Richard and Buckingham at 4.1 and the earlier scene between Richard and Clarence at 1.1.

[87] Anthony Hammond describes the Scrivener as "cynical" and provides proof, along with the anxious Citizens at 2.3 and the silent Londoners at 3.7, of the "a collective awareness of the corruption of the national life" and "the decay of society towards chaos" (108).

Distinctively, the "acting" here transforms into the future performance of murder. Richard demands its execution. The act of Lord Hastings's murder had already been committed by 3.6. The indictment operates as the vehicle to cloak its malevolent invention—much like Clarence's incarceration and the future murder of Edward's sons.

As much as this indictment reveals Richard's machinations, the scene also reveals the character of Lord Hastings as well. Earlier in at 3.5, Richard and his co-conspirators assassinate Hasting's character as traitorous. However, the Scrivener describes the accused as "good Lord Hastings" (3.6.1). Consistent with Richard's plan, this newly drafted document undermines the appellation. In the previous scenes, the audience witnesses the false accusations against Hastings. Richard accuses Hastings of protecting those, like "that harlot, strumpet Shor" (3.6.71), who:

> …do conspire my death with devilish plots
>
> Of damned witchcraft, and that have pevail'd
>
> Upon my body with their hellish charms? (3.4.60-62)

He calls Hastings "a traitor" and commands:

> Off with his head!
>
> Now by Saint Paul I swear
>
> I will not dine until I see the same. (3.6.75-77)

To remove all obstacles to the throne, Richard colludes with others, particularly the Duke of Buckingham and Sir William Catesby, to get rid of those who pose a threat. Richard tells Buckingham his suspicions about Hastings:

> Catesby hath sounded Hastings in our business,

That he will lose his head ere give consent

His master's child (as worshipfully he terms it)

Shall lose the royalty of England's throne. (3.4.36-40)

In this moment, Richard expresses his dissatisfaction with Hastings, who refuses to play a role in Richard's quest for the throne. By Richard's command, Hastings does lose his head. The indictment merely serves as the legal cover-up in its poignantly material display at 3.6. In this scene, the Scrivener confirms what the audience already believes. Through this soliloquy and the presentation of the indictment, he reveals that *Hastings is good*. At the same time, conspiracies maneuver treachery within the legal framework. Arguably, if we consider "the good Hastings" as the subject of the scene, the indictment for his death grows difficult to ignore.

As much it operates as a legal vehicle, the presentation of this indictment displays, I imagine, the artistry of this professional drafter. Because many of the paper props were not saved by the theatrical companies, the features of this stage property grow difficult to determine for this period.[88] Yet, we might make a comparison to indictments, like that of Robert, Earl of Essex.[89] His treasonous offenses against Queen Elizabeth I were not only on display at his trial, but were read aloud, where the court listed his charges in great detail (see images below referencing

[88] See Lena Cowlin Owen's discussion of "inexplicably lost" objects from early modern stage productions (Harris and Korda 114-116) and Bruster's chapter where he discusses the fluidity of hand props, which explained why they disappear from discussion; they could be "variously possessed, traded, lost, fund, concealed, and evaluated" in *Staged Properties in Early Modern English Drama* (71).

[89] See David Jardine's discussion of the trial of Robert, Earl of Essex (321-328). See also Cobbett's *State Trials* where the Clerk of the Crown read the Indictments of Earl of Essex and Southampton during their trials (1335-1336). For further examples of treason, consider Sir Thomas More. Sir Thomas More's treason might be considered as a worthy comparison to that of the "treason" committed by Lord Hastings here in this drama. The writing of More during this time of his accusations allowed for an opportunity for his words to speak another voice of resistance to the device created by his trial for treason.

evidence and trial against Essex).[90] Likewise, I imagine this stage property is large, as it is an indictment with room to set out the charges against Lord William Hastings, the King's Lord Chamberlain. Also, the Scrivener remarks that the document is "set hand fairly is engross'd" (3.6.2).[91] From its Anglo-Norman roots, the etymology of the word, "engross'd," means written in large print, in a "set hand." This "set hand" may have been a particular way of writing for legal documents (*OED*). The Scrivener presents this document—written in large print—to this audience, which has witnessed the unfair charges against Lord Hastings so recently fallen at 3.6. The document and the character, the Scrivener, operate as constant reminders in the purpose of the scene: to demonstrate the trouble with evidence in this realm. In fact, this scene continues to shift the audience's attention to the current legal or political moment. Within this British realm, these corrupt subjects act to imperil other subjects with the help of a well-placed indictment.

[90] Sir Francis Bacon, chief prosecutor, suggests that the Earl of Essex's position as a subject of Queen Elizabeth prohibits his right to impose the law, or his own notion of justice, upon the sovereign, and by Essex's attempt to do so, he has violated the law of the state in "A Declaration of the Practices and Treasons committed and attempted by Robert the late Earle and his Complices against her majesty and her Kingdom" (1601).

[91] This reference suggests the documents formal, legal objects as it illustrates a formal hand with large characters, as Anthony Hammond, editor of Arden edition, notes (244).

THE EFFECT OF
the Euidence giuen, at the ſeuerall
Arraignments of the late Earls of
Eſſex and *Southampton*, before
the L. STEWARD;
And of Sir *Chriſtopher Blunt* and
Sir *Charles Dauers*, and others, be-
fore great and Honourable Com-
miſſioners of *Oyer* and
Determer,
And of the Anſweres and Defenſes,
which the ſaid Offendors made for them-
ſelues; And the Replies made vpon
ſuch their Defenſes
With ſome other Circumſtances of the
proceedings, as well at the ſame
Arraignments as after.

THE two late Earles of *Eſſex* and *Southampton*, were brought to their triall, the nineteenth of Februarie, eleuen dayes after the Rebellion. At which triall there paſſed vpon them 25. Peeres, a greater number then hath bene called in any former preſident. Amongſt whom her Maieſtie did not forbeare to vſe many that were of neere alliance and blood to the Earle of *Eſſex*, and ſome others, that had their ſonnes and heires apparant that were of his Company, and followed him

Some queſtion was made by the earle of *Eſſex*, whether he might challenge any of the Peers. But anſwere was made by the Iudges, that the law had that reputation of the Peeres, that it muſted them both without othe and challenge.

G 3

Figure 9 Francis Bacon, A declaration of the practises & treasons attempted and committed by Robert late Earle of Essex and his complices, against her Maiestie and her kingdoms, 1601, Paper, Huntington Library and Art Gallery, EEBO STC / 1338:09.

In a 2009 production of *Richard III*, Steve Pringle plays the role of the Scrivener at 3.6, and delivers the character's only speech—in soliloquy. He walks around the darkened stage with the stage prop—the indictment of Lord Hastings—in his hand. Yet, in the 1996 production, artistic director Barbara Gaines, who produced both plays at the Chicago Shakespeare Theatre, removes this scene. Why was this Scrivener removed? One could argue that like most staged productions of Shakespeare's plays, directors must decide how to economize the lines, the characters, and the sets, particularly in such large productions like *Richard III*. Yet, in the 2009 production, the Scrivener and the indictment conspicuously returns. This figure of the Scrivener and his presentation of this legal document evoke an intriguing relationship between the character, the

document, the law, and the early modern period.[92] Shakespeare provides a scene, which explains, in part, how Richard will justify the execution of Lord Hastings, friend to King Edward IV, and Richard's brother. This justification lies in this lone legal instrument—the indictment of Hastings as a traitor. The scene essentially ties together the earlier scenes, 3.4 and 3.5, where Hastings is accused and executed, respectively.

Conspicuously occurring after Hastings' execution, this evocative scene, at 3.6, which describes the evolution of the document, offers an interesting tension in this scene that reveals the legal process given some productions, like Chicago Shakespeare Theatre (CST) in 2009, perform this scene, and others, such as CST 1996, exclude the scene. Also, the process by which subjects obtain and execute arrest and death warrants arises most poignantly in Shakespeare's *Richard III* (1591). The play not only dramatically represents this controversy through the movement of written evidence as props, but also this indictment makes an important intervention, where Richard's exploitation of legal process for executions rests in these state papers. This inquiry follows the figure of The Scrivener and Richard, as they negotiate with and around specific legal instruments, the indictment and the warrant. This chapter examines this counterfeit legal instrument, notions of authenticity, and stage property.[93] In addition, I critique the institutions and the agents that utilize them and the legal and material contexts, which embed them within this early modern era. In particular, the Scrivener exhibits the fraudulent legal indictment of Lord Hastings in soliloquy at 3.6, as a seemingly inevitable culmination of Richard's practice of

[92] I viewed the 2009 in one of its live performances, but saw the 1996 production with the assistance of the Education department at the Chicago Shakespeare Theatre in December 2011.

[93] Eve Rachel Sanders discusses Richard's involvement in the "counterfeit treason indictment" against Hastings in her book, *Gender and Literacy on the Stage in Early Modern England* (147).

producing fraudulent indictments when his men delivers a suspicious death warrant for the Duke of Clarence at 1.3 in *Richard III*.[94]

Though other references to warrants and commissions appear in the play, only this scene, through the indictment, states explicitly that a problem emerges in the state of England—this future kingdom of Richard III. At the outset of this chapter, I mentioned that some productions of the play do not include the scene with the Scrivener. While some might argue that the rationale lies in the economy of time in stage production of the play, other scholars, like Jyotsna Singh, might argue that the appearance and disappearance of the scene may lie in the complexity of the scenes temporal quality. For instance, the Scrivener describes events, which occur both before and after the execution of Lord Hastings.[95]

Still others might insist that the short scene's complexities lie in its connection to the accusations of treason against Hastings at 3.4 and his execution at 3.5. Here at 3.6, the Scrivener's soliloquy attempts to bridge events, which happen *before* and *after* Hastings's death where this scribe admits that at least "five hours Hastings liv'd" (3.6.8) while he was drafting this indictment. In essence, his monologue describes the life of this indictment, where part of it existed while Hastings was alive. However, within the narrative of the play, the audience has already witnessed Richard's demand for his head (3.4.76). Within the scope of this soliloquy, the element of time alone presents intricacies for the actor and the audience as well. In spite of these complexities, the scene ripens into one of the anchors upon which Richard's conspiracy rests—the other is the death warrant for the Duke of Clarence. The Scrivener's indictment for Lord Hastings provides the public story that Richard needs to legitimize not just the death Hastings, but his future place on the

[94] For this chapter, I utilize the Arden Shakespeare, edited by Anthony Hammond.
[95] Singh, Jyotsna. Discussion with Lisa M. Barksdale. 1 June 2015.

throne. At all costs, Richard must avoid a bloody scandal before his ascension. The Scrivener's indictment provides a public effort at an untainted throne.

Does not the deleted scene possess a philosophical meaning that is just as important as its dramatic one? Arguably, the scene still remains within the play theoretically, even when it is removed physically by an individual performance.[96] Yet, something significant does happen to the political, legal and cultural imperatives here in 3.6 with its actual removal, even where its theoretical and philosophical implications persist. A palpable tension exists here in what evidence actually means. Still, is it even possible for the director, here Ms. Gaines, to delete the meaning of the indictment? Or, has the director merely deleted the role of the Scrivener as an actor "upon" the document with this delineation? Meaning, the role of the Scrivener in the life of the document is essentially eliminated with the removal of this scene. The beheading of Lord Hasting occurs even though the indictment upon which the act becomes "justified"—legally or performatively—is removed dramatically. There arises a complication in what legal documents actually represent at this particular moment. Though this historical play represents events, which happen almost two hundred years earlier, this moment surfaces as important in this early modern moment as well, particularly with Robert, the Earl of Essex. An issue of treason—a viable threat to the throne—comes out of these legal documents. The manipulated state of these written proofs turns into an "open secret" much like the Scrivener's indictment.

[96] Andrew Sofer observes that playwrights must decide what will be seen and unseen in his book, *Dark Matter: Invisibility in Drama, Theater, and Performance* (15). Yet, how do we think about those scenes which directors, not playwrights, cut?

The Question of Treason

With well-placed precision, the Scrivener's indictment exposes the depth of the conspiracy and its impact on British subjects. Earlier, Richard declares: "We speak no treason" (1.1.90). Yet, these documents of death speak loudly of treason. In particular, the indictment in this scene calls to question the consent by silence to Richard's treason. For instance, the Scrivener states this quandary explicitly:

> Yet who's so bold but says he see it not?
>
> Bad is the world, and all will come to naught
>
> When such ill-dealing must be seen in thought. (3.6.12-14)

The Scrivener notes the sad state of the world where such trickery is "seen" by the subjects and "witnessed" by the audience but cannot be more than thought about as any other such action would amount to treason.[97]

In this scene, the Scrivener's indictment serves as an example of the treasonous conspiracies in which Richard helms. For instance, the Scrivener asks the audience to "mark how well the sequel hangs together" (3.6.4). Here, he asks the audience to "mark" (i.e. to witness) how well this "tainted" document is manufactured. We witness how well the servants of this realm transform into willing, and some reluctant, agents of conspiratorial plots against the individuals who cautiously serve this aspiring king. Ironically, at several moments in this drama, Richard

[97] Mukherji's discussion of the audience and how the audience might be affected by this depiction of treason. Unlike Mukherji, I consider the role of audience and this treasonous document in *Richard III*, on the stage suggests further insight to how deception is measured during this era.

similarly asks others to "mark" some behavior or action.[98] We too, as the audience, grow engaged in the act of "marking" the behavior of these characters. In particular at 3.4, Richard tells Hastings:

> Then be your eyes the witness of their evil.
>
> See how I am bewitch'd! Behold, mine arm
>
> Is like a blasted sapling wither'd up!
>
> And this is Edward's wife, that monstrous witch,
>
> Consorted with that harlot, strumpet Shore,
>
> That by their witchcraft thus have marked me. (3.4.67-72)

In the course of this brief dialogue with Hastings, Richard asks this doomed Lord Chamberlain to "be your eyes the witness," "see," and "behold" how the actions of others have "marked" Richard. As a consummate actor, this machiavel plays the role of victim.[99] By comparison, the Scrivener here at 3.6 asks the audience to "mark this sequel," in the indictment "hangs together" (3.6.4). I argue that this Scrivener refers to more than this legal document, for its implications grow exponentially. He intimates to the larger conspiracy at work in this British realm because Richard seeks the throne at all costs. Here, the plot, the Scrivener, and the indictment will serve this aspiring king well in this criminal scheme against Lord Hastings.

Furthermore, within these several conspiracy plots, the Scrivener's indictment lacks transparency. Ironically, an expectation of veracity and lucidity arise as inseparable from this legal

[98] Richard also uses the word at 1.3 when he gives the warrant to Clarence's assassins and at 2.1 when gauging the reaction to Clarence's murder.

[99] In chapter 1 on Shakespeare's *Titus Andronicus*, I also refer to Aaron the Moor as a machiavel. See also Anthony Hammond's discussion of machiavels from several early modern dramas, including Richard's self-identification as machiavel in 3 Henry 6 (104). Ironically, here in this history play he plays the victim of those who set upon him.

document. The issue of transparency grows inescapable in this play where the indictment operates as the key prop for understanding the dynamics of treason. This treason evolves in its layered dimensions as evidence of the defective condition of the state. The Scrivener asks "[w]ho is so gross / That cannot see this palpable device?" (3.6.10-11).[100] He suggests that the audience must "see" this quite tangible "device," this trick, or this collusion. Using the same word, Prince Hal asks a similar question in *Henry IV, part 1*:

> What trick, what device, what starting-hole, canst
>
> thou now find out to hide thee from this open
>
> and apparent shame? (2.4.255-257)[101]

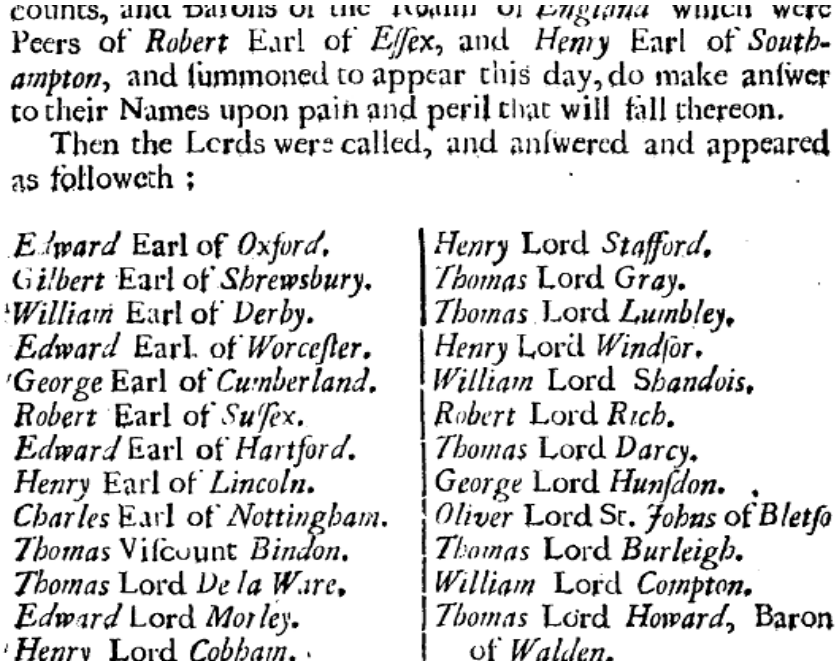
Like the Scrivener's indictment, Hal suggests that the device evolves as uneasily hidden—this trick grows open to the realm's shame. This transparency of the device evolves as the obstacle within this realm. This document exposes that trick—this conspiracy to murder Hastings and ascend the throne by removing King Edward's sons—yet no willing voices raise to admit to the indictment's fraudulence.[102]

While contemplating Richard's treasonous actions among these written pieces of evidence on the early modern stage, we must also consider the definition of treason during the period. For example, in the Essex trial (see image below), Bacon defines the proof required for "treason:"

[100] With a similar use, the word, "device," appears several times in *Titus Andronicus*.
[101] See Roderigo's discussion with another machiavel, Iago, about how he grows wearied of Iago's "devices" in *Othello*.
[102] Rebecca Lemon's discussion of the scaffold speeches in her *Treason by Words* serves as instructive in the layered pretense cloaked in this rhetorical phenomenon, as I consider the multi-faceted deceit that each actor, including but not limited to the Scrivener places upon this indictment for Lord Hastings.

> Treason is nothing else but [criminal high treason or diminished high treason] making every offence which abridgeth or hurteth the power and authoritie of the Prince, as an insult or invading of the Crowne, and extorting the imperiall Scepter. And for common reason, it is not possible that a subject should once come to that height as to give law to his Soveraigne, but what with insolency of the change, and what with terror of his own guiltinesse, he will never permit the King, if he can chuse, to recover authoritie, nor for doubt of that, to continue alive.

Such pronouncements of concepts define the legal, cultural, political, and criminal lives of the British subjects. This idea of treason evolves over the course of this period and unfold as compelling and complex. Necessarily, these written statements on the conditions under which subjects may live freely within the realm becomes transformative for these subjects thereby providing an impetus to challenge these declarations. On both the legal and theatrical stage, the sovereign and his or her agents help to determine what happens to such definitions as warrants or indictments rewrite previously identified boundaries.



counts, and Barons of the Realm of *England* which were Peers of *Robert* Earl of *Eſſex*, and *Henry* Earl of *Southampton*, and ſummoned to appear this day, do make anſwer to their Names upon pain and peril that will fall thereon.

Then the Lords were called, and anſwered and appeared as followeth ;

Edward Earl of *Oxford*.
Gilbert Earl of *Shrewsbury*.
William Earl of *Derby*.
Edward Earl of *Worceſter*.
George Earl of *Cumberland*.
Robert Earl of *Suſſex*.
Edward Earl of *Hartford*.
Henry Earl of *Lincoln*.
Charles Earl of *Nottingham*.
Thomas Viſcount *Bindon*.
Thomas Lord *De la Ware*.
Edward Lord *Morley*.
Henry Lord *Cobham*.
Henry Lord *Stafford*.
Thomas Lord *Gray*.
Thomas Lord *Lumbley*.
Henry Lord *Windſor*.
William Lord *Shandois*.
Robert Lord *Rich*.
Thomas Lord *Darcy*.
George Lord *Hunſdon*.
Oliver Lord St. *Johns* of *Bletſo*
Thomas Lord *Burleigh*.
William Lord *Compton*.
Thomas Lord *Howard*, Baron of *Walden*.

Figure 10 Robert Devereux Earl of Essex, The arraignment, tryal and condemnation of Robert Earl of Essex and Henry Earl of Southampton, 1679, Paper, Huntington Library and Art Gallery, EEBO Wing / 805:37.

To further complicate the notion of treasonous acts, I compare Rebecca Lemon's discussion of "treason by words," as opposed to this treason in the Scrivener's indictment by written words. She argues that treason is "doubly linguistic," where it evolves as "an event created in the texts circulating after the plot, evinced in text," like letters and a variety of other texts on the Gunpowder Plot, as an example (3). While Lemon focuses on the rhetorical moves, like scaffold speeches, and the effects of treason, I emphasize the written moves and its effects that accrues specific authority derived from the law. Indeed, the Scrivener's soliloquy offers more than a rhetorical gesture in 3.6. The indictment accompanies the Scrivener on the stage. This instrument receives all of the attention, which emerges distinctly from Shakespeare's representation of the warrant for Arthur at 4.1 in *King John* or for Claudio at 4.2 in *Measure for Measure*.

This impact of the Scrivener's indictment grows increasingly significant, as it demonstrates the ways in which legal dimensions of the written indictment intersect with the social, cultural, and performative aspects and ramification of imposing fraudulent legal accusations. For instance,

it demonstrates how the unreliable, illegal, and tainted proof within the play transforms into an object, larger than its initial purpose. Even in its imperfect state, the document moves beyond the initial biographical moment, designed by its architect, Richard, and shifts into an impetus for a discontented faction for an entire realm.

In the following section, I will chart the journey of the death warrant, which materializes on the stage in Richard's possession.

SCENE TWO: 1.3.344: Richard Delivers the Warrant for the Duke of Clarence

"Armed in proof…" (5.3.220 King Richard III)

At 1.3, Shakespeare provides a provocative dialogue between Richard and his two assassins, Murderer 1 and Murderer 2, as he delivers the death warrant for his brother Clarence. As the assassins appear within hearing distance, Richards utters:

> But soft, here come my executioners.
>
> How now, my hardy, stout, resolved mates;
>
> Are you now going to dispatch this thing? (1.3.3.339-341)

In a most complimentary fashion, Richard bolsters his executioners to "dispatch this thing." He rallies these recruits with reminders of their fortitude, courage, and most importantly—their resolve. Enthusiastic about their deadly assignment, Murderer 1 responds: "We are, my lord, and come to have the warrant, / That we may be admitted where he is" (1.3.344-345). In order to get into the Tower, where Clarence is imprisoned, they must have permission. They need a warrant. To this request for the warrant, Richard responds:

> Well thought upon; I have it here about me.

When you have done, repair to Crosby Place—

But sirs, be sudden in the execution,

Withal obdurate: do not hear him plead;

For Clarence is well-spoken, and perhaps

May move your hearts to pity, if you mark him. (1.3.344-349)

Richard remarks that having a warrant is a good idea, as he possesses the warrant for Clarence "about me." Yet, he advises these apparently experienced assassins about this deadly deed. Richard wants the execution to be swift and unforgiving. They cannot listen to the pleas of Clarence, for his brother is persuasive and compelling. With good reason, Richard warns them, for later, Clarence beseeches these hardened assassins for his life:

Have you that holy feeling in your souls

To counsel me to make my peace with God,

And are you yet to your own souls so blind

That you will war with God by murd'ring me?

O sirs, consider: they that set you on

To do this deed will hate you for the deed. (1.4.240-245)

While both assassins may have been moved by the words of this doomed prince, Murderer 1 accuses Murderer 2: "My friend, I spy some pity in thy looks" (1.4.254). To preserve their own lives, Murderer 1 recalls Richard's warning: "Ay, millstones, as he lesson'd us to weep (1.4.229).

Here at 1.3, Richard wants these executioners to remain "hardy, stout, and resolved" to withstand any pitiable affect on display by Clarence within those prison walls. Assuring Richard, Murderer 2 says: "Tut, tut, my lord: we will not stand to prate. / Talkers are no good doers; be assur'd / We go to use our hands, and not our tongues" (1.3.350-351). He dismisses Richard's concerns by reminding him that they are men of action—not men of speech. They use their hands for doing—not their tongues for speaking. Reassured, Richard declares to these assassins:

> Your eyes drop millstones, when fools' eyes fall tears.
>
> I like you, lads: about your business straight
>
> Go, go, dispatch. (1.3.352-354)

In his parting gesture, Richard compliments the hard-hearted nature of these men. Where other men display tears of water, these men cry tears of stone. These are serious men sent to dispatch dark matters. They leave Richard promising their success: "We will, my noble lord" (1.3.355).

Specifically, Richard's warrant as a legal instrument should offer, by definition, a truthful testament to the crime that the accused has been charged with committing.[103] In a dialogue at 3.1, Prince Edward captures this ideal of truth:

> Methinks the truth should live from age to age,
>
> As 'twere retail'd to all posterity,
>
> Even to the general all-ending day. (3.1.75-77)

[103] The warrant has been also defined as "a writing issued by the sovereign, an officer of state, or an administrative body, authorizing those to whom it is addressed to perform some act" (*OED*).

In addition, the warrant should offer the transparency of evidence, as discussed earlier with the indictment, so that those jurists—whether advocate or judge—who may advise the accused as to the seriousness of the charges against him. As a result, they may determine how to adjudicate effectively the matter.[104] The document should also offer the authority by whom the charges are vested, which would further strengthen the reliability of the evidence against the accused.[105]

However, Richard's warrant for the Duke of Clarence grows out of a realm inflicted with the disease of sedition, conspiracy, and murder. Indeed, Richard seeks sedition to overturn the order of things by unseating the king, Edward IV, and undermining those who might have a stronger claim than himself to the throne. But, he wishes to do so under the guise of legal process. No longer satisfied as Duke of Gloucester, Richard conspires with diverse subjects, including Buckingham and Catesby, in mini-plots not unlike Shakespeare's Iago in *Othello*. In his opening soliloquy, Richard discloses the:

> Plots have I laid, inductions dangerous,
>
> By drunken prophecies, libels, and dreams
>
> To set my brother Clarence and the King
>
> In deadly hate, the one against the other:
>
> And if King Edward be as true and just
>
> As I am subtle, false, an treacherous,

[104] Subsequently, counseling the accused who is not, under normal circumstances, privy to the charging document (Langbein 51).

[105] See Michael J. Braddick's discussion of the warrant in his book, *State Formation in Early Modern England, 1550-1700* (285).

This day should Clarence closely be mew'd up. (1.1.32-38)

Ultimately, these plots not only imprison poor Clarence, and inflame Edward's hate, but Richard's designs for this warrant also include the murder this incarcerated brother. This part of the chapter explores the problematic nature of the warrant, its service, particularly as it relates to the Duke of Clarence's arrest and imprisonment. Within this scene at 1.3, Shakespeare minimizes the presentation of the warrant's pre-history that the audience receives in the Scrivener's soliloquy. Instead, the playwright offers a warrant, which rests on the work, the power, and the authority that arises as perhaps unseen and unrealized—yet, quite remarkable in its centrality to this drama.[106]

The Problem of Reading

Like the Earl of Essex's treason trial in 1601, the Scrivener's indictment is read to the audience in a striking performance. In contrast, later in the play, the death warrant for the Duke of Clarence is read, but with much brevity. The scene offers the audience neither a full reading of the charges, nor a trial of the witnesses against the King Edward's brother.[107] Again, here on the stage, at 1.4, there appears a conspicuous warrant, which is offered in an ostensibly, but cloaked manner. Though emerging as a weighty matter of conspiracy, treason, and assassination, the scene possesses an official air of state business. In this scene, Brackenbury, Lieutenant of the Tower, reads the charging document to the Duke of Clarence, and states: "I am in this commanded to

[106] Cormack's discussion of the term, "warrant" in his analysis of Skelton's *Magnyfycence* is significant as he posits the significance of writing and the "trustworthiness of authority" found in this word and the constitution of royal authority (73). He argues that Skelton's play suggests that memory and conscience are more reliable than writing. Cormack uses this discussion of the warrant within Skelton's play to discuss the use of the *quo warranto* by Henry VIII to critique title to hunting privileges, collect fines, or held court (73-76). This discussion considers warrants outside of treason, where commercial transactions, inheritance, and other financial relationships become impugned by the unlawful use of warrants, as Middleton stresses in his comedies, which surround the figure of the Scrivener.

[107] The Duke of Clarence is third in line to the throne—after King Edward's two sons who are placed in the tower later by Richard.

deliver / The noble Duke of Clarence to your hands" (1.4.91-92). There evolves trouble with this document, which "reading" the conciseness of the warrant does not alleviate.[108] These simple lines suggest that Brackenbury is "ordered" to perform a task in which he has no choice. In addition, his reference to the Duke of Clarence as "noble" is similarly telling—not unlike the earlier reference to Lord Hastings as "good" (3.6.1).

Nevertheless, this reading of the warrant performs work, which seems distinct from the Scrivener's reading of the indictment. Though here in this brief reading of the warrant, Brackenbury does not editorialize as the Scrivener does, his words offer a distinctive commentary, which incriminates the actions surrounding the warrant for the Duke of Clarence. As Lieutenant of the Tower, his role seems no more than a turnkey, locking and unlocking the gates of the Tower of London, as he is commanded. As Murderer 2 is brief in his salutation to Brackenbury at line 87, this warrant is similarly bereft of no more information—other than requiring Brackenbury to relinquish his custody of the Duke of Clarence, a royal prince, to these murderers for hire. Even in the brevity of this commission, Murderer 2 allows the document to speak for both him and his companion, Murderer 1. In this sense, the warrant develops, as its definition suggests, an authority to act. The authority is assumed and the warrant turns into the justification of this act.

While the Scrivener later tells the audience in 3.6 what the indictment contains, here in the scene at 1.4, Brackenbury reads Richard's warrant to Clarence and arguably to the audience as well. This act of reading offers a moment that materializes as distinct from the Scrivener's exposition. In contrast, the Scrivener's soliloquy provides a detailed background and commentary upon the invalidity of its contents to the audience. At the same time, it is not readily apparent that

[108] Douglas Bruster discusses the reading effect in his chapter "The dramatic life of objects" (Harris & Korda 77).

Brackenbury reads the entire document. Perhaps, he merely shares with the audience the pertinent portion: "deliver / The noble Duke of Clarence to your hands" (1.4.91-92). However, I think the stronger argument is that Brackenbury has read the entirety of the document. In the previous scene at 1.3, the Murderers appear with Richard and ask for the warrant so that they might gain access to the Duke of Clarence. I imagine that Richard did not invest the eleven hours that the Scrivener committed when he manufactured a warrant for access *to* the Tower in order to remove Clarence *from* the Tower. However, in the scene with the Scrivener's soliloquy, the scribe crafts a document, which apparently justifies the execution of Lord Hastings. Richard, here in 1.4, merely wants access to Clarence, for he is arrested and imprisoned at the behest of the King. Consequently, Richard, Duke of Gloucester, does not have to justify anything more to Brackenbury and the Keeper of the Tower.[109]

The Problem of Service

This charging document, Richard's warrant, provides some insight in the manner by which this service of process by Brackenbury is performed where he must relinquish his duty to protect Clarence to the two Murderers. In my use of "service of process," I actually mean the legal "delivery" of the warrant. While the nomenclature may fit contemporary law, there exists an identifiable procedure to the warrant delivery. It is this "process," which I examine in this part of the chapter. This delivery of the warrant cannot be overlooked.[110] While scholars focus on the verbal delivery of the actors, I concentrate on the delivery of these stage objects--namely the movement of the theatrical object, as Jonathan Gil Harris explains in his notion of Shakespearean intertheatricality. He notes "the working and reworking of theatrical matter, including the actor's

[109] Recall that Brackenbury is the Lord of the Tower.

[110] See Mark Hailwood's discussion of indictments and warrant delivery issues in his chapter, "Authority and Alehouses," in his book, *Alehouses and Good Fellowship in Early Modern England* (91, 97).

body and his accessories" (Harris 68-69). However, I focus on these "accessories," as stage objects and legal instrument to study how they are perceived as written evidence, as a commentary on their vulnerable status during this early modern era.

In particular, the exchange of Clarence's death warrant between Richard, the assassins, and Brackenbury emerges as a crucial moment in the life of this legal document. In this instant, where the delivery is performed by two murderers, the warrant evolves as highly inflected with criminality. These murderers, in their stoic manner, present themselves before this Lieutenant of the Tower for the King's brother, the Duke of Clarence—the most elevated inmate over which Brackenbury currently provides care. Before the Murderers enter, Brackenbury's dialogue with the Keeper reveals that this Lieutenant of the Tower prognosticated correctly:

> Sorrow breaks seasons and reposing hours,
>
> Makes the night morning, and the noontide night.
>
> Princes have but their titles for their glories,
>
> An outward honour for an inward toil;
>
> And for unfelt imaginations
>
> They often feel a world of restless cares:
>
> So that between their titles, and low name,
>
> There's nothing differs but the outward fame. (1.4.76-83)

At this time, the Tower of London has had a host of prisoners who represent the realm's aristocracy, but the Duke of Clarence's incarceration surpasses those inmates, at least during the course of this drama. The "sorrow" of the Tower reduces its inmate, Clarence, to "reposing hours."

Yet, for this prince, his repose will have finality. Brackenbury recognizes the waste in envying the life of the prince where "an outward honour for an inward toil" unfolds as a stark reality. Even more startling, Clarence's nephews, Edward's sons, will soon take his place. Although the warrant releases Brackenbury from further responsibility for the custody of the Duke of Clarence, Brackenbury speeds to the King to confirm his obedience to the warrant: "I'll to the King, and signify to him / That thus I have resign'd to you my charge" (1.4.96-97). How should we read this moment? Perhaps, Brackenbury's suspicions may have been aroused by the manner and mien of these two murderers? Or, maybe Brackenbury wants full deniability when these murderers spill royal blood? In this moment, I contend that the service of this warrant disturbs Brackenbury. These murderous figures, I imagine, present a hardened visage, even within the *secure* walls of the Tower.[111]

While filled with the dread of Clarence's impending death, the scene grows further complicated by this legal instrument—with its tainted status as an arm of justice, an arm of sovereignty, and an arm of the future rule of King Richard III.[112] As I mentioned earlier, the warrant possesses certain expectations. The warrant serves as a manner in which justice may be achieved through the accumulation of evidence to provide sufficient cause to present a case against an accused, in this case the Duke of Clarence—and mirroring the later indictment of Lord Hastings. The warrant also operates as a way in which the sovereign state of England to keep order, maintain its subjects, and deter factions, which would fell the country. In addition, the warrant acts to protect the monarch against those who would seek to overturn the proper line of succession, the power

[111] Kristen Deiter discusses the use of the Tower as a place of safety, including for Edward II and his struggles with Roger Mortimer's usurpation, Henry VII's wife and son during the Cornish Rebellion of 1497, among other royals (32, 38, 42).

[112] See Professor Beat Kümin's discussion of counterfeit warrants in *Political Space in Pre-Industrial Europe* (223-226).

and authority that vest with the rightful king who sits on the throne for his people. This legal instrument plays a significant role within the play, the courts, and the early modern society. Yet, these noble expectations of the warrant weaken in the face of Richard's treasonous conspiracy. In the same way, the merchant Egeon's comments in *The Comedy of Errors* apply here—Richard's warrant for Clarence unfolds as: "a doubtful warrant of immediate death" (1.1.68). In a compelling display, Richard and his agents complicate the objectives, the expectations of reliability, and the trustworthiness that the society has for these legal documents. The play offers a persuasive critique, which resonates with this society, which bears witness to those accused who were arrested, tried, convicted, and executed with fledgling evidence, secret trials, and closeted executions. For Richard, his ambition supersedes any such miscarriage of justice.

Within this realm, nothing seems either "safe" with Richard, or *secure* in the Tower of London when examining the problems in the delivery and the service of warrant.[113] The scene does not elaborate upon the warrant that is delivered to Brackenbury, the Lieutenant of the Tower. Richard's warrant merely requires the surrender of "the noble Duke of Clarence" (1.4.92). Brackenbury does refer to any seal. He does not mention who, if anyone, signed the warrant.[114] In spite of these deficiencies, the audience would note some disparities from the previous scene at 1.3, where the Murderers obtain the warrant from Richard. Under normal circumstances, the requirements at the Tower seems quite regimented, like many prisons.[115] Noticeably, Brackenbury

[113] James Sharpe discusses the duties of the office of sheriff including executing warrants, writs, presentments, and informations; and, the problems, which arise when individuals fail to execute warrants, *Crime in Early Modern England, 1500-1750* (47-49, 106-107). See also Natasha Korda's discussion of serving warrants under embattled disputes in her book *Shakespeare's Domestic Economies: Gender and Property in Early Modern England* (41).
[114] See John Bayley's text where he notes Sir John Tower's confinement at Newgate on 15 September 1665 for allegedly counterfeiting in the king's hand in *The Histories and Antiquities of the Tower of London with Memoirs* (626).
[115] See John Pym of the House of Commons delivers five speeches to make "secure the Tower of London in hands of those in whom the Houses could have confidence" in David Underdown and Susan Dwyer Amussen's *Political Culture and Cultural Politics in Early Modern England: Essays Presented to David Underdown* (33).

does not flee from his duty to obey the warrant, but does seek, apparently, direct authority to confirm the validity of the warrant. Not unwisely, Brackenbury realizes that his own life is imperiled. He could die from acting upon the "word" of the warrant without asking more in the matter of this prince, the Duke of Clarence.

To see how important the warrant is, let us follow the service of process, the execution of the document, and the drafting of the document to address the tainted status of the indictment or the warrant. Within Shakespeare's drama, we can find several moments in the life of the warrant, which convey the import of the document to the expendability of the Duke of Clarence's life. The corrupted beginning of the document commences at the request for the warrant. This moment operates as an interesting metaphor to the birth of an identifiable and written site of the corruption.

Nevertheless, at the moment of the warrant's delivery, Brackenbury does not inquire into the significance of this part of the "process." He believes that his lack of knowledge will keep him innocent of any actions, which follow. However, the Scrivener's soliloquy does not suggest that there exists an innocence found in a realm, which remains silent in the face of the atrocities at the hand of Richard. His soliloquy for all its truth bears all. In contrast, this dialogue between Brackenbury and the Murderers materializes as "so brief" (1.4.88), politic, and conspicuous. Murderer 1 advises: "'Tis better, sir than to be tedious" (1.4.89). Yet, the silence is deafening. A significant gap in the exchange of information arises in this moment. In spite of this chasm, nothing is said—yet, everything appears out of order. A lack of order develops in this service of process, as it did with the Scrivener's indictment.

As legal documents, the warrant and the indictment function similarly, yet possess their distinctions. There exists some attributes where an identifiable sense of history, time, physicality, performativity, and association with the character of Brackenbury and similarly exudes in the

scene with the Scrivener. Because the warrant for the Duke of Clarence is brief, the scene lacks any reference to the document's history or temporal qualities, as I argue with the Scrivener and the indictment. However, a notion of physicality, if not time, materializes where the audience may assume that the legal instrument was drafted by Richard and given to the Murderers who submit the document in exchange for possession of the Duke of Clarence. If anything arises from this scene with Brackenbury and Richard's warrant, it is the distance that Brackenbury tries to place between himself, the warrant, and the murderers.[116] Hence, the warrant rests as one crafted by Richard and circulated among the court to secure the death of his brother, Clarence.[117]

The Problem of Surrender

In the context of war, the notion of surrender involves one side acquiescing to his opponent. Indeed, a similar dynamic unfolds in the problem of surrender and Richard's warrant. After Richard delivers his warrant to the assassins, they serve this warrant for the Duke of Clarence on Brackenbury. The effect of this exchange of Richard's warrant does not end there. In exchange for Richard's warrant, Brackenbury surrenders the Duke of Clarence to the two Murderers. The most striking part of the surrender is the speech, which Brackenbury delivers after reading the warrant:

> I am in this commanded to deliver
>
> The noble Duke of Clarence to your hands.
>
> I will not reason what is meant hereby,

[116] I like the distance that I perceive in N.L. Peschier's *Vanitas* painting (1661), discussed in *Subject and Object in Renaissance Culture*, filled with objects and only faint evidence of their traditional subjects in the form of skulls, paintings, and worlds still under exploration (de Grazia 1-42).

[117] It is different from the service of the warrants that the audience witnesses in either *Arden of Faversham* or *Bartholomew Fair*. The service of these warrant seems cursory.

Because I will be guiltless from the meaning.

There lies the Duke asleep; and there the keys.

I'll to the King, and signify to him

That thus I have resign'd to you my charge. (1.4.91-97)

Richard's warrant gives the Murderer's access to the King's brother. In spite of his hesitation, Brackenbury does not refute the validity of the warrant, nor the two Murderers possession of such a warrant. The warrant reveals the key to the kingdom not merely for Richard, but the Murderers too. In their brief possession of the warrant, they grow into legal malefactors who obtain a crucial part to the legacy of the throne. The Duke of Clarence is not only Richard's brother and son of King Henry VI, for his mere existence grows as a threat to Richard. In his reach for the crown, Richard does not consider either of his brothers as potential co-conspirators; rather, they are his opponents, if not his enemies. His ambitions develops into a war for the throne. Having learned from earlier plots, murder provides a simpler means of disposal than trust in this play. Ignorant of Richard's royal aspirations, the Duke of Clarence cannot quash Richard's plans. He will be murdered as those before him to make way for Richard. With good reason, Brackenbury does not refute the validity of the warrant, for he reads the veiled threat in the brief words of Murderer 1. The presence of these hired assassins give Brackenbury and the Keeper of the Tower reason to relinquish not only the Duke of Clarence, but to remove their presence from the Tower as well.

Brackenbury's response to reading Richard's warrant unfolds as distinct from the Scrivener's response to the indictment. This scene offers the audience additional insight into the life of the warrant. For instance, Brackenbury does not inquire into the rationale for the warrant and the surrender of the Duke of Clarence to these two murderers. Brackenbury says: "I will not

reason what is meant hereby, / Because I will be guiltless from the meaning" (1.4.93-94). His words intimate some sense of suspicion about this process of surrendering the duke to these men.

Even further, Murderer 1 intimates that the refusal to transfer custody of the Duke of Clarence to them may have resulted in the possible death of Brackenbury, for after Brackenbury agrees to surrender the Duke's custody, Murderer 1 responds that "You may, sir; 'tis a point of wisdom. Fare you well" (1.4.98). The threat to their mortal lives, if not their souls, for surrendering the son of a king, materializes clearly. At the same time, these "protectors" of the Tower make no brave stand against these murderers. Not only does Brackenbury leave, but the Keeper of the Tower exits the stage as well. They remove themselves bodily from this affair and, apparently, report to the King. In a very direct way, the surrender of the Duke of Clarence evolves as life-threatening, as slightly different from the Scrivener's drafting of the indictment. The Scrivener imagines the possibility of mortal danger, where Brackenbury must confront the gravity of the danger face-to-face. In following the life of this warrant from creation, service, to execution, the undercurrent is one of imbalance where the nature of corruption, misbegotten rule, and the shedding of innocent blood parallel the tedious hold upon order that exists within the play, but mimics the state of the country, where the realm reveals itself as dysfunctional.

In contrast, when summoned by his queen, Robert, the Earl of Essex refused to be called or defend himself.[118] His response, rebellion, may be considered as an unreasonable response to a rational request for explanation by a beneficent servant of Queen Elizabeth I. Yet, here the Duke of Clarence is arrested and served without any fight, flight, or rebellion. While both were eventually executed, would the Duke's outcome have become different had he responded like

[118] The Trials of the Earls of Essex and Southampton in Cobbett's *State Trials*, vol. I (1340).

Essex? Here, the problem of warrants, authority, and treason suggests the issue of challenged authority with respect to Duke of Clarence, threat to the throne, and public, legal authorization versus private unlawful justice. Essex was a threat to the throne where Clarence demonstrated no viable threat, except to Richard's ambition. Essex, unlike Clarence or Hastings, had a public trial where evidence illustrated his traitorous acts and character. Nevertheless, Clarence and Hasting fall, like Essex.[119]

SCENE THREE: 1.3.339 and 1.4: The Execution of Richard's Warrant

"Ah, Keeper, Keeper, I have done these things, / That now give evidence against my soul" (Duke of Clarence 1.4.66-67).

The execution of Richard's death warrant arises as a significant moment in the life of this legal instrument. Usually the site of execution occurs in some prison like the Tower of London for Essex or the King's Bench prison for other co-conspirators in the Essex rebellion (Everett Green 409). Within this play, the execution of the warrant similarly takes places at the Tower. In *Richard III*, the execution of the warrant scene, at 1.3, unfolds as the first where the warrant appears in the play in a significant way. Though no stage direction alludes to its physical presentation on the stage, the dialogue between Richard and the two assassins speak of the document's existence as a physical and legal instrument to obtain access to the Duke of Clarence. Here, Richard transforms

[119] While delving into the scene where the warrant for the Duke of Clarence evolves as the focal point of this analysis, I wish to consider briefly the contribution of the warrant to the cultural materials represented during this early modern era. Since the outset of this chapter, the discussion of the indictment and the warrant, both here focused upon the death of the accused. Yet, the warrant functions as a source of freedom as well. In July 1601, *Warrant Book* I, on page 94, sets forth several warrants, which release those men who played some identifiable role in the Essex rebellion. These men were some of those named in the Clerk of the Crown's indictment, which was read at the trial of the Earl of Essex and Southampton, including Earl of Rutland, the Lord Sandys, Sir William Parker called Lord Monteagle and Lord Cromwell from the Tower Prison and Sir John Davis and Edmund Baynham from the King's Bench prison, and other men from other prisons. Six men of the Privy Council released these men by warrant. Three warrants were issued—one to the Council to dismiss the prisoners and the others to the Lieutenant of the Tower and the Keeper of the Prison at the King's Bench to release them (Everett Green 409).

into, at this moment, what appears to be the author, or the source of the warrant. He emerges as the designer or the architect of this conspiracy to murder his brother, Clarence. An apparent authority unfolds, as inextricably attached to this document for said access. The expectation arises that the warrant appears to possess truth, veracity, and verisimilitude.

Nevertheless, in this scene, Richard discloses in soliloquy how his secret handling of the warrant for the Duke of Clarence (and later the indictment of Hastings) and his agents parallel his character:

> I do the wrong, and first begin to brawl:
>
> The secret mischiefs that I set abroach
>
> I lay unto the grievous charge of others. (1.3.324-326).

Richard instigates all of the "secret mischiefs," which inflame this realm and its people. Yet, he lays the blame before others. As an example, he admits that:

> Clarence, whom I, indeed, have cast in darkness,
>
> I do beweep to many simple gulls,
>
> Namely to Derby, Hastings, Buckingham. (1.3.327-329)

For some, the imprisonment of his brother Clarence grows woeful, and Richard embodies that affect of concern before his dupes, Derby, Hastings, and Buckingham. To detract from his own culpability, Richard lays all of the blame with:

> …the Queen and her allies
>
> That stir the King against the Duke my brother.

Now they believe it, and withal whet me

To be reveng'd on Rivers, Dorset, Grey. (1.3.330-333)

As a calculating mastermind of complots, Richard successfully convinces most of his slanderous tales against the Queen and her allies. Now, factions encourage Richard to prepare for attack against innocents like the Queen's brother Rivers and her sons, Dorset and Grey. In response, Richard counterfeits his reluctance for bloodshed with "sigh[s], and with a piece of Scripture, / [and] Tell[s] them that God bid us do good for evil" (1.3.334-335). Like all of his secret mischiefs, he discloses in soliloquy:

I clothe my naked villainy

With odd old ends stol'n forth of Holy Writ

And seem a saint, when most I play the devil. (1.3.336-338)

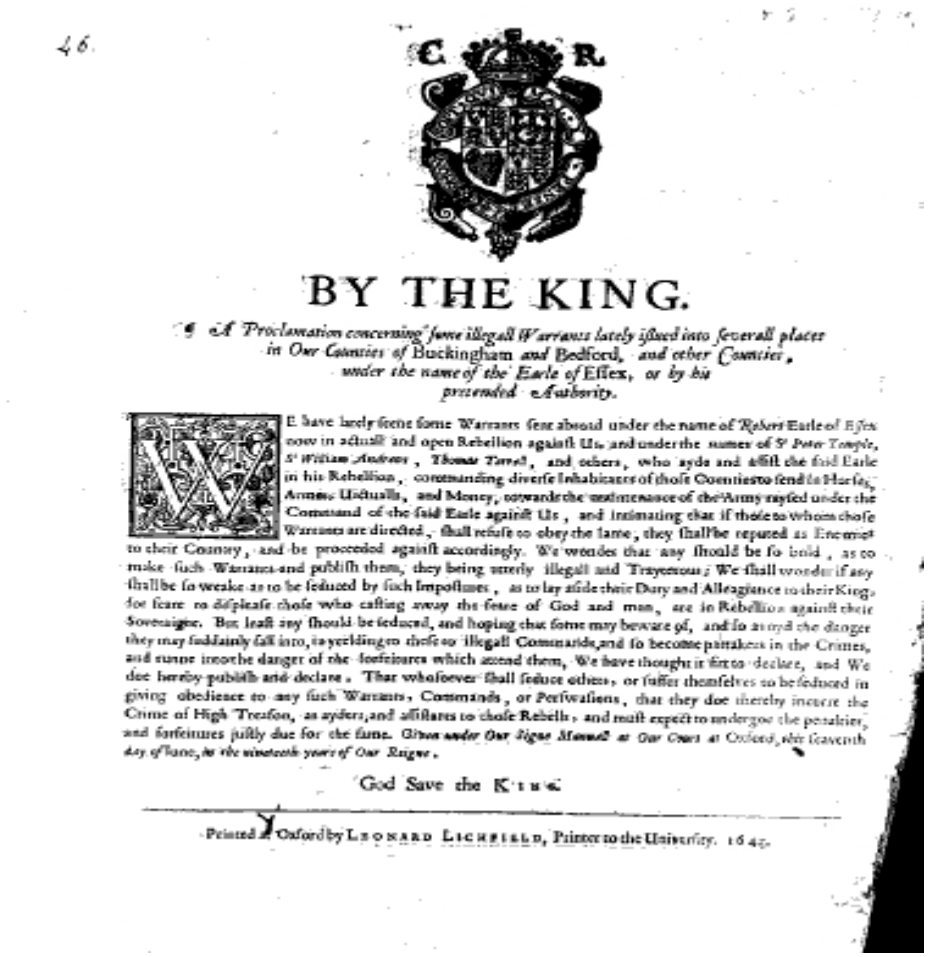
In his villainy, Richard hides in piety, and provides all the more reason that we apply a decided skepticism of legality to any document in his possession.

The Request for the Warrant

The warrant operates as a written document for entrance, permission, power, and authority to do as the instrument dictates.[120] In this moment at 1.3, the two Murderers request the warrant for the Duke of Clarence so "that we may be admitted where he is" (1.3.343). The warrant ripens into the vital source of access that allows these misguided subjects to act upon an identifiable

[120] Renaissance scholar Kristen McDermott offers that we can also compare the warrant's request for permission to enter in this moment with the theatrical entrance of the player on the legally ambiguous space of the stage and the theatre company's entrance in the physical space of the theatre. Message. "A favor la troiseme partie?" 20 July 2013. E-mail.

authority—Richard. Upon this authority, the Murderers may gain access to the Tower where Clarence is imprisoned. Yet, beyond the access and the authority to enter the Tower, the warrant represents the problem with all instruments as they convey a perceived authority to gain access to all manner of power, privilege, and property. Here, in this conspicuous exchange, the warrant physically shifts from Richard to the two Murderers.



46

C. R.

BY THE KING.

A Proclamation concerning some illegall Warrants lately issued into severall places in Our Counties of Buckingham and Bedford, and other Counties, under the name of the Earle of Essex, or by his pretended Authority.

WE have lately seene some Warrants sent about under the name of Robert Earle of Essex now in actuall and open Rebellion against Us, and under the names of Sr Peter Temple, Sr William Andrews, Thomas Tyrrell, and others, who ayde and assist the said Earle in his Rebellion, commanding diverse Inhabitants of those Countiesto send in Horse, Armes, Victualls, and Money, towards the maintenance of the Army raysed under the Command of the said Earle against Us, and intimating that if those to whom those Warrants are directed, shall refuse to obey the same, they shallbe reputed as Enemies to their Country, and be proceeded against accordingly. We wonder that any should be so bold, as to make such Warrants and publish them, they being utterly illegall and Treasonous; We shall wonder if any shallbe so weake as to be seduced by such Impostures, as to lay aside their Duty and Allegiance to their King, for feare to displease those who casting away the feare of God and man, are in Rebellion against their Soveraigne. But least any should be seduced, and hoping that some may beware of, and so avoyd the danger they may suddainly fall into, in yeelding to these so illegall Commands, and so become partakers in the Crimes, and runne into the danger of the forfeitures which attend them, We have thought it fit to declare, and We doe hereby publish and declare, That whosoever shall seduce others, or suffer themselves to be seduced in giving obedience to any such Warrants, Commands, or Perswasions, that they doe thereby incurre the Crime of High Treason, as aydors, and assistars to those Rebells, and must expect to undergoe the penalties, and forfeitures justly due for the same. Given under Our Signe Manuall at Our Court at Oxford, this seaventh day of June, in the nineteenth yeare of Our Reigne.

God Save the King.

Printed at Oxford by LEONARD LICHFIELD, Printer to the University. 1643.

Figure 11 Charles I, By the King, a proclamation concerning some illegall warrants lately issued into severall places in our counties of Buckingham and Bedford, and other counties, under the name of the Earle of Essex, or by his pretended authority, 1643, Paper, Bodleian Library, EEBO Wing/1629:8.

Though Richard possesses the warrant, he does not make any significant references to either its content, its authority, or its validity. In response to the request for the warrant, Richard merely answers: "Well thought upon; I have it here about me" (1.3.344). It would not be surprising

if Richard himself authored the document in its fraudulent state, which involves Richard supplanting his desire for that of his King. Exceeding his authority with a death warrant for his brother Clarence epitomizes an act of treason to possess the document without any colorable authority.[121] For the sake of argument, it is possible that the king would yield authority to Richard in drafting a warrant for his brother Clarence. Still, the import of a death warrant for the King Edward's brother must encompass all the requirements that a duly authorized death warrant should possess. Nevertheless, Richard plays an informal advisory role to whomever reigns—whether Henry VI or Edward IV. Despite the lack of clarity over Richard's authority, his word and his warrant are taken seriously. In this moment, Richard is extended due courtesy as the king's brother, as a royal, and as figure of power and authority.

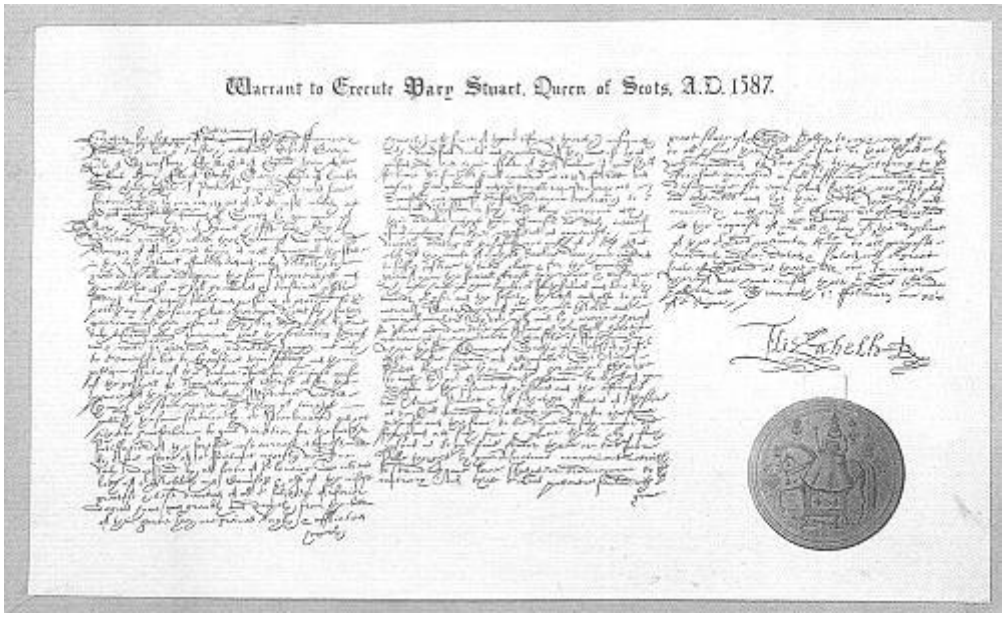


Figure 12 Death Warrant, Mary Queen of Scots, 1587, Paper, Lambeth Palace Library, MS 4769 f.1r.

Nevertheless, the significance of Richard carrying the warrant about his person should not be diminished.[122] Arguably, this warrant against Clarence should be considered just as much

[121] The word, "colorable," derives from Middle French etymology, meaning "presenting favorably or plausibly." The word's use has grown in legal circles in both medieval and early modern periods, and means "capable of being presented as true or valid; having a prima facie appearance of justice or legality" (*OED*).
[122] See Sofer's discussion about carrying of the dead in his chapter, "Take Up the Bodies" (JK Curry 143).

Richard's warrant as the Scrivener's indictment. The threat of treason grows prominence. To illustrate, Richard has persuaded the "many simple gulls" like Derby, Hastings, and Buckingham in his efforts on the Duke of Clarence's behalf and placed the wrong with "the Queen and her allies" (1.3.328, 330). In order to succeed, Richard cannot allow proof about his lack of allegiance to Clarence to be discovered. Hence, Richard keeps close this legal instrument that operates as the key to Clarence's cell and death. This Duke of Gloucester understands just how swiftly Fortune can shift to craft his own fall. Like Iago, his cloak of innocence functions to keep a public distance away from his private complots and schemes for the demise of his brothers, Edward and Clarence.

In this scene, a dilemma surfaces in its seeming removal from the prototypical vestiges of legal procedure.[123] Here, Richard hires assassins to carry out the murder of his brother who supersedes his claim in the law of primogeniture (i.e. succession).[124] This notion of warring brothers brings to mind Saturninus and his brother Bassianus in their quest as Rome's emperor in *Titus Andronicus*. Clearly, the process for obtaining a warrant requires more than is illustrated in this moment. Did Richard obtain the warrant from his brother the king, Edward IV? While it is possible, I doubt that Richard' warrant is invested with the king's authority, for King Edward expresses his surprise when he asks: "Is Clarence dead?" (2.1.87). This shock and dismay grow substantially when King Edward discloses to Queen Elizabeth, Buckingham, Dorset, Richard—and the audience—that "the order was revers'd" (2.1.87). While the king may have desired, with Richard's encouragement, Clarence's imprisonment at the Tower, he did not desire the death of his brother, the Duke of Clarence.

[123] In the other chapters in this dissertation, I discuss legal procedure more than in this chapter, for Richard circumvents any identifiable process in his ambition for the British throne.

[124] The issue of primogeniture emerges as an issue in Shakespeare's *Titus Andronicus* as well. See also J.H. Baker's discussion of primogeniture in his chapter on "Inheritance and Estates" in *An Introduction to English Legal History*, 3rd edition (306-307).

The Request for Evidence

The requirement for proofs in this discussion of "tainted proofs" almost reduces to an afterthought in the drama, which unfolds around the arrest, service, and execution of the death warrant in the matter of the Duke of Clarence. Of import, early modern criminal procedure did not allow the accused to have access to the warrant nor the charges against him until the day of court (Langbein 51). Though the proofs may be ill-gotten, perverted, and false, the accused would have no right to review the evidence against him. Nonetheless, early modern drama struggles with these evolving rules toward increasing juridical and cultural expectations on behalf of British subjects. In *King John*, when faced with death at the hand of his executioners, young Arthur whose death has been ordered by his King is told: "Read here, young Arthur….Can you not read it? Is it not fair writ?" (4.1.33, 37). Notably, Arthur acquiesces to the warrant as "fairly writ," yet disputes its "foul effect."[125] In contrast, in this particular scene at 1.4 in *Richard III*, the Murderers neither mention the warrant specifically, nor allude to its existence indirectly. Yet, the law of evidence is not far from this particular dialogue between the Murderers and the Duke of Clarence.

Neither the scene at 1.3 nor here at 1.4 suggests the substantive evidence against the Duke of Clarence, which would justify his death. A clear articulation of the evidence is an early modern demand that is superimposed upon this pre-history. Indeed, the dream, a prognostication at the beginning of the play, seems the only evidence against Clarence whose first name is "George." The prophecy claims "G" / Of Edward's heirs the murderer shall be" (1.1.39-40). Is Edward just as guilty or more than Richard by using this prognostication? This ethereal, non-written proof materializes as less "tainted" than these proofs. Unsurprisingly, these Murderers demonstrate some

[125] At 4.2, Pembroke and King John discuss the death warrant in *King John*. At 1.4, Lucio mentions the warrant in and the Provost at 4.2 "Look here's the warrant, Claudio, for thy death" and at 5.1, Isabella says "he sends a warrant for my poor brother's head" in *Measure for Measure*.

hesitation with executing "judgment" against the Duke of Clarence. As much as they interject biblical law into their discussion of conscience, remorse, and damnation, the scene still exudes the sense of secular law as well.[126] Most notably, Clarence requests evidence of his illegal acts from these Murderers, who live their lives outside of the law. To these assassins, he offers an impassioned speech on the nature and the weight of the evidence against him:

> 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 giv'n their verdict up
>
> Unto the frowning judge? Or who pronounc'd
>
> The bitter sentence of poor Clarence' death?
>
> Before I be convict by course of law,
>
> To threaten me with death is most unlawful.
>
> I charge you, as you hope to have redemption,
>
> By Christ's dear blood, shed for our grievous sins,
>
> That you depart and lay no hand on me:
>
> The deed you undertake is damnable. (1.4.170-181)

[126] The Murderers discuss judgment at 1.1.100-114 and consciences at 1.1.117-140.

This speech unfolds as clear in its recitation of the requirements to execute one accused of a crime. Clarence raises several key issues. There has been no discussion of his offense. There has been no presentation of the evidence against the duke. No lawful body has adjudicated against him before this theatrical audience. Richard has not explicitly stated that the king has passed a sentence of death upon the Duke of Clarence. The audience possesses no reason to believe Richard even if he had. Clearly, Clarence has not been given the proper "course of law" to submit to the death sentence that these Murderers seek to execute. After his recitation upon the requirements of law, Clarence leans upon the requirements of biblical law with references to "redemption," "grievous sins," and damnation.[127] Clarence offers a wonderful argument, both religious and legal, against his impending execution at the hands of these Murderers. This murderous scene denies Clarence both a scaffold and a courtroom to either plead guilty, contest any alleged crimes against his king and brother, Edward, or to repent his sins against "[t]he great King of kings" (1.4.183). Conspicuously, the usual remnants of the proper adjudication of the law in the gravest circumstances—the execution of an accused—grow so far removed from this particular scene. Their absence fills not only Clarence with doubts, but also his assassins.

The Execution of Judgment

The execution of judgment grows so intertwined with the death warrant, Richard's agency, and the King's authority transform almost into afterthoughts. Even though Richard does not refer extensively to the warrant, he explicitly explains about how he wishes these Murderers to carry out the execution of the Duke of Clarence: they must "repair to Crosby Place," they must "be sudden in the execution, / Withal obdurate," and they must "not hear him plead" (1.3.345-347).

[127] Clarence's speech on biblical law at 1.1.184-189, 240-245.

The execution of judgment against an accused is one of the most important functions of a law-giver. At this moment, the sovereign is not Richard. Arguably, he acts on his own, as if he has already assumed the position as Britain's future king. The execution of judgment remains, as always, about the process of legitimacy whether actual or apparent.

The Murderers struggle as they execute "judgment" against Clarence. Their discussion is replete with an examination of their inward and outward selves. Richard offers a description of these Murderers at 1.3 as "my hardy, stout, resolved mates" (1.3.340). In stark contrast, this exterior description of the assassins shifts, as Richard foretold, when they face the Duke of Clarence. Ironically, Richard warns the assassins about Clarence at 1.3: "For Clarence is well-

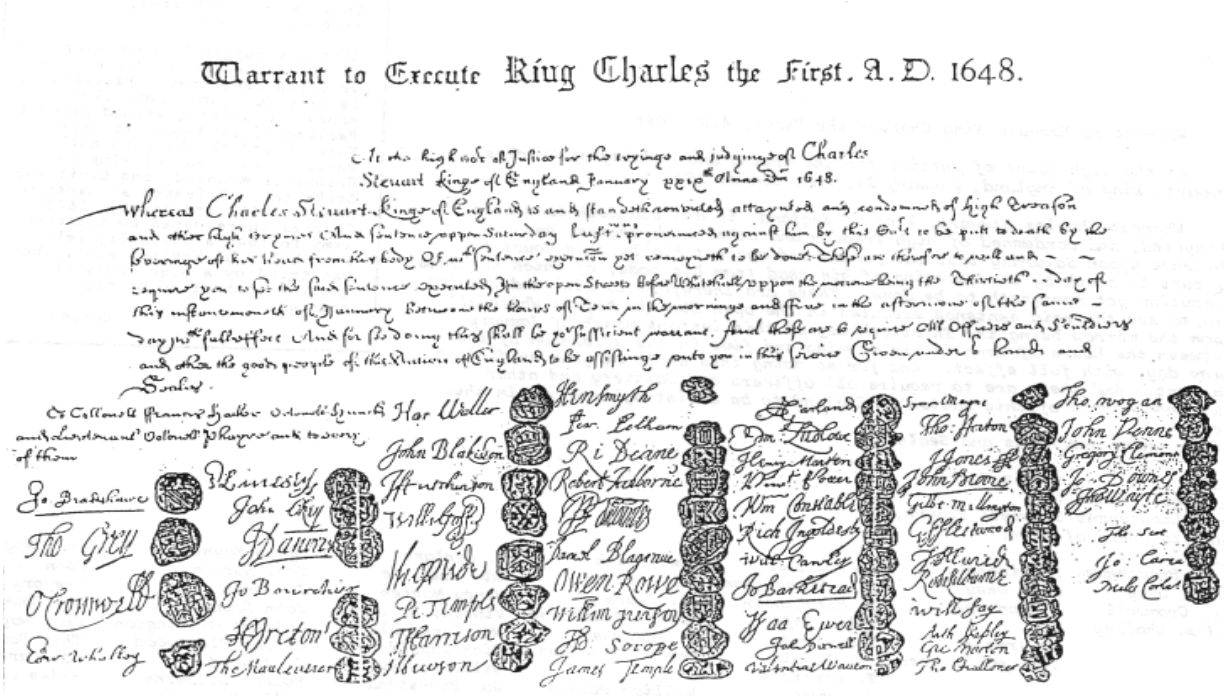


Figure 13 Execution Warrant for Charles I, 1648/9, Parchment, Parliamentary Archives HL/PO/JO/10/1/297A, British Library.

spoken, and perhaps / May move your hearts to pity, if you mark him" (1.4.348-349). Clarence describes these Murderers as less than murderers where they "scarcely have the hearts to tell me so, / And therefore cannot have the hearts to do it" (1.4.164-165). The divided hearts of these

murderers grow symbolic when compared to the unified signatures of the royals in the death warrant of Charles I and the public response to the execution (see images above and below).


A LIST of the Names of those pretended Judges who Sat, and Sentenced to Death, our Sovereign King CHARLES the First, in the Place which they called the High Court of Justice, January 27, 1648. And also of those 35 Witnesses Sworn against the said KING: The Sentence read against him: With the Catalogue of the Names of those that Subscribed and Sealed the Warrant for his Execution, and the manner of his Cruel Murther.

THE ROYAL MARTYR UPON THE Scaffold at WHITEHALL

Figure 14 Anonymous, A List of the names of those pretended judges who sat, and sentenced to death, our sovereign King Charles the First, 1649, Paper, Huntington Library and Art Gallery, EEBO Wing/964:10.

Almost as if these Murderers embark upon their own private trial of Clarence, they compile a list of "offences" that fall far afield from the business for which Richard seeks the death of his brother, Clarence. They accuse Clarence for his part in the "quarrel of the House of Lancaster" (1.4.193). In response, he defends his actions as borne out of "my brother's love, the devil, and my rage" (1.4.212). Nevertheless, these offences evolve as suspiciously lacking for Clarence who accuses his brother, the King, as possessing "in that sin he as deep as I" (1.4.203). These delirious

counter-arguments remind me of Katharine Maus's reference to "the claustrophobic setting of the Tower" (52). In essence, these frugal allegations against Clarence without any substantive charges transform into merely an exercise of justification. These assassins attempt justify their own choice to follow the authority of Richard and murderer his blood brother.

This setting of the Tower shifts in mood, tone, and language as the Murderers attempt to act out the last stage of this warrant. This "accursed tower" (1 Henry VI 1.4.75) transforms into the consecrated place of confessional where Murderer 2 grows moved by Clarence's impassioned plea and tries to help him as the death blow by Murderer 1 stabs Clarence to death. Attempting to withdraw from the murder plot, Murderer 2 still contrite after the death of Clarence removes himself from this act by stating: "Take thou the fee, and tell him what I say, / For I repent me that the Duke is slain" (1.4.267-268). In this moment, the words of Murderer 2 echo:

> Not kill him—having a warrant—but to be
>
> damned for killing him, from which no warrant
>
> can defend me. (1.4.107-109)

This earlier debate reaches a resolution in the slaying of the Duke of Clarence.

In spite of the weakening Murderer 2, Murderer 1 grows stalwart in his resolve to complete the contract for murder ends the scene in soliloquy:

> Well, I'll go hide the body in some hole
>
> Till that the Duke give order for his burial.
>
> And when I have my meed, I will away:
>
> For this will out, and then I must not stay. (1.4.270-273)

He seeks to remove himself if not religiously or morally from this murder—then physically, he abandons the physical site of this now bloody location. The word of the death of the Duke of Clarence will not remain secret for long, and Murderer 1 intimates the gravity of his concern in any connection to the this foul deed physically over any concern for his conscience as Murderer 2. He remains constant in his desire to continue in Richard's employment long enough to remove the Duke of Clarence's future burial. As the Duke of Clarence's body turns disposable, so are any further thoughts of conscience by Murderer 2.

Conclusion

Shakespeare presents a history play, which critiques the apparent authority of written evidence, namely the Scrivener's indictment for Lord Hastings and Richard's death warrant for the Duke of Clarence. Each of these legal instruments materializes as complicated in their presentation and intervention with the characters who create, reference, deliver, exchange, read, and execute them. In their flawed presentation, the careful material display of the Scrivener's indictment unfolds as complicated while false and crafted in secret the document's future existence becomes thoroughly public to achieve Richard's objective—King of England. So too, the warrant for the Duke of Clarence uncovers complexities, where Murderer 1 and Murderer 2 (the assassins) request the warrant, Richard supplies it, the assassins serve it, and Brackenbury reads it. In spite of the existence of the warrant, Clarence decries that sufficient evidence has been provided to substantiate his execution. In his compelling speech at 1.4, he raises an excellent question: "Where is the evidence that doth accuse me?" (1.4.172).

Because of this lack of sufficient evidence for these executions against Lord Hastings and the Duke of Clarence, a strong case emerges against Richard III for the crime of treason within the world of Shakespeare's historical drama. To make the case, the conspicuous written evidence,

which he uses to fell Hastings and Clarence within the play, transforms as the key exhibits against Richard: the Scrivener's indictment and Richard's warrant. Richard avoids any public thoroughfare to legally process the execution of these state papers against Hastings and Clarence. Any apparent authority that Richard might claim reduces in its weight as even his brother the king, Edward IV, had not realized—thus had not authorized—the death of his brother, Clarence.

The state conducts no hearing before the execution of this prince and this lord. No credible written evidence arises on which to ground these unauthorized execution. Where lies their treason? Actually, the case I make in this chapter develops as strong as the case the state had against Robert, the Earl of Essex as the written evidence in his case amounts to his indictment, letters, and a few confessions. I find instructive Sir Francis Bacon's definition of treason, which he used in the *Essex* trial. Bacon concluded that Essex attempted to impose the law, or his own notion of justice, upon the sovereign, and the law of treason prohibited such an imposition on the King of England—in his case Elizabeth I. In this case, Richard imposes his own notion of the law or justice upon the kings of England, including the crowned prince, young Edward, and his brother. Ultimately, Richard violates the laws of the sovereign state of England. Every facet of the treasonous conspiracy may be read through the Scrivener's indictment and Richard's warrant. As we read these written pieces of evidence against Richard, we find the taint of the case foregrounding, foreshadowing and instigating the eventual end of the eighth generation of the Plantagenet line with Richard III—all through these written legal devices.

CHAPTER 3

"But none can drive him from the envious plea / Of forfeiture, of justice and his bond": Shylock's Bond, Playing Hardball, and the Law of Remedies in *The Merchant of Venice*

Introduction

In Shakespeare's *The Merchant of Venice* (1598), the bond emerges as the central legal instrument through which to read the play in the making and the breaking of agreements—those both romantic and tragic.[128] Through the document's manipulation, the bond illuminates how its physical handling and movements throughout the play and within the legal community expose the opportunity for similar legal manipulation—in its execution, its use, and its interpretation. In essence, a bond was a legal document, which contained an acknowledgement of the amount that the borrower owed the lender (Baker 368). Such bonds—both legal and physical—as they are created and destroyed make visible the problem of written evidence, both on the stage and the courts. Invested in the cultural significance of the written evidence on the stage, I track the legal and the material life of the bond in *The Merchant of Venice*, where Antonio promises to pay Shylock for the ducats borrowed so that Bassanio may marry Portia.[129] Much like the failed marital agreement between Prince Charles of England (later Charles I) and Spain for Maria Anna's hand,

[128] In some places bonds and contracts are treated separately, but for the purposes of this chapter, I used them interchangeably. In medieval times, the word, "contract," emphasized the obligation, but did not involve consensual agreements as the word grew to include by 1600. In its modern sense, the notion of contract encompasses two ideals: the right of the performance of the obligation and the wrong in the breach of the contract (Baker 360-361, 368-371). A deed, by which A (known as the *obligor*) binds himself, his heirs, executors, or assigns to pay a certain sum of money to B (known as the *obligee*), or his heirs, etc. A may bind himself to this payment absolutely and unconditionally, in which case the deed is known as a single or simple bond (*simplex obligatio*) (*OED*).

[129] I published a portion of this chapter in the journal *Problems of Literary Genres*. Poland: University of Lodz, 2013.

the contractual terms grow too steep, and the relationships, in terms that are financial, personal, and religious, dissolve. Overall, the contractual promises were important during this early modern era, and in an examination of the play, the surety relationship, the penalty clause, and the law of remedies (or legal remedies) offer a complex perspective on the covenant between contracting parties—here, Shylock, Bassanio, and Antonio. This chapter maintains that Shylock's bond, as a legal and material object, reveals its own troublesome life history.[130] I highlight the physicality of those moments and demonstrate how the courts and the law transform into the keys to interpreting these broken contracts exemplified by Shylock's bond. The agreement shifts from one, which at least in its intention is contractual, commercial, and a depiction of the normal course of business to one, which is "tainted," dangerous, and criminal.

Like the theatre, the courts experienced their own shift toward the presentation of written evidence. While examining the material properties of exhibits on the theatrical stage, I observe that the law courts likewise emphasized their own demand for these written exhibits; one rationale may be found in the concerns for safeguarding the evidence. During this time, the courts created these safeguards through every case, which critiqued how people would treat evidence not only in the courts, but also in relation to their business practices. These rules—found in cases, statutes, and the stage—would now define early modern social and business practices.

Despite the strides that these early modern courts made in the field of evidence, some scholars maintain that "there were few if any rules of evidence before the eighteenth century," but a formal process was burgeoning, which would see its ultimate fruition later (Baker 582) (Macnair

[130] I explore here the physical biography of Shylock's bond, which is separate from its legal biography, not unlike Igor Kopytoff's distinction between an object's physical and economic biography (Appadurai 68).

15-21).[131] During the medieval period, most evidence used in trial consisted of oral testimony, but the period also saw the emergence of predilection for writing (Macnair 92). The courtroom exhibits include proofs like "objective facts, testimonies, oaths, depositions, and confessions" (Mukherji 162-163).[132] And, in the late sixteenth century, the courts placed both an emphasis on written evidence and an expanded nature of the trial proceeding where the summary trial (i.e. an abbreviated proceeding) was less typical (Bellamy 158-159). Given the development of the rules for writing, including the Statute of Frauds in 1677, there evolved "in equity proof a fairly marked general preference for writings over witnesses" (164).[133] Even earlier, there arose corroboration that written evidence, was alive and well as found in the Statute of Uses, which required written proofs for interests in land, in 1535 (Moffat & Bean 39).[134] Broadening the scope beyond land, the Statute of Frauds and the parol evidence rule required certain contracts to be in writing. In particular, the Statute of Frauds required that written contracts, among other things, which could not be performed in one year and contracts where one party served as a surety for another party's debt or obligation. After this point, common law jurisprudence became synonymous with a rigid reliance on proof in written form.[135]

This project builds on the work of Luke Wilson in his examination of contract law, including his analysis of *The Merchant of Venice*, where he offers a risk analysis to evaluate the

[131] See also Hemholz at 243.

[132] Subha Mukherji's discussion on Webster's play, like Hutson's work, focuses upon the nature of evidence, though she does not focus upon written evidence (206-232).

[133] The first draft of the Statute of Frauds was written by Sir Heneage Finch (later Lord Nottingham), which was intended to address the instances where there was no written proof as in Slade's Case (Baker 396).

[134] Though the text by Bedford, Davis & Kelly (204) states that the statute was passed in 1540, I will defer to Moffat, Bean & Probert's text as other texts also agree with this text on trusts law. See also Baker (283-295).

[135] Bacon defines common law as "no text law, but the substance of it consisteth in the series and succession of judicial acts form time to time, which have been set down in the books we term as yearbooks or reports' (12.85)" (Helgerson 76).

reasonableness of purchasing maritime insurance, which was considered speculative at this time (Jordan and Cunningham 133). Although Charles Ross focuses on "Shylock's Penalty" in his aptly titled chapter, he seems chiefly concerned with the bond as a fraudulent conveyance and the application of Portia's "alien statute," which castigates Shylock because of his religion (64-103). In addition, A.G. Harmon looks at the play's use of legal instruments, like bonds, contracts, and sureties, to examine marriage and the law—that is, how people use these instruments to either obtain or avoid marriage (3-5, 84-115), not unlike the marital contract of Prince Charles of England. Thomas C. Bilello argues that Portia's judgment lacks the principles, which underlie justice and equity, and instead supplants her will as she exploits the law (Jordan and Cunningham 109-126). Even Amanda Bailey's recent monograph examines the nature of debt through bonds in *The Merchant of Venice*. Though each of these scholars make interventions into the representations of the law around which the play revolves, none of these works have examined specifically what contribution written evidence, particularly the bond agreement, makes to early modern jurisprudence, where written evidence reveals its place as both an identifiable safeguard and a complicated source of tension within this period—and how this tension plays out on the stage, while revealing their relationship between the legal and theatrical courts. In addition, they do not consider the document as a complex stage property appearing in the early modern theatre. In its complexities, the contract serves a dual role, as a legal document and a material object, on the stage. Even though I utilize contract law to examine Shylock's bond, the focus in my analysis remains on the bond itself. This complicated instrument offers a way to examine contract law, the burgeoning field of evidence, legal history, and material culture. To reduce the analysis to mere revenge, debt or maritime insurance diminishes the broad picture, which this stage property paints

in Acts 1, 3, and 4.[136] Hence, the analysis of this drama through these different legal lens requires an assessment of Shylock's case. Here, this analysis focuses on the attempts in the play to devalue the trustworthiness of written evidence, presented at a time where the early modern courts increasingly tried to emphasize the reliability of such evidence; this inquiry also demonstrates how commercial instruments intervene as vital legal vehicles within this society.[137]

As this dramatic and legal vehicle moves within the play, wavering between tragedy and comedy, the impact upon the nature of the resolution of the play develops in a complicated fashion. *The Merchant of Venice* begins as a drama concerned about the commercial transactions between borrowers and lenders, Christians and Jews, and royals and foreigners in early modern Venice. Where tragedy imitates noble action, comedy imitates baser men immersed in less noble activities, observes Aristotle in his *Poetics* (52-69). Here, arguably the activity within the play is ignoble, yet no less important, where the drama reveals "this merry bond" (1.3.169) as the central artery through which the fates of two friends, Antonio and Bassanio, intertwine, and Shylock's tragically falls. Like the fates of the foregoing characters, the moments within the play shift between merriment and tragedy. Then, a distinct shift occurs to the lavish life at Belmont where Portia and Nerissa escort potential suitors before the marital altar filled with both its legal mandates and romantic promises. The play is a romantic comedy, but Shakespeare makes Shylock "the emotional centre of the play" (Margolies 87). Still, Bassanio's role should not be overlooked. Early in the

[136] Some scholars suggest that Shakespeare drew his polarizing character, Shylock from Roderigo Lopez, whose case allegedly implicated the British realm's relationship not only with Spain, but also with Portugal. Though Posner insists that Shylock is a villain (148), I maintain that in this tragicomedy, Shylock stands apart from these avengers where he has neither committed murder, nor attempted murder, but by Portia's arguments, he emerges as a forestalled murderer, and some scholars have agreed where they refer to "Shylock's murderous bond" (Charney 47). .Shakespeare may have written Shylock sympathetically (Risden 17)

[137] Though Kahn discusses contracts in her 2004 monograph, *Wayward Contracts*, her focus seems much more broadly based in politics and not so much the field of evidence, particularly contracts, and the law of remedies. Still she acknowledges the necessity of legal remedies when dealing with property (84).

play, Bassanio arises as the figure, which connects these two places—the one concerned with the business of law and the other with the business of marriage. In both places, the individuals are concerned with bonds, legal and marital. A.G. Harmon suggests that the legal bond threatens the societal bond, and emphasizes the bond of friendship as opposed the marital bond (82-84).[138]

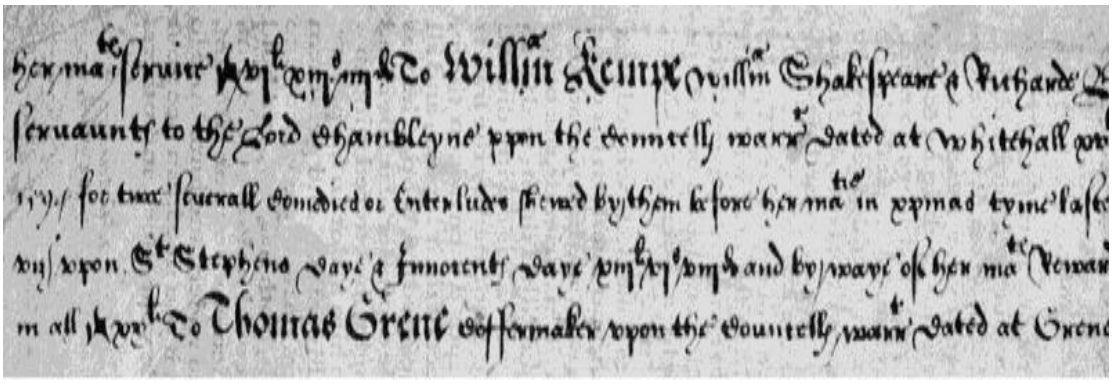


Figure 15 Royal Proof of Payment, £20, to Will Kempe, Will Shakespeare, and Richard Burbage for two comedies performed before Queen Elizabeth I by Lord Chamberlain's Men at Whitehall, March 1594, Paper, The Public Record Office in London, Wordpress.[139]

My reading of the play shows that the use of the word, "bond," unfolds as significant in this examination of genre, for it may be interpreted in ways both playful and pitiful. For instance, Victoria Kahn notes that "to be bound is to be commanded and obligated; it is also to be in bonds, enslaved, fearful and guilty." Even further, she observes that a bond implies "a contract and a bargain" (66, 113). Set in comedic fashion, I argue that the drama *plays* with the dangers presented by Shylock's bond—and jeopardizes, in turn, the fates of Shylock, Bassanio and Antonio from one act to the next. Hence, the play dramatizes the role of written evidence as a way of critiquing the law of contracts, and in doing so, illuminating the important function of stage properties. In its critique, the bond protects the written promises of the promisor and the promisee. The writing

[138] Maus notes that "friendship…is a looser, non-teleological, largely extra-legal concept" and two of its important properties is individual agency and generosity (76-77).

[139] See also page 204 for William Allan Nielson and Ashley Horace Thorndike's discussion in *The Facts About Shakespeare*, New York: Macmillan 1921.

bears the proof of these protections. Yet, through its life journey on the stage, the bond, this prop, actually is physically man-handled in its creation by the parties, stamped seal of approval, delivery, and presentation at the courts. In its physical and legal life, the essence of the bond becomes exposed to the audience, where this supposedly legal safeguard can also subvert its intended purposes.

The play's stage history includes the first performance by the King's Men at Court on Shrove Sunday, 10 February 1605. Although the performance of this play was limited during the early modern era, the drama has continued to find its place on the stage since then. In one review after another, Shylock's bond is mentioned.[140] Yet, most of the discussion emphasizes the characters and actions, which *surround* the bond. For instance, in a *New York Times* 1907 article, the reviewer writes: "while Portia is reading of the bond, [Shylock] takes his seat at the rostrum, removes his slippers, and sharpens his knife." Even here, the material action, which circulates around the bond, involves the characters, particularly Shylock. The focus on the bond itself beyond the enforcement of the penalty clause has been minimal. Other more recent reviews discuss the bond to determine whether the actors should read (and *play*) the bond as a "jest" or a "joke" earlier in the scenes, but as a more serious matter at court when Shylock attempts to enforce the bond.[141] As the play progresses, it grows difficult to view the bond as benign, whimsical, or non-lethal.

Sixteenth century discussions of the dynamics of drama remind us of the role of stage props like the bond document as those conspicuous stage objects, which function as the "soul" of the play. In his *Playes confuted in five actions* (1582), anti-theatrical critic Stephen Gosson notes the

[140] John Russell Brown notes no other performance of the play is recorded until 1741 (xxxii).
[141] "Unlocking a more nuanced Shylock" in the *Cleveland Jewish News* 10 January 2003. Also, Juliet Wittman's "Tragic Comedy; Uneven Direction Adds Flaws to Risky Merchant of Venice." *Westword* Apr 08 2004. ProQuest. Web. 10 Apr. 2015

prominence of the stage object. He asks: "When the soul of your plays are either mere trifles, or Italian baudery, or wooing gentlewoman, what are we taught?" For Gosson, nothing could be learned from such stage props. However, in discussions of staging and dramaturgy, generations of critics have observed that certain objects "can gesture toward a drama, character, and scene," which strongly link the character and the stage property, as Douglas Bruster observes. As examples, he uses the handheld objects like the severed finger, which calls to mind De Flores in *The Changeling* and a skewered heart recalls in *'Tis a Pity She's a Whore* (Harris & Korda, 67-68).[142]

Here in this play, I point to the written object as a stage prop in similar terms. For this chapter, Shylock's bond functions as the center of the play. Hand props, as Bruster notes, are "'unanchored physical objects, light enough for a person to carry on stage for manual use there,'" yet they differ from other props in their mobility and "larger properties" in terms of size (70-71). He recognizes some handheld props operate as weapons and others represent the routine of life, like letters (75). Effectively, Bruster contemplates the material world upon which the hand property, like Shylock's bond, may impact *physically*.

Indeed, I argue that this prop, Shylock's bond, impacts its society—both materially and legally. This commercial contract function on several levels within this play. At once, it serves the stage visually. Even further, its appearance on the stage emerges as complicated. As I mention earlier, some theatrical productions reduce the bond as a mere appendage to Shylock. In this way, the bond identifies with Shylock's character. Still, this bond evolves as more meaningful. With this bond, Antonio likewise binds his fate to Bassanio's and leaves holding these ties. In essence,

[142] Bruster also cites Gosson's anti-theatrical text in his chapter, "The dramatic life of objects" (Harris & Korda, 67-96).

the bond identifies the surety relationship of Shylock, Antonio *and* Bassanio. This contractual relationship implicates the legal consequences of such a bond. The bond shifts and moves from scene to scene—and hand to hand—from the first act until the fourth act. As the chapter progresses, I highlight how this hand prop not only travels, but is visually, physically and legally manipulated inside and outside of the Duke's Court. Within its life on the stage, the bond, as written evidence, does teach the audience in spite of Gosson's critique. As written proof, Shylock's bond materializes as the key to reading the entire play. The emphasis on a "pound of flesh" made by Shylock's bond emphasizes the implicit cruelty in the second phase of its surety arrangement and signals what will become the treacherous nature of its journey. As Portia and Shylock later wrestle with how to read the bond, this stage prop evolves as the play's centerpiece.

In following Shylock's bond as a material prop and a legal instrument, I examine three important moments in the life of Shylock's bond. In the first scene, 1.3, I review how Shylock negotiates a bond agreement with Bassanio where Antonio will serve as surety, how the bond complicates this three-party agreement, and why sealing the bond is significance. While contemplating the creation of the bond, I analyze what issues provide a way to break the bond and how other early modern bonds compare. In the second part of this chapter, I explore the moment in 3.1 and another in 3.2 when Shylock initiates a forfeiture action against Antonio when the latter cannot fulfill the bond, setting the scene by considering strategies for attacking and enforcing the bond at court. Though the early scenes in Act 1 and Act 3 address the negotiation of the third-party (or three-party) contract and the allegations of its breach, it is in Act 4.1 where Shylock appears at the Court of Justice. Here, the entire action of the scene hangs on the actual language of the bond and the potential remedies. Shylock, the Jewish creditor, shrewdly crafts a "single" bond (1.3.141) to which Antonio, the shipping magnate, and Bassanio, the gentleman lover, agree. Yet, by the end

of this drama, this contractual language also enables an interrogation of its own validity as an agreement, its legality as a contract, and its transformed state as a settlement offer or criminal plea bargaining agreement at the case's denouement. The scene unfolds as important in its examination of the bond itself and the judgment of the court. My examination of Act 4 focuses chiefly on the law of remedies and demonstrates how they emerge in diverse embodiments in the embattled arguments between Shylock and Portia and the beleaguered penalty clause. The remedies that the court offers evolve, in some ways, as incongruent with contract law. While several scholars discuss common law and equity in examining the court scene, they do not discuss the law of remedies, the suretyship and the penalty clause as I have described.

In the world of legal contracts, broken promises are not merely broken promises. On the stage, Shylock's bond seems as a bare piece of parchment, yet this document grows larger than the moment when it appears at 1.3, the scene where parties, Shylock, Bassanio, and Antonio discuss it at 1.3, and the locale where, in the Duke's court, Portia as Balthazar examine it at 4.1.221. While some written evidence in early modern drama never reaches the court, in *The Merchant of Venice* the bond transforms into the centerpiece of the Duke's court.[143] In this legal action, this document turns out as the sole exhibit at 4.1. The discussion of this contract and the nature of its brokenness at 4.1 parallels the broken relationships in business between Shylock and Antonio, and the potential for brokenness in personal relationships between Shylock and his daughter Jessica. Dynamic in its materiality, the bond is created, handled, sealed, discussed, and examined by people who are party to the contract and extends to those who merely circulate around its defective, faulty condition.

[143] The contract in Christopher Marlowe's *Doctor Faustus* and the letter in Thomas Heywood's *A Woman Killed With Kindness*.

Specifically, this chapter demonstrates that the written evidence here, namely the bond agreement, within *The Merchant of Venice* illuminates a network of socio-personal, cultural, economic, legal and political relationships, as they are mediated by contract law, particularly at the stages of negotiation, breach, and litigation within the courts. While focusing upon written evidence, I demonstrate how the material life of Shylock's bond evolves as part of this stage prop's life history and examines commercial relationships. With the very words of the contract, the bond gestures toward its own taint, and exposes the malicious intent of its drafters without actual falsity within the bond itself. In the midst of the violent and comic moments, the play struggles with determining its genre as Shylock's case wrestles with distinguishing its field of law. While moving between different people and places within the drama, I demonstrate how the bond thrives—legally, materially, and socially—as both a divisive and a unifying device. This indeterminacy reflects a problem the courts had with the law of remedies, and tangentially, to the nature of global politics, and the foundational contract principles, and illustrates the conflicted way in which early modern society perceived and received contract disputes. Within the play, the scenes foreshadow, instigate, and foster the potential breach of the contract as a way of examining remedies, critiquing suretyships, and revealing penalty clauses and how they were implemented and not only distorted from their original intent, but flawed in its physically, violent and potentially deadly consequences.

FIRST SCENE: 1.3: Bonding in Venice

"I think I may take his bond" (Shylock 1.3.24)

In Venice, bonding takes several forms—from martial coupling to legal ones. Yet, Shakespeare explores a tripartite arrangement in this drama. In short, instead of two parties to this agreement, there are three parties where one, Antonio, will serve as a surety for or guarantor of the underlying loan. For instance, in the first scene, at 1.3, Shylock negotiates a bond agreement with

Bassanio where Antonio will operate as surety to insure that Shylock is repaid.[144] As part of the negotiation, the agreement requires a three month deal. This agreement suggests that there exists a mutuality of promises, where a bond has indeed been formed with the presence of a valid, legal contract.[145] Specifically, Bassanio borrows 3,000 ducats to be repaid within the proscribed period; if Bassanio fails to pay, then Antonio, as surety, will repay Shylock. The penalty clause requires a pound of flesh. Specifically, Shylock states:

> 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. (1.3.144-147)

In peculiar fashion, the penalty condition, expressly stated, demands satisfaction from Antonio. This legal satisfaction finds bloodly and violent end for Shylock's pleasure—and "kindness" (1.3.139).

To be sure, Shakespeare takes this passing reference to "surety" and develops an entire framework for reading Shylock's bond and the early modern world of legal contracts. While enjoying the preliminary courting of the couples, we grow unable to extract ourselves from Shylock's recurring reference to the bond. This bond overwhelms the life of Antonio as well. Shakespeare complicates this role as surety for Antonio. When the bond comes due, Bassanio's

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[144] A surety has been defined as: "A person who undertakes some specific responsibility on behalf of another who remains primarily liable; one who makes himself liable for the default or miscarriage of another, or for the performance of some act on his part (e.g. payment of a debt, appearance in court for trial, etc.); a bail" (*OED*).

[145] See A.W.B. Simpson's discussion of mutuality of promises, binding promises, discharge of promises, and consideration in *A History of the Common Law of Contract: The Rise of the Action of Assumpsit* (459-70).

role as the borrower shrinks to mere *emotional* despair—but neither financial nor legal. It is not Bassanio whom Shylock takes to court, places in jeopardy, and blemishes his credit history.

With its ties grounded in law, finance, and fealty, this term, "surety," makes its appearance across several of Shakespeare's works from King Ferdinand of Navarre in the comedy *Love's Labour's Lost* (2.1.134), King Henry V of England in the history play *Henry V* (5.2.366) to Sonnet 134. These references cast their allusions into the legal world where the speakers describe this three-part relationship. In Sonnet 134, the language evokes how the relationship transforms into one of bondage, as the speaker "mortgaged" and "forfeit[ed]" himself to the object in this "surety-like" liaison. Like Shylock's bond, this alliance too, as the speaker suggests, reveals a dynamic filled with "bond[ing]" and "bind[ing]" (134.2-3, 7-8).

Breaking the Bond with Animus

In spite of the bonding between these men, the mutuality of promises that Antonio and Shylock make within this agreement initiates as clearly at odds with their mutual animus, or their enmity; these men hate each other. This contradiction finds parallel in *Hamlet*, where the Ghost of Hamlet's father describes the enmity, which defies even brotherly bonds. As he retells the story of his death, the natural bonds by blood startlingly dissipate with Claudius's deadly act:

> Brief let me be. Sleeping within my orchard,
> My custom always of the afternoon,
> Upon my secure hour thy uncle stole,
> With juice of cursed hebona in a vial,
> And in the porches of my ears did pour
> The leperous distilment; whose effect
> Holds such an enmity with blood of man

> That swift as quicksilver it courses through
> The natural gates and alleys of the body,
> And with a sudden vigour it doth posset
> And curd, like eager droppings into milk,
> The thin and wholesome blood. (1.5.59-70)

Here, the Ghost discloses that the acts of men "holds such an enmity with blood of man." These bloody acts reveal themselves in ways, which, not surprising, also break bonds between Antonio and Shylock. All of their animus overwhelms the moment at 1.3, yet the document remains—unmodified. Antonio assures Bassanio: "Why fear not man, I will not forfeit it" (1.3.152). Shylock's penalty wreaks of hatred and vengeance. Antonio's disdain of Shylock likewise fills the moment with heated tension. While this affect—hatred—is not written clearly into the bond. The penalty clause provides a hint at this conflict between the men. Similarly, the seeds of conflict complicate the legal condition of the document. In this scene, Bassanio approaches Shylock about the loan of 3,000 ducats over the course of 3 months to be repaid by Antonio upon the safe arrival of his expected merchandise from one of his ships. Initially, Shylock conveys his skepticism about agreeing to the transaction but considers several factors—Antonio's credibility, the knowledge of the fleet that he has at sea, and the calculation of risk.

So too, *The Merchant of Venice* plays with probability. Apparently, the skepticism arises from the possibility (or probability) that Antonio's ships may not return from their different locales, Tripolis, Indies, Mexico, England, and elsewhere (1.3.15-19). In this chapter, I show how a recognizable animus, which arises in the tenor of the negotiation, shapes the ways in which the legal process surrounding the bond and its sureties unfolds in the play. This is evident when Antonio appears at 1.3.35. For example, Shylock accuses Antonio of calling him:

misbeliever, cut-throat dog,

And spet upon my Jewish gabardine,

And all for use that which is mine own. (1.3.105-108)

Antonio confirms by stating that "I am as like to call thee so again, / To spet on thee again, to spurn thee too" (1.3.125-126). What value have promises made in the midst of such antagonism. In spite of this mutual animosity—that is, Antonio and Shylock, they agree to be bound. With this bargaining, Antonio espouses his own principle to prick Shylock: "I neither lend nor borrow / By taking nor by giving of excess" (1.3.56-57). Demonstrating his disapproval, Shylock violates his own precepts by contracting with one who:

hates our sacred nation, and he rails

(even there where merchants most do congregate)

On me, my bargains, and my well-won thrift,

Which he calls interest: cursed be my tribe

If I forgive him! (1.3.43-47)

This pre-existing animus appears at odds with two who have found, in writing, a middling ground.[146] In asides filled with venom, Shylock agrees to lend the money where he will take Antonio's "fair flesh, to be cut off and taken / In what part of [his] body pleaseth me" (1.3.146-147). Shylock's venomous volley seeks satisfaction to be found only in the bodily sting of the

[146] See Carolyn Sale's discussion of the continuing animus surrounding the case of Queen v Northumberland (or Case of Mines), including Burghley's letters, in her chapter, "'The King is a Thing': the King's Prerogative and the Treasure of the Realm in Plowden's Report of the *Case of Mines* and Shakespeare's *Hamlet*" (Raffield and Watt, 144).

merchant's flesh. Though aware of this deeply felt hatred, Antonio agrees to the "exact the penalty" (1.3.132). Apparently, Antonio is confident that his ships will bring their return:

> 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. (1.3.153-155)

Hence, he agrees to this contractual bond with Shylock. Asserting that he shall meet the demand within two months, Antonio exudes confidence. Why Antonio and Bassanio do not object to this clause, later in the Venetian court such questions will arise.

While discoursing upon Antonio's affect (i.e. sadness) and his lack of maritime insurance, Luke Wilson argues that the notion of probability and the evaluation of risk surface as ever intertwined with Shakespeare, particularly in his dramas like *Twelfth Night* (1601), *The Winter's Tale* (1610-11) and *The Tempest* (1611) (Jordan & Cunningham 135-136).[147] Wilson focuses on Antonio's sadness. Yet, Antonio's sadness is not linked to Shylock. Simply put, Antonio hates Shylock and Charles Fried would concur (Cormack, et al 157). In terms of Shylock's bond, the hatred between the parties materialize as the most important affect, which will affect all subsequent transactions between the parties.

Breaking the Bond, Complicating Contractual Terms, and Shylock's Penalty Clause

The agreement appears simple on its face: Should Antonio fail to fulfill the terms of the repayment, then he will forfeit the agreement; thereupon, Shylock will received a pound of

[147] Barbara Shapiro in her chapter entitled "Rehtoric and the English Law of Evidence" discusses probability in terms of "motives" and "manner of life," as does Cicero in his *Rhetorica ad Herennium*. Yet, for Shapiro and Cicero, this analysis of probability is considered as it relates to suspicion, particularly in criminal matters (Kahn & Hutson 57-58). Here in *The Merchant of Venice*, Wilson discusses maritime insurance and the possibility of shipwreck.

Antonio's flesh. If we take a closer look, the initial negotiations result in very specific complexities of the contract. Within Shylock's counter-offer, not only will the repayment be made within three months, but the agreement includes a penalty clause. The penalty clause requires a pound of flesh upon the bond's breach. With some quibbling, the counter-offer is surprisingly accepted. Clearly, a contract must possess a mutuality of exchange—"consideration."[148] Both parties must have a reason to be bound.

Even more complicated, the penalty for forfeiture is not financial, but this failure to repay requires a performance, where the guarantor, Antonio, must literally surrender flesh to the creditor, Shylock. In spite of the bloody clause, each party agrees to the terms of the contract, with full knowledge of its penalties. Yet, the terms of Shylock's bonds, particularly the penalty, invites further examination. These men hide nothing, not even their animus toward each other. Antonio and Bassanio cannot say that Shylock did not make the terms explicit. Calculating all of the risks that Antonio's ships may not return, Shylock requires an offering of flesh to account for the loss of 3,000 ducats. During the negotiations, Shylock intimates that he himself shall have to obtain a loan from Tubal in order to give Bassanio the amount, 3,000 ducats:

> I am debating of my present store,
>
> And by the near guess of my memory
>
> I cannot instantly raise up the gross
>
> Of full three thousand ducats: what of that?

[148] There evolved a concept known as the Tudor doctrine of consideration: "a person could bring *assumpsit* for nonfeasance when he had paid for something and it had not been done" (Baker 384). Assumpsit: "a promise or contract, oral or in writing not sealed, founded upon consideration; an action to recover damages for breach or non-performance of such contract" (*OED*).

Tubal (a wealthy Hebrew of my tribe)

Will furnish me. (1.3.48-53)

Is Shylock sincere here? This intimation may have been merely a negotiating ploy. It is never clear whether this loan from Tubal is either true or false. I believe that Shakespeare offers a play that combines the issues of the day when it came to commercial transactions between early modern citizens in a society, which was ever growing by exponential proportions where new worlds were being discovered all the time.[149]

The actual exchange of money is altered in this agreement. In this bond, the elements of *quid pro quo* de-emphasizes the money, where the penalty for lack of timely payment is a pound of flesh, rather than cash. Instead of requiring "usance for [his] moneys," this shrewd creditor Shylock insists: "This kindness will I show" (1.3.138-139). The contract includes a mutuality of promises, where each party knows the extent of the contract and its repercussions. While Antonio confidently confirms his ability to repay the debt in a timely fashion, he carelessly critiques the terms of the penalty should a forfeiture arise. Antonio dismisses Bassanio's cautionary warning: "I like not fair terms, and a villain's mind" (1.3.175). In part, the source of the animus between Antonio and Shylock lies in the previous forfeitures, which Shylock has claimed from debtors who have failed to pay. Recalling his past grievance, Shylock accuses Antonio: "In the Rialto you have rated me / About my moneys and my usances" (1.3.102-103). Still, there is no indication that any of those previous cases involves a pound of flesh. Why does Shylock seek Antonio's flesh? Is it the monologue in the aside where Shylock suggests that Antonio has cause against Shylock's faith

[149] See Sheilagh Ogilvie's discussion of merchant guilds, alien merchant guilds and trading companies in her book *Institutions and European Trade: Merchant Guilds, 1000-1800* (2011).

as well as his acumen as a creditor? Antonio considers Shylock as a loan shark or the disdain for the scurrilous usurer, which the profession's notorious biblical origins.

Shylock's bond suggests the potential remedies, which parties might avail themselves should the other parties breach their promise in the underlying contract. The bond agreement sets out the terms of the loan, particularly the amount of the loan, the duration of the loan, and the penalties for forfeiture. Strikingly, the penalties usually do not involve some type of physical extraction of flesh. The penalties would usually involve interest, specific performance, forfeiture of property, particularly land, etc. Here, the bond extends beyond the traditional options for remedying a party in breach.

Within the Tudor period, the notion of consideration had one single function: "it was the vital element, which caused parol promises [i.e. oral promises] to be legally binding." Without consideration, a treatise upon contract insisted that "a man might be drawn into an obligation without any real intention by random words and ludicrous expressions, and from thence there would be a manifest inlet to perjury, because nothing were more easy than to turn the kindness of expressions into the obligation of a real promise" (Baker 399).[150] This intention and obligation could be found in this Tudor consideration, which was essential to determining the existence of a contract. The words of Shylock's bond explains the oral promises, which have been committed to writing. The very words of the bond demonstrate that these mutual promises are neither random, nor unintentional. Shakespeare presents to the audience a hard-fought negotiation between businessmen who not only exchanged their promises, but went further by committing the promises to writing—and sealing Shylock's bond.

[150] Andrew Zurcher discusses consideration, contract and Shakespeare's *The Comedy of Errors* (Raffield and Watt, 19-37).

The Function of the Seal in Shylock's Faulty Bond

While the written bond has the legal force in the binding and bonding of the relationship between Shylock, Bassanio and Antonio, the document also endures a sealing of the bond—that is the contract—as well. The agreement, the bond, binds the contracting parties, but even more, the document bears legal authority, with a seal—where an additional witness and an impression upon the document itself is left to bear witness to the agreement. The seal marks the importance of the agreement. This written proof bears the authority of the legal arena to which it will later be used to show the boundary of the agreement between the parties. Shakespeare offers such a scene of proof between Shylock, Antonio and Bassanio at 1.3:

> This kindness will I show,
>
> Go with me to a notary, seal me there
>
> Your single bond, and (in a 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. (1.3.139-147)

The use of a notary to "seal" the agreement serves as an important stage in completing the contract process. Here, Shylock calls for the notary so that the physical document—as well as the physical

stage prop—may bear evidence of its authority. Without protest, Antonio responds: "I'll seal to such a bond, / And say there is much kindness in the Jew" (1.3.148-149). While Shylock's "kindness" may be Antonio's way of also finishing this agreement, Bassanio interjects: "You shall not seal to such a bond for me, / I'll rather dwell in my necessity" (1.3.150-151). There is danger in "sealing" this bond; after the seal, the bond is official.

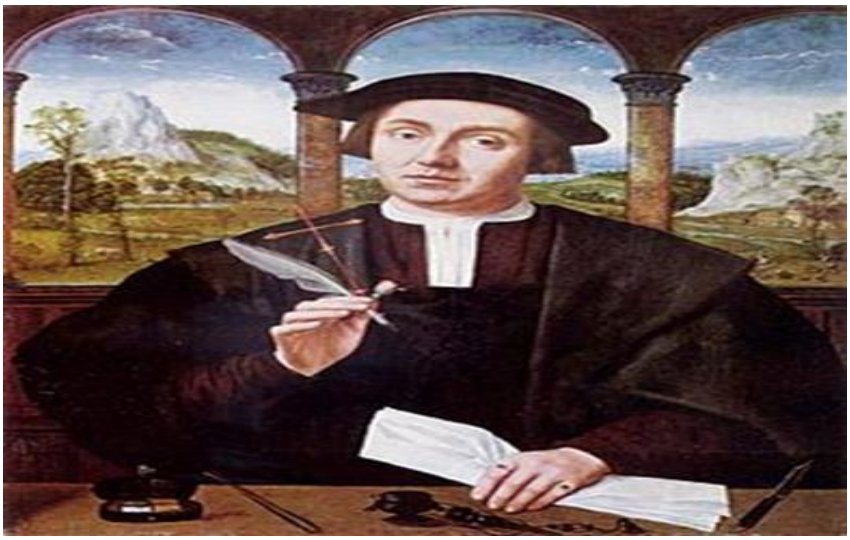


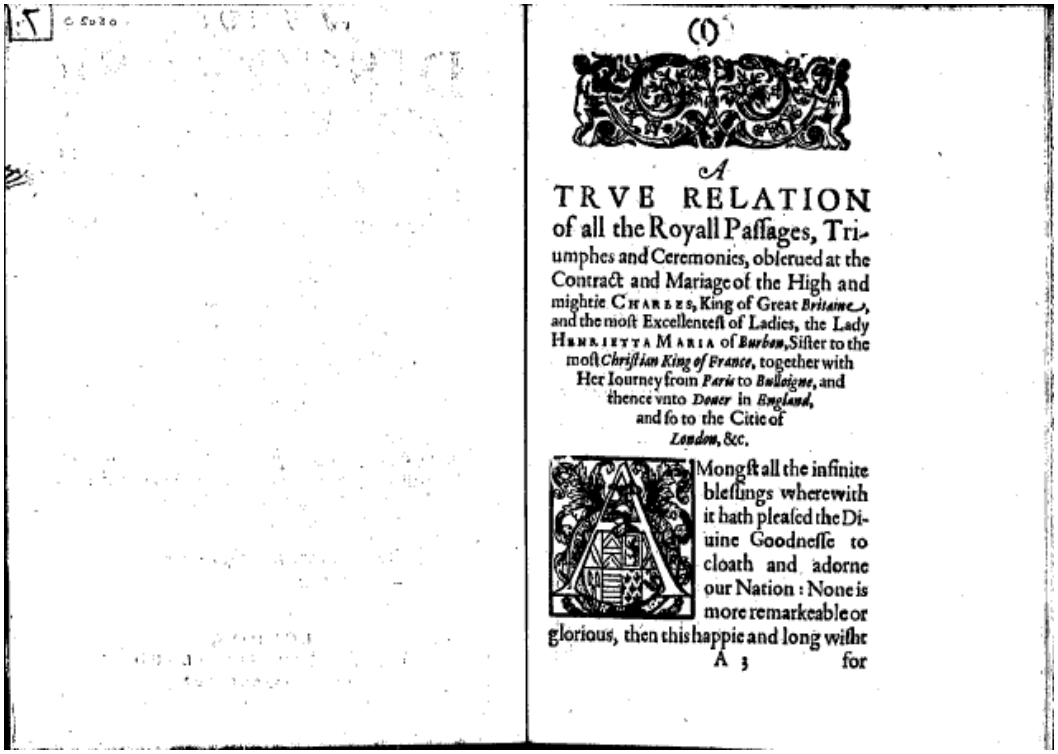
Figure 16 Flemish painter, Quentin Massys, Portrait of a Man, 1510-1520, Oil on Panel, Scottish National Galleries, National Galleries of Scotland, NG 2273.

Some sources suggest that Edward II had a practice of banning imperial notaries (Dell 386-397). I find the royal interference with this legal and material process striking. A painting of a sixteenth century man, and some suggest a civil law notary, by Flemish painter, Quentin Massys is depicted (*above*).[151] With this ban, was Edward II impugning the trust of these imperial notaries or the legal and material process? Actually, the physical seal to the legal instrument provided a level of guaranty, legally. While a person could not easily circumvent the process, "a deed under seal is treated as sufficient proof of a binding agreement without proof of consideration" (Macnair

[151] The title of the painting is Portrait of a Man, but other sources have implied his profession as a civil law notary, like Eric M. Jackson at Jackson White, and other online sources.

134).[152] Hence, it is not surprise that Shylock insists upon the sealing of his bond. Upon such a bond, this creditor may find a relief recognizable in the Duke's court.

While the document is drafted in the normal course of business, the addition of the seal adds another dimension to the agreement. For instance, while using this seal and the notary to



A
TRVE RELATION
of all the Royall Paſſages, Tri-
umphes and Ceremonies, obſerued at the
Contract and Mariage of the High and
mightie CHARLES, King of Great *Britaine*,
and the moſt Excellenteſt of Ladies, the Lady
HENRIETTA MARIA of *Burbon*, Siſter to the
moſt *Chriſtian King of France*, together with
Her Iourney from *Paris* to *Bulloigne*, and
thence vnto *Dower* in *England*,
and ſo to the Citie of
London, &c.

Mongſt all the infinite
bleſſings wherewith
it hath pleaſed the Di-
uine Goodneſſe to
cloath and adorne
our Nation: None is
more remarkeable or
glorious, then this happie and long wiſht

A 3 for

Figure 17 Anonymous, A true discourse of all the royal passages, tryumphs and ceremonies, obserued at the contract and mariage of the high and mighty Charles, King of Great Britaine, and the most excellentest of ladies, the Lady Henrietta Maria of Burbon, sister to the most Christian King of France, 1625, Paper, Huntington Library and Gallery, EEBO STC / 1342:16.

"authorize" or "solemnize" this agreement, we know later from the plot that will be forsaken

[152] A deed is an instrument in writing (which for this purpose includes printing or other legible representation of words on parchment or paper), purporting to effect some legal disposition, and sealed and delivered by the disposing party or parties. Signature to a deed is not generally required by English law, but is practically universal; and in most jurisdictions outside England where English law or legal forms prevail, signature has been substituted for or made equivalent to sealing. *Delivery* (q.v.) is now a moribund formality. Contracts of most kinds, as well as dispositions of property *inter vivos*, may be made by deed, and in common practice are often so made (*OED*).

because the terms are "illegal." The penalty "taints" this bond agreement to the extent that it is not recoverable under its terms. Again, Shylock does not seek increased interest, land, or some other traditional specific performance as penalty for the contractual breach.[153] Here, he seeks flesh. Shylock seeks to remove a part of Antonio's flesh to satisfy the breach in this agreement.

Reading English Bonds

In *The Merchant of Venice*, nothing happens outside of the contract, which would make the contract null and void. While Shylock did not do anything to prevent Antonio's ships from returning safely with their goods in tow, Shylock does calculate the risks that the ships will not return, as initially proffered by Bassanio. Like a good lender, he accounts for the several ships in Antonio's ownership. It might be suggested that Antonio should have calculated the risk by purchasing marine insurance, as Luke Wilson observes (Jordan & Cunningham 133). Nevertheless, at the end of this exchange between Shylock, Antonio, and Bassanio, a contract is indeed formed. Surmising his own risk assessment, Shylock calculates correctly and a breach occurs.

As an illustration, this period does provide historical examples of bonds, which likewise possessed their own complications. The first example is Elizabethan and the second is Jacobean. Not only do these examples offer a comparative analysis for Shakespeare's drama, but for the differences found in the Tudor and the Stuart houses. In this first case, the activities, which surround the bond, raise questions about its veracity. While on trial for his treasonous attempt to free Mary Queen of Scots from her incarceration in England, marry her, and invade England,

[153] Williard Titus Barbour notes that specific performance created an advantageous remedy, particularly on contracts to convey land in his *The History of Contract in Early English Equity*, vol 4, issues 7-8 (116). In addition, George Luther Clark notes the Chancery's liberal assessment of specific performance in contracts involving building on land in *Equity: An Analysis of Modern Equity Problems Designed Primarily for Students* (143).

Thomas Howard, fourth Duke of Norfolk, offers a written bond or submission to Queen Elizabeth I:

> Before his delivery from the Tower he made a humble submission to the Queen, dated 23rd of June 1570 containing this solemn engagement, : -"I do by this my writing, signed with my own hand, and sealed with my seal, freely, voluntarily, and absolutely grant, promise, and bind myself by the bond of my allegiance to your Majesty as my sovereign lady, never to offend your highness in the same, but do utterly renounce and revoke all that which on my part anywise hath passed, with a full intention never to deal in that cause of marriage of the Queen of Scots, nor in any cause belonging to her, but as your Majesty shall command me. (Jardine 133)

On its face, the bond reveals a renewed commitment by Norfolk to demonstrate his solidarity with his queen. The language of this new allegiance seeks to erase any of his past indiscretions. In spite of this pledge of allegiance, if we examine beyond the face of the bond, Norfolk's own sincerity may be questioned. Like Shylock's bond, remnants of a pre-existing animus may still be read within the words of Norfolk's sealed and signed pledge. Here, the Duke faces the penalty of death if found guilty of the treasonous allegations. For this reason alone, his bond develops as neither "free" nor "voluntary." Some scholars have even questioned the truth of the bond itself.

For example, David Jardine, in his *Criminal Trials*, argues that Norfolk's "solemn engagement" was insincere. Moreover, the duke's culpability could be found in the constant contact with the Queen of Scots—he even had the bond sent to her through a secondary, John Lesley, Bishop of Rosse. (Weir 197, 205, 270, 276-277). Bishop of Rosse and Lord Herries were

members of the "Queen's Party' in Scotland, and Rosse took it upon himself to go to England and plead Mary's case.[154] After having been found guilty, Norfolk is beheaded (Alford 47).

In my examination of the bond, I emphasize these critical junctures, like the delivery, within the life of this written evidence. Here, the Bishop of Rosse delivers Norfolk's bond. Beyond the stage, this circulation and delivery of the bond in society, between people and places uncover a material and legal significance. At several critical junctures Norfolk's bond grows less credible. Rosse's own proximity to Mary, Queen of Scots implicates this instrument. Rosse's actions cannot be ignored. Within the alleged conspiracy between Norfolk and Mary Queen of Scots, his own culpability emerges. Unsurprisingly, Norfolk cannot extricate himself from his previous bonds with this tragic queen.

In the second case, I critique Sir Francis Bacon's bond between James I and Sir Walter Raleigh. Before departing for Guyana, Raleigh was required to sign a bond, as Bacon outlined in a pamphlet concerning the conviction in 1618.[155] Such strong reasons against Raleigh's temporary release may have provided the impetus for the creation of the contract between Raleigh and King James. In this contract, Raleigh made several written promises: 1) gold mines were present in Guyana; 2) he would not engage in a hostile manner with Spain; 3) he had disclosed his true intention for this expedition with the king; and 4) he had agreed on the financial shares of the found treasure.

To illustrate how bonding and surety relationships functioned at the King's Bench at Westminster Hall, the case against Raleigh serves as an instructive example to investigate the legal

[154] This discussion on Mary Queen of Scots is addressed more extensively in Chapter 1.
[155] Raleigh's "The arraignment and conviction of Sr Walter Rawleigh, at the Kings Bench-barre at Winchester. On the 17. Of November. 1603." London, 1648. Early English Books Online. British Library.

and theatrical stage. Raleigh, an explorer, merchant of the seas and knight, epitomized the figure, which embodied both romantic and tragic sentiments. With charges led by Bacon, Raleigh stood accused of participating in two plots, the "Bye" and the "Main," which allegedly had been mounted to interfere with James I's accession to the English throne.[156] In 1603, the knight was convicted, and incarcerated for thirteen years.[157]

When James I petitioned for the knight's release, Raleigh promised upon his life that he had seen a mine of gold in Guyana. Some scholars, like Paul Sellin, suggest that Raleigh essentially lied to the king and the investors in the expedition (5-24).[158] However, based on these promises, the crown financed a voyage to Guyana upon the knight's word. King James had no proof other than Raleigh's word and the speculation of other explorers to substantiate the claim that gold mines existed in Guyana. Because Spain had already established a significant presence in Guyana, Raleigh's presence, along with naval support, could be construed as more than political interference. Indeed, this voyage to Guyana could result in dire consequences to the relationship between Spain and England. The Ambassador to Span, Count de Gondomar, made similar arguments (Vaughan 95-106). Despite these significant reasons against a second expedition to Guyana, James's excessive spending required an infusion of funds that such a golden find would bring to bear for this financially and politically beleaguered crown. In spite of the precarious nature of their relationship, James I and Raleigh agree to be bound—by Bacon's contract.

[156] As attorney general, Sir Francis Bacon was the successor to both Sir Edward Coke and Sir Henry Hobart, respectively. The attorney-general, as a trustee of the public interest, brought such proceedings on the 'relation' of persons affected (Baker 493, note 65). Sir Francis Bacon was attorney general from 1613-1617. Sir Edward Coke held the office from 1594-1606, and Henry Hobert from 1606-1613.

[157] His alleged co-conspirators were Sir Griffin Markham, Lord Cobham, and Lord Grey (Vaughan 14-26).

[158] Ironically, Alan Stewart's chapter, "The Fall of Lord Chancellor Bacon," confronts the ecclesiastical courts and sexual defamation cases, like bastardy, whoredom, cuckoldry, pimping, and adultery (Kahn & Hutson 126-142). The case highlights Bacon's own fall from grace.

In addition, this bond, called the Articles of the Commission, gave Raleigh the authority that he needed to act as governor and commander on this expedition. However, the articles included a penalty clause, which required Raleigh's surrender to Spain as a consequence of engaging with the Spanish while on this expedition. Although Raleigh, this imprisoned explorer, realized that the violation of this written oath to King James would have a significant impact on his current confinement, the knight, like Antonio in *The Merchant of Venice*, signed the document, and embarked upon this expedition for golden treasure. Unfortunately, during the voyage, a group of the men engaged with the Spanish, and the knight's son, Walter, was killed in the skirmish. After Raleigh's return, Bacon provided an exhaustive list of Raleigh's offenses, and accuses Raleigh of feigning sickness to secure an escape. He further charged that Raleigh broke the contractual agreement by engaging in battle with Spanish citizens (Vaughan 95-106). Even further, Bacon asserted that the explorer used traitorous words against King James to plot a way to avoid keeping his word to the king, and simultaneously persuade the king to send Raleigh for another expedition. At his trial in 1618, Raleigh's words are few, yet in his written record of the arraignment and conviction, Bacon acknowledges the many pamphlets, poems, and letters, which surrounded this iconic figure who at this time was arguably both so popular and so hated by his people (Sellin 137, 257-258, 284, 287) (Edwards 523).[159] To satisfy the Spanish, Raleigh—this romantic and tragic figure—was executed.

[159] In this trial, the chief justice is Popham (Vaughan 100, note).

SECOND SCENE: 3.1: Let us to Court

"I crave the law, / The penalty and forfeit of my bond*"* (Shylock 4.1.202-203)

Here in the second scene of argument, Shylock the lender initiates a forfeiture action against Antonio the surety when Antonio cannot fulfill the bond. Yet, Shylock continues to demand: "I'll have my bond" (3.3.12-13). It is evident here that beyond the making of the bond agreement with its exchange of mutual promises, the actual breaking of the bond, and subsequent court action also function as critical points in the life of Shylock's bond. In analyzing this forfeiture action, I make three observations about legal life and impact of the written contract agreement. First, the scene exemplifies the moment when breach is alleged to have occurred. Second, the scene illustrates the impact that the breach and the impending forfeiture action have on the contract. Third, the scene offers a response to the potential litigation upon a known but unconscionable term within this bond agreement. Interestingly, the play offers no reading of the bond here in Act 3, particularly scenes 1 and 3.[160]

At 3.1, this scene focuses on the process of forfeiture, which Shylock wishes to begin against Antonio if he cannot make his bond agreement. The rumors spread that Antonio's ship has been wrecked at Goodwins so his debt remains outstanding to Shylock. This scene already begins to discuss legal phrases like "judge" (3.1.30), "usurer" (3.1.43), and "forfeit" (3.1.45). In this way, Shylock seeks remedy from the court to help himself to the bond's penalty clause, the pound of flesh. Despite the restitutive remedy found in forfeiture, an extreme retaliatory violence infuses the legal action. Yet, my discussion combines analysis from forfeiture, equity, and evidence to consider this stage property, which the play exhibits in the form of Shylock's bond.

[160] Recall in my chapters on Shakespeare's *Titus Andronicus* and Ben Jonson's *Volpone*—there are readings of Aaron's letter and Volpone's will, respectively.

Within the play, Salerio, friend to Antonio and Bassanio, raises a good question to Shylock: "Why I am sure if he forfeit, thou wilt not take his flesh,--what's the good for?" (3.1.45-46). Shylock answers not as a shrewd creditor, but as one bent upon feeding his "revenge" (3.1.47).[161] The entire speech between lines 47-66 lists his animus against Antonio. In two key lines, Shylock says: "The villainy you teach me I will execute, and it shall / go hard but I will better the instruction" (3.1.65-66). Shylock intimates that it is Antonio who has taught *him* villainy, and now apparently this lender will not apply this knowledge. He blames Antonio for the ills, which he has suffered at the merchant's hands:

> …he hath disgrac'd me, and
>
> Hind'red me half a million, laugh'd at my losses,
>
> mock'd at my gains, scorned my nation, thwarted
>
> my bargains, cooled my friends, heated mine
>
> enemies,--and what's his reason? I am a Jew. (3.1.48-52)

In Shylock's desire to claim what he is owed, he settles upon Antonio's flesh. He expects to recoup for his losses of millions, his shame, his affront, and his earlier, habitual degradation by Antonio. As one who is unsaddled with vengeance, Salerno does not expect that Shylock will enforce his bloody penalty against Antonio.

Here Shylock inculpates the law as corrupted, like his penalty clause. While examining the same lines, I note that Shylock also peppers his response with juridical language and implications:

[161] Charney compares Shylock to Richard III, Aaron and Iago and determines that his role is much smaller than the aforementioned villains; yet he acknowledges that there exists an ambiguity to this character (43, 49).

"the villainy you teach me I will execute, and it shall / go hard but I will better the instruction" (3.1.65-66). Having found Antonio guilty of the enumerated offenses, Shylock shall now "execute" or punish, as much as a court would administer a judgment against an accused. In weighing the depth of Antonio's transgressions, this punishment shall "go hard" or rather go to the extreme.

Shylock's villainous schooling joins Gosson's critique in the education playwrights provide their audience: "The discipline we get by plays is like to the justice that a certain schoolmaster taught in *Persia*, which taught his scholars to lie, and not to lie; to deceive and not to deceive; with a distinction to how they might do it to their friends, and how to their enemies; to their friends for exercise; to their foe in earnest." Like the scholars, Shylock's erudition in lies and deception teaches him how to deal in earnest with Antonio. This socially and emotionally wounded creditor seeks to physically wound Antonio with his bond. Shylock's bond does not lie in that Antonio and Shylock make their promises, but Shylock lies in his preference is for Antonio's flesh rather than the ducats. Shylock's bond does not deceive in plainly seeking a pound of Antonio's fair flesh, but does deceive when Shylock suggests the bond "is kind I offer" (1.3.138). In negotiating this bond, Shylock speaks of friendship to Antonio:

> I would be friends with you, and have your love,
>
> Forget the shames that you have stain'd me with,
>
> Supply your present wants. (1.3.134-136)

Yet, Shylock and Antonio are enemies (1.3.130). Hence, the penalty clause now operates as Antonio's penance.

In many ways, forfeiture provides a way to enforce a contract with its own system of penalties. In particular, bringing an action of forfeiture—to claim that which is owed—emerges as an act of self-help remedy unless the law is excessive (Seaton & Friedman 415).[162] In essence, when Bassanio and Antonio fail to pay, Shylock takes the matter to court as a self-help remedy. In order to enforce the bond, Shylock must present proof of the bond agreement to the court. Unlike the Pauncefoot Case, Antonio does not attempt to forego his penalty. Later in court, he acknowledges Shylock's bond and his underlying debt owed as surety for Bassanio.

Responding to Antonio's Letter

At 3.2, in order for Shylock to enforce his contract, he must have proof that Antonio has breached his promise. In the form of a letter, this proof comes, which confirms Antonio's loss of his ships:

> Sweet Bassanio, my ships have all miscarried,
>
> My creditors grow cruel, my estate is very low, my bond to
>
> The Jew is forfeit, and (since in paying it, it is impos-
>
> sible I should live), all debts are clear'd between you and I,

[162] Even the Fraudulent Conveyance statute required that "every thing which shall be law be forfeited to the King or subject," as noted in *Pauncefoot's Case* (1594) and *Twyne's Case* (Ross 106). If the one who forfeits the contract tries to forego his "penalty" by transferring "all of his leases and goods of great value" this action would violate of statute, 13 Eliz. c 5, noted in *Twyne's Case*. 13 Elizabeth c. 5 in which he examines the "creditors and others" phrase included in the enactment and its penal clause becomes quite relevant to this discussion where the commercial statute for commercial interests has penal provisions. Ross suggests that as the crown made most of its revenue from the surrender of property by those convicted of treason and the like, the provision becomes quite telling (29-30). The defrauding of a creditor could mean that one would have to surrender the profits from one's lands for up to a year (114). In addition, even ecclesiastical courts took to using the forfeiture action (Ross 67). Bailey notes that forfeiture functioned more as a kind of restitution (30). See also *A Selection of Leading Cases on Various Branches of the Law* by John William Smith, Richard Henn Collins, and Robert George Arguthnot. C H Edson & Company, 1888.

If I might but see you at my death: notwithstanding, use

Your pleasure,--if your love do not persuade you to come,

Let not my letter. (3.2.314-320)

Here again, we have another stage property, which refers to this bond, the strength of its enforcement, and the peril in which Antonio's life has been placed. Bassanio reads this letter to Portia—and the audience in Act 3; yet, in Act 1 where the negotiation of the bond agreement begins, no such reading occur. Now, Shylock may demand his penalty—Antonio's flesh. With Bassanio's presence, Shylock will have a witness to the execution of the penalty clause. Unfortunately for Shylock, this letter also serves as an opportunity to also tell Portia of the loan from Shylock and his true financial state. Bassanio learns of the loss and tells Portia of the loan, thereby giving her an opportunity to offer sufficient funds to buy Antonio out of his debt. Hence, the letter thrusts Portia into action.

In order to defeat the bond, Portia suggests "defacing" it (3.2.298). After sealing Shylock's bond to complete the contract, Portia's word choice suggests "marring the appearance of," "ruining the form of," or "disfiguring" (*OED*). This notion of defacing the material object that is the bond is physically violent, materially destructive, and dramatically evocative. This momentary allusion to a physical act has physical, financial, and legal implications for the bond itself. The physical destruction of the bond would perhaps involve an illegal act. Its legal destruction would demand an appearance at court. It would also involve a dramatic act—representing a potentially serious legal violation. As an economic solution, she asks Bassanio to "destroy" the bond with the financial remuneration. When Bassanio tells her that he owes Shylock "three thousand ducats" (3.2.296), Portia responds, as if unimpressed by the sum:

What no more?

Pay him six thousand, and deface the bond:

Double six thousand, and then treble that,

Before a friend of this description

Shall lose a hair through Bassanio's fault. (3.2.296-301)

In the most persuasive manner, Portia asks Bassanio to settle this matter of money for whatever amount the contract demands. While developing a stratagem for destruction of this bond, she contemplates another type of bonding. For Portia, the solution for Shylock's bond finds itself in the marital bond. If she and Bassanio marry, Portia promises Bassanio their own *quid pro quo*, for he "shall have gold / To pay the petty debt twenty times over" (3.2.305-306). Ultimately, they do marry before leaving for Venice to aid Antonio, for Portia crafts, like Shylock, a counter-attack, where she places Antonio's fate before her own.

Striking Illegal Terms from the Contract

While we may think that after fixing its seal, the bond may be accepted as legal—actually, we learn that the bond may require another physical act upon the material content of the bond's faulty penalty clause. To prevent the voiding of the contract, the law provided for the striking the offending clause from the document. Essentially, the contract must be weighed as to its legality. A determination must be made as to the reasonableness of the forfeiture action and the penalty clause, which gives permission to attack the body as payment in the bond. This view might invalidate the contract, where this bond might be interpreted as an act of vengeance against

Antonio for past, present, and future wrongs. In this way, this illegal term destroys the whole contract and "taints" the entire agreement.

During the sixteenth and seventeenth century, legal jurists, like Sir Edward Coke, stated: "it is commonly holden that if the condition of a bond, etc., be against law, that the bond itself is void" (Simpson 110). This rule is consistent with medieval law. Yet, the early modern law offers a different modification in Coke's commentary:

> But herein the law distinguisheth between a condition against law for doing of any act which is *malum in se*, and a condition (that concerneth not anything that is *malum in se*) and therefore is against law because it is either repugnant to the state [i.e. "estate"] or against some maxime or rule of law. (Simpson 110)[163]

So the question could be asked whether Shylock's penalty clause is malum in se or "intrinsically wicked"? One argument would suggest that the contract is "repugnant to the state" when considering the statements of mutual animus between Shylock and Antonio during their contract negotiations.

Even further, another argument might suggest that the contract be severed. Hence, the offending term might be replaced with a more reasonable one in this circumstance. During the negotiations, Antonio expresses disdain for Shylock's use of "interest" as a reasonable penalty; the ethics of the borrower should not necessarily emerge as the deciding factor in determining a reasonable replacement of Shylock using Antonio's flesh as punishment? On its face, the contract seems unconscionable. Yet, Antonio agrees. His friendship with Bassanio encourages him to

[163] "Malum in se" means, "intrinsically evil or wicked" (*OED*).

forgo, even temporarily, his principles. In considering the ethics of Antonio's choices, Bassanio's need is dire, for marriage was one of the most important life decisions that one could make. At the outset of this chapter, I used marital contract negotiations between James I and Phillip III, as an example. In particular, the importance of a good match between a man and a woman with a dowry was a chief concern. For instance, the dowry of Princess Katharine of Aragon was so important that Henry VII of England married Katharine to his younger son Prince Henry when his elder son Prince Arthur died. Hence, the nature of the bond, or promise, particularly in writing, was given great weight in the matter of contracts, even those for marriage.

In addition, English law provided for the severance of problematic contractual terms (Simpson 111-112). The practice of excising or extracting a bad or 'unlawful' term develops as an option during the early modern era. In his report on *Henry Pigot's Case* (1611), Coke suggests:

> It is unanimously agreed in 14 H.8. 25, 26 that if the covenants in an indenture, or the conditions endorsed upon a bond, are against law, the covenants or conditions which are against law are void *ab initio*, and the others stand good. (Simpson 111)

This legal rule allowed for the contract to stand in spite of an unlawful term. In essence, the contract would not be considered unlawful. The court would void the unlawful portion of the contract—that is, the court would eliminate Shylock's penalty clause. Apparently, the law sought to uphold contracts. Later at court, Portia makes the argument that Shylock's penalty clause is against the law; the court could acknowledge the unlawful portion of the contract, but save the remainder of Shylock's bond.

Enforcing Shylock's Bond

Despite these challenges to the validity of the bond, throughout the scene's opening, Shylock repeats the phrase: "I will have my bond, speak not against my bond" (3.3.4). He insists upon his right to the bond. Relentless in his determination, Shylock refuses to relinquish this right, where he says "tell not me of mercy" (3.3.1). Rejecting any notions of Christian solace, like mercy, Shylock seeks "justice" (3.3.8)—that which may be found in the Venetian courts. This moment intermingles the law, evidence, mercy, equity, and justice.[164] Within the tripartite analysis in this chapter, each of these concepts intervenes with the bond, the bond's redress in forfeiture action, and the judgment by the Duke in the Court of Justice in Act 4.

Actually, this scene grapples with the law, its violations, and its enforcement in relation to the bond, the surety, and the penalty clause. Specifically, Antonio believes that Shylock insists upon his penalty for vindictive reasons. While Shylock pursues his remedies for the losses and the offenses suffered from Antonio, the rationale for granting the lender's suit has global implications. Hence, Antonio believes that no relief may be granted in law where:

> With us in Venice, if it be denied,
>
> Will much impeach the justice of the state,
>
> Since that the trade and profit of the city
>
> Consisteth of all nations. (3.3.28-31)

Here, Antonio expounds upon the utility of using the law in commercial matters for Venice, which is a global port where nations from all over the world profit. Should Venice depart from the law in

[164] Later, in Act 4, the characters expound upon them further.

favor of one of its citizens, such an action would risk trade with the rest of the world. Antonio's sense of helplessness reads almost like the desperate victim who turns into an avenger in a revenge tragedy.

In the following analysis, I consider how the court, in its deliberation over this matter at 4.1, stresses that the principles of justice, equity, and mercy function at the forefront of its judgment, and whether this judgment is consistent with the remedies available at contract law. The attempt by Shylock to access the courts by initiating his forfeiture action seems palpable. Yet, what turns problematic is presenting before the court the actual language of the bond and trying to seek a realistic remedy, which upholds the principles and tenets of contract law. Notably, the use of forfeiture as felony crime seeps into this case of contract breach here in *The Merchant of Venice*.[165] This vacillation between civil and criminal law—that this case of *Shylock versus Antonio* presents—creates a divergent way of reading not only the play, but the law.

THIRD SCENE: 4.1: This Strict Court of Venice: The Law of Remedies[166]

"Do you confess the bond*?"* (Portia 4.1.177)

Like Raleigh's experience at the Great Hall at Westminster Castle, Shylock's case at the Court of Justice at 4.1 evolves into a confluence of several legal approaches representing the various ways in which early modern society viewed contract law, and requires an examination of the law of remedies. As a matter of course, if a litigant is wronged, the injured party may decide upon the type of remedy that he desires. Among many Shakespearean dramas from the First Soldier at 4.3 in *All's Well that Ends Well* to the First Senator at 3.2 in *Coriolanus*, I find the refrain: "there

[165] Notably, the concept of forfeiture serves as a potential redress in criminal cases, including homicide (Baker 580-581, 585, 600-601).
[166] In one of the final lines of her "quality of mercy" speech, Portia utters this phrase at 4.1.200.

is no remedy." Some characters move beyond this simple declarative statement to ask as does Arthur, Duke of Brittany at 4.1 in *King John*: "Is there no remedy?" Yet, here in *The Merchant of Venice*, this strict court of Venice attempts to craft a specific remedy for Shylock's bond. The court's "strictness" is revealing.[167] As Shylock's terms of negotiation grow legally excessive, the court's resolution in the matter of his allegedly illegal bond likewise emerges as inequitable; hence, the moments, which surround these points of negotiation turns out as tainted as Shylock's bond.[168]

Within the setting of this trial, an analysis of the bond lends itself to a review, which focuses upon the legal remedies available to this bond agreement. In the framework of early modern law, this Venetian court reveals an array of remedies available to address Shylock's bond. The remedies for breach of contract cases are quite flexible.[169] One such example of a lawful remedy in the midst of breach is specific performance. The remedy of specific performance compels a party to act in a way to complete the contract, whereas injunctions enjoin a party from acting in a manner inconsistent with the contract.[170] In the play at 1.2, Nerissa's discussion with Portia at Belmont suggests the refusal of specific performance:

> If he should offer to choose, and choose the right
> cas-

[167] *The Merchant of Venice* Arden editor, John Russell Brown, notes that Shakespeare imagines roles and locales, which may have been a fictional portrayal of sixteenth century Venice, for Elze in *Shakespeare Jahrbuch*, xiv (1879) suggests "the Doge had not presided over a Court of justice" since the fourteenth century (103).
[168] Posner argues that the contract is not illegal, where he distinguishes between the contract and its penalty clause for breach; he insists that the penalty provision may be "severed" from the original contract (149).

[169] See Lawson 46-47.
[170] Coke, an advocate of common law courts and hostile toward other jurisdictions, denied jurisdiction of a court of equity to grant specific performance of contracts, on the ground that the breaching party had the right to pay damages if he chose (Baker 140).

ket, you should refuse to perform your father's will,

if you should refuse to accept him. (1.2.88-90).

While the dialogue grapples with the will of Portia's father, the debate over performance implicates Shylock's bond. While the refusal to perform the letter of the language prescribed in her father's will has its consequences, the refusal to perform the letter of the contract in the bond has its ramifications as well.

As a different remedy, the court might award either monetary damages or land. These legal remedies are built upon common law concepts, which consider the injured party's expectation, his or her reliance upon the breaching party's promises, specific performance, and unconscionability (or unfairness).[171] As there are remedies, which address unfairness, some legal approaches address fairness or equity. These foundational concepts in the law of remedies incorporate the principles of mercy and justice, which develop particularly in this scene. Within this legal arena, the entire action of the scene hangs on the actual language of the bond with its 'pound of flesh' penalty clause and how the Duke's court might apply each of these principles.

In particular, this play lends itself to the principles of equity (i.e. fairness), where Shylock and Antonio have an agreement and Antonio's ships fail to return under accidental circumstances. The scene evolves as important in its examination of the bond itself here at 4.1.221, quoting its language, and the judgment of the court. The remedies, which this Venetian court offers turn somehow incongruent with early modern contract law, yet the courts of equity allowed a wide

[171] Beatson and Friedman 13-15, 429-437, 474-475, 482.

berth for breach of contract cases. Even in *King Lear*'s farcical court, the displaced king observes the principles of equity:

> I'll see their trial first. Bring in the evidence.
>
> [To Edgar] Thou robed man of justice, take thy place.
>
> [To the Fool] And thou, his yokefellow of equity
>
> Bench by his side. [To Kent] You are o' th' commission,
>
> Sit you too. (3.6.35-39)

The demand for *visible*, tangible evidence in this trial unfold as tantamount. Even in these brief lines and this make-believe court, the ideals for weighing and applying notions of equity to achieve justice are clear. Each of these elements of court, like "the evidence," the "robed man of justice," "bench," and its administration, emerges as recognizable and meaningful for the audience through their own attendance of court and their reading of pamphlets like the Raleigh and Lopez cases. In *The Merchant of Venice,* Shakespeare offers a scene, which effectively intertwines the issue of contract law, breach, and remedies where these remedies reveal themselves as quite malleable, for the Duke's "judgment" evolves as heavily influenced by that of Portia, Antonio, Shylock's faith, and Shylock's fortune.[172] Everyone "weighs in" on the balancing act to determine whether to uphold the contract or punish its author, Shylock. These malleable remedies again reflect the play's shifting adherence toward the court's evolving adherence to the principles of equity. This feeling of relief is confirmed as Act 4 opens where the Duke, the law-giver/judge, protectively pronounces

[172] The Duke of Venice is the Doge, or the chief magistrate of Venice (sometimes Genoa). Thomas Madden begins his Introduction with an 1192 quotation from a Venetian Doge's Oath of Office: "We will consider, attend to, and work for the honor and profit of the people of Venice in good faith and without fraud" (1).

his stance for the life of young Antonio, as the court, having recognized the parties, begins its session on "this merry bond" (1.3.169).

One of the remedies, which would have been available to these men of written promises and commercial transactions is restitution. The principle affords the parties to the place where they began. As Titus Lartius notes in *Coriolanus*, this option grows fruitless: "he would pawn his fortunes / To hopeless restitution" (3.1.15-16). This options grows out of the concept of equity as well. The play expresses the concern about upholding Shylock's bond if fairness may be achieved. If the law of Venice ignores a clear contract, then the city implicates all commercial transactions, including bonds, within its boundaries. The drama exposes the troubles with the lack of, and need for, safeguards to uphold the commercial relationships. Hence, the Duke's court must craft an acceptable remedy.[173] This strict court of Venice offers Shylock an avenue for redress for his commercial concerns and his own rage against Antonio who will now be rightfully judged, in Shylock's mind, with Venetian justice.[174] Now, these legal figures and leaders of Venice must decide, and watch, this contentious case.

[173] See Linda Levy Peck's *Court Patronage and Corruption in Early Stuart England* (2003) where she discusses the practice of corruption, navy contracts, and the Crown (109). In addition, Rosemary O'Day discusses judicial corruption, avarice, and manipulation during the early modern period on page 148 in her book *The Professions in Early Modern England, 1400-1800: Servants of the Commonweal (2014).*

[174] The litigants in the Court of Common Pleas had a higher burden; they were required to show proof of a subsequent promise (Barret 61). Particularly for bonds, the King's Bench evolved as the standard bearer, modeling efficiency, innovation, and preeminence. The breadth of this court's jurisdiction included diverse cases and the broad reach of the court's legal power, identifiable authority, and unquestionable dominion were essentially incontrovertible. At times, this Court heard non-criminal matters, like contracts, where physical jeopardy was not at risk, yet there were other times, where the King's Bench heard quite serious criminal matters where one's life or liberty might be taken. In the law, these matters are distinguished one from the other by "jurisdiction," yet in literature these realms are distinguished by "genre." The Court of the King's Bench, an English high court 'superior to all' and whose decisions could only be supplanted by Parliament, has been in existence since the time of Henry I of England. Initially, the court handled cases "dealing exclusively with the King's business" (Lawson 259). Eventually, the jurisdiction included criminal and non-criminal matters and because of the legal work with new writs, procedures and other matters, the court was called simply the "Bench" and held term at Westminster (Selden Society 229-230). Later, the Court of the King's Bench, which, among other cases, handled commercial

Presenting the Legal Exhibit: Shylock's Bond

As discussed in the first part of this chapter, this bond agreement turns into a useful tool for the Duke's Court to examine the motives or intent of the parties. Many reviews of the performance of this play even from 1875 focuses on how the actor played the role of Shylock—whether as "a disguised gentleman" or as "a Jew with great pride of race" who comes alive in the trial scene in an 1887 review. Minimal attention was paid to "the letter of the bond."[175]

The letter of the bond grows revealing. Earlier at 2.3, Launcelot Gobbo the Clown says: "…tears exhibit my tongue..." (2.3.10). The clown's face reveals what his speech has not conveyed. Likewise, Shylock's bond exhibits his own animus. Beyond the animus of either Shylock or Antonio, the actual "face" of the bond bears closer examination. Like the tears, which run down the face of Launcelot Gobbo, the truth of Shylock's bond shall flow, revealing its secrets—both legal and material. Here at 4.1, Shakespeare provides such a moment.

While in Act 1 and Act 3, the audience witnesses such scenes, where the parties created, sealed, and referred to Shylock's bond, this scene at 4.1 where Portia, as Balthazar the lawyer, examines the bond at line 221 grows even more compelling. In this moment where a hyper-attention is applied to the bond, Portia says: "I pray you let me look upon the bond" (4.1.221).[176] In this instant, neither Shakespeare nor editors provide any stage direction. This line simple in its words actually convey a powerful theatrical and historical moment. Dressed in the role as lawyer, according to stage direction at 4.2.162, Portia examines the legal document, which is the center of

cases (Baker 107). Here, the reference may sometimes be called the Queen's Bench, depending upon the current sovereign.

[175] See "The English Stage: Dramatic Tale and Taste in the Metroolis in *The New York Times* 4 May 1875. See also "Possart as Shylock" in *The New York Times* 31 December 1887.

[176] Portia enters the court at 4.1.164 dressed as Balthazar the doctor of laws, according to the stage directions.

"the difference / That holds this present question in the court" (4.1.167-168). Here at line 221, the play emphasizes Portia's legal prowess with her thoughtful, circumspect deliberation.

Consistent with early modern law, Portia focuses upon the language within the four corners of this written bond and minimizes the significance of Antonio's confession of the bond. I find the moment where Portia initially discusses the bond with Antonio striking. In its brevity, the moment grows conspicuous. At her entrance to the court, Portia's performance opens as subdued. Following legal protocol, she awaits the court's approval of her letter of introduction at 4.1.150 and the permission to engage in this legal matter at 4.1.166. Then, Portia addresses the court, where she asks Antonio candidly: "Do you confess the bond?" (4.1.177). Instead of creating an elaborate recitation about how the bond should be derided, Antonio the accused merchant of Venice simply responds: "I do" (4.1.178). At this point, the confession so readily given reduces the question of the agreement's truth as peripheral. Much as he had at the formation of the contract, Antonio does not object to its validity. He surrenders to the bond and its implications. As Antonio initially ignored the import of the bond, Portia also appears to gloss over the significance of the mutual agreement of the parties, which finds consent in those two words by Antonio: "I do"—these two words, which echo the earlier more romantic and marital moments between her and Bassanio.

This legal instrument travels from Shylock and Antonio in Act 1—and later to the notary for sealing—to Shylock and Portia in Act 4. The document circulates on the stage and within this Venetian locale.[177] In an attempt to resolve this matter at court, the bond passes from Shylock to Portia. After its travels since Act 1, the bond now rests under her inspection here at 4.1. In this moment, not only does this stage property shift in space and to yet another person, but now this

[177] See also Lena Cowen Orlin's discussion of the circulation of stage properties (Harris and Korda 106-107).

legal instrument grows anew in its usefulness for Antonio. Here, Portia argues that the court should not only deny Shylock's forfeiture action, but find him guilty of attempted murder within the alien statute:

> In which predicament I say thou stand'st:
>
> For it appears by manifest proceeding,
>
> That indirectly, and directly too,
>
> Thou hast contrived against the very life
>
> Of the defendant. (4.1.353-357)

Within her well-crafted argument, Portia urges that Shylock has intentionally sought the life of one of Venice's leading citizens, Antonio the merchant. The bond now takes on another feature: instead of a tool to conduct commercial relations, this contract evolves as an instrument of death. In this instant, Shylock's hands emerge as one bloody with guilt.

Not without his own legal prowess and cunningly persuasive acumen, Shylock looks to his own bond's language. He remains grounded in the letter of the bond. In an exchange between Shylock and Portia, Shylock pursues relief in the words of contract:

> Portia: For the intent and purpose of the law
>
> Hath full relation to the penalty,
>
> Shylock: 'Tis very true: O wise and upright judge,
>
> How much more elder art thou than thy looks!
>
> Portia: Therefore lay bare your bosom.

Shylock: Ay, his breast,

So says the bond, doth it not noble judge?

"nearest his heart," those are the very words.

(4.1.243-250)

With unrelenting zeal, Shylock attempts to hold Antonio to the letter of the contract—"the very words." Shylock even bows to flattery to win his case. He compliments her age and wisdom. Shylock praises Portia as an "upright judge." His stance impresses as one where such a juge will and must follow the law of this written bond. Unintimidated by Portia's own quest to find release for Antonio's jeopardy and Bassanio's grief, Shylock presses the matter by reminding her and the court of the bond's fleshly penalty.

As this learned doctor of laws, Portia as Balthazar develops a clever strategy. After she finds Shylock unwilling to accept mercy to release Antonio, Portia changes legal tactics. Portia uses "the very words" of the contract for the merchant's liberty:

Portia: Why this bond is forfeit,

And lawfully by this the Jew may claim

A pound of flesh, to be by him cut off

Nearest the merchant's heart: be merciful,

Take the thrice thy money, bid me tear the bond.

Shylock: When it is paid, according to the tenour.

It doth appear you are a worthy judge,

You know the law, your exposition

Hath been most sound: I charge you by the law,

Whereof you are a well-deserving pillar,

Proceed to judgment: by my soul I swear,

There is no power in the tongue of man

To alter me,--I stay here on my bond. (4.1.226-238).

Here in the midst of the forfeiture proceeding, Portia seeks to negotiate Shylock away from the language of the contract. This language is filled with mutuality of promises, and confirms Shylock's lawful claim of flesh. She pleads mercy on Antonio's behalf. Yet, Shylock rests upon the law for his relief: "proceed to judgment." He is unwavering in his claims.

While examining notions of equity, the written evidence of this trial confronts how legal jurisprudence in local jurisdictions impacted global politics. The language of the bond penalty on its face does not promote the principles that underlie equity, like fairness and equity, which the progressive Court of the King's Bench emphasized in its application of contract law.[178] As this court sought to apply these principles, it is difficult not to see the influence that Raleigh's deadly skirmish with the Spanish had upon his fate.

Examining the Arguments: Shylock versus Portia

The most striking part of this scene in *The Merchant of Venice* is the remedy that the court reaches at the conclusion of the case. Shylock competes with Portia to dominate the manner in

[178] Spinosa refers to the King's Bench as "progressive" and the Court of Common Pleas as "conservative" (67).

which to read Shylock's bond. Through Antonio's jeopardy, and the courtroom drama, the question of Shylock's bond foists itself from potential peripheral concerns to one, which sits at the center of the drama's importance. Though not surprising in early modern courts of equity, the judgment reads as an amalgam: a criminal plea to address Shylock's penalty clause, civil settlement to address Shylock's forfeiture action, and a dismissal against Antonio. Shylock is threatened with the death penalty and imprisonment. He also must surrender the value of his estate. His forfeiture action turns into a non-starter after Portia introduces the alien statute. These arguments between Shylock and Portia parallel the Raleigh case. The many allegations against Sir Walter Raleigh offer a conflicted view of the knight where the charges shift from the secret marriage without his queen's permission, to treasonous conspiracy against his king to violation of a signed proclamation with his sovereign, which impact the breadth of the possible judgment against him. His case and Bacon's contract involved diverse arguments both for and against the knight.

In an interesting contrast, Portia participates in a less serious game than Burghley and Essex—that is, word play. She displays her own "verbal quibble" where "blood is necessarily spilt when flesh is cut, Portia's distinction was valid only if the contract had specifically stipulated that blood should not be spilt" (Shakespeare 116).[179] This verbal quibble allows Portia, with the Duke's permission, to remove the discussion of this forfeiture action from that of the language of recovery of property and restitution, and shifts the discussion to the efforts at recovery as an attempted criminal act against the life of a Venetian (4.1.356-357). Likewise, this verbal and legal quibble performed by Portia attempts to minimize the significance of Shylock's bond.

[179] The Arden editor for *The Merchant of Venice*, John Russell Brown, notes that some criticism has been discussed in regard to Portia's "verbal quibble" at the notes for lines 305-306

At 4.1, Shakespeare sets this scene in a way that emerges unlike any other scene that the playwright presents in this drama. The stage directions provide our location in a Venetian Court of Justice. In this early modern courtroom, each of the litigants, judges, and witnesses usher in this courtroom, as Shakespeare describes: "Enter the Duke, the Magnificoes, Antonio, Bassanio, and Gratiano, Salerio, and others. Immediately, the Duke calls the court to order by seeking the named defendant in this forfeiture action: "What, is Antonio here?" (4.1.1). As is appropriate for this legal setting, Antonio responds in kind: "Ready, so please your grace!" (4.1.2).

What follows reveals a striking dialogue between the Duke, the defendant Antonio, the witness Bassanio, the witness Gratiano and later Shylock, the plaintiff. This scene evolves as conspicuous where the dialogue between these parties parallels this strict court of justice's assessment of the legal remedies against Shylock the lender, as they dissect the character of Shylock. Notably, Shylock's own responses cannot be minimizes as his unrelenting and uncooperative stance to any type of negotiation with these judges and litigants who have adjudged his character and his sentence at the opening of this scene. Where audience may perceive the role of the law-giver (i.e. judge) as objective, here we have the Duke who illustrates his one-sidedness in this civil matter. Regrettably, he discloses, "I am sorry for thee,--thou art come to answer / A stony adversary, an inhuman wretch, / Uncapable of pity, void, and empty / From any dram of mercy" (4.1.3-6). The Duke shares his *reading* of Shylock before the lender is introduced, before the matter is argued, and before Shylock's bond is even read to this Venetian Court. Without any instigation, the Duke apologizes to Antonio. He demonstrates that his sympathies rest with this Venetian merchant. The Duke adjudges Shylock as a "stony adversary" whose disposition is not human. Here, this judge divulges his own predisposition toward Antonio. Not only has he unveiled his own poor estimation of Shylock, the Duke has also—before hearing the arguments, reading the

bond, and objectively appraising the case—determined the appropriate remedy: "mercy." While this remedy arises as a propos within an ecclesiastical setting where attributes like "pity" would be readily embraced, this supposed civil court avoids discussing the typical legal remedies, as specific performance and restitution, discussed earlier.

As the audience, do we now witness unethical discourse between the judge and the litigant where both parties are not present? Without the presence of Shylock, the Duke offers this ecclesiastical remedy. Indeed, Antonio's response to the Duke bolsters the possibility of unethical legal practice, including this duke's partiality, here:

> I have heard
>
> Your grace hath ta'en great pains to qualify
>
> His rigorous course; but since he stands obdurate,
>
> And that no lawful means can carry me
>
> Out of his envy's reach, I do oppose
>
> My patience to his fury, and am arm'd
>
> To suffer with a quietness of spirit,
>
> The very tyranny and rage of his. (4.1.6-13)

So too, it appears that the judge has discussed the case with Shylock out of the presence of Antonio. The Duke has tried to influence Shylock's "rigorous course" or "hardline." Because of Shylock's apparent refusal, the Duke and Antonio depict the lender as stubborn, immovable—unwilling to "playball." This Jewish lender refuses to "take one for the team." Declining his role as a team player, Shylock stands "obdurate"—he remains stalwartly outside of the circle of Antonio and the

Venetian aristocracy. Antonio does not believe that the court's desire for mercy will settle the matter. Antonio stands resolved to Shylock's "fury," his "very tyranny and rage." In Antonio's mind, Shylock's desire for his bloody penalty clause cannot be supplanted by the court's use of mercy as the remedy here.

In spite of Antonio's resignation to Shylock's penalty, the Duke attempts to convince Shylock that the appropriate remedy for this case is indeed mercy. When Shylock enters the court, the Duke encourages the aggrieved lender to surrender his malice to the higher more agreeable act of mercy:

> Shylock the world thinks, and I think so too,
>
> That thou but leadest this fashion of thy malice
>
> To the last hour of act, and then 'tis thought
>
> Thou'lt show thy mercy and remorse more strange
>
> Than is thy strange apparent cruelty;
>
> And where thou now exacts the penalty,
>
> Which is a pound of this poor merchant's flesh,
>
> Though wilt not only loose the forfeiture,
>
> But touch'd with human gentleness and love,
>
> Forgive a moiety of the principal,
>
> Glancing an eye of pity on his losses
>
> That have of late so huddled on his back,

Enow to press a royal merchant down,

And pluck commiseration of his state

From brassy bosoms and rough hearts of flint,

From stubborn Turks, and Tartars never train'd

To offices of tender courtesy:

We all expect a gentle answer Jew! (4.1.16-34)

Essentially, the Duke believes that Shylock has entertained this Venetian society and the world at large long enough with his malicious posturing and "strange apparent cruelty" to enforce this bond's fleshly penalty. He believes that the publicity that Shylock has created will emerge as even greater for the lender if he relents, as the public believes, and releases Antonio from this penalty. In spite of Shylock's public show, the Duke suggests that Shylock go even further by releasing Antonio from the contract in total, as the merchant has suffered pitiable losses. Why "press a royal merchant down" further and make his financial state even worse? The Duke implores Shylock to foist off the rigid persona like so many unlearned, "stubborn Turks and Tartars." Rather, the Duke advises Shylock to show "courtesy" and yield to a more "gentle answer" for Antonio's obvious "losses." For the Duke, the merciful answer provides the best legal remedy for this civil matter.

In response to the Duke's impassioned plea for mercy, Shylock rejects this remedy, which, for this lender, does not flow from the language of his bond. Implying that he has already told the Duke of what he seeks, Shylock insists:

I have possess'd your grace of what I purpose,

And by our holy Sabbath have I sworn

To have the due an forfeit of my bond, --

If you deny it, let the danger light

Upon your charter and your city's freedom! (4.1.35-39)

Shylock does not want the mercy by which the Duke entreats him. This plaintiff-lender wants the substance of his bond. Shylock will use every bit of the "light" that the publicity of this case has brought to Venice to decry justice in this fair city.

Even further, Shylock refuses to answer why he insists upon this penalty of a pound of flesh:

You'll ask me why I rather chose to have

A weight of carrion flesh, than to receive

Three thousand ducats: "I'll not answer that!

But say it is my humour,--is it answer'd? (4.1.40-43)

Shylock believes that the answer to this question grows irrelevant. In his opinion, it does not matter why he wants the flesh. What does matter is the language of the bond. The remedy that he seeks may be found in the pound of Antonio's flesh:

So can I give no reason, nor I will not,

More than a lodg'd hate, and a certain loathing

I bear Antonio, that I follow thus

A losing suit against him!—are you answered? (4.1.59-62)

He reiterates his hatred and "loathing" of Antonio. Beyond his contempt for Antonio, Shylock decries that he will have the lack of law applied in this case:

> The pound of flesh which I demand of him
>
> Is dearly bought, 'tis mine and I will have it:
>
> If you deny me, fie upon your law!
>
> There is no force in the decrees of Venice:
>
> I stand for judgment,--answer, shall I have it? (4.1.99-103)

In Shylock's mind, he cannot be denied a remedy, Antonio's flesh, which the law allows because of his contracted bond agreement. He demands that the Duke apply Venetian law, which Shylock assumes will grant him the remedy he seeks—a pound of Antonio's flesh.

The Duke, Antonio, and Shylock appear to be at an impasse. No one has changed his position with respect to the appropriate remedy, which should be applied to this civil matter. At a loss, the Duke says:

> Upon my power I may dismiss this court,
>
> Unless Bellario (a learned doctor,
>
> Whom I have sent for to determine this)
>
> Come here to-day. (4.1.104-107)

Instead of ruling against Antonio and giving Shylock his bond, the Duke would rather dismiss the case. Perhaps for political or ethical reasons, the Duke seeks an expert to determine this difficult

case. At this court, a stalemate exists where Shylock rejects mercy and insists upon his bond—and, Antonio resolves that no other recourse is available to him says:

> 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. (4.1.114-118)

As a result of this impasse, Antonio believes that he shall die. He believes that he is that "tainted" one in a flock, which falls the earliest because of its weakness. Bassanio, standing as witness, shall write Antonio's epitaph.

As a replacement for Bellario, the doctor of law, Portia enters as Balthazar and argues this case of *Shylock the lender versus Antonio the surety*. In her assessment of this case, she takes up where the Duke leaves. Portia argues for mercy as the appropriate remedy in this forfeiture case:

> 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 scepter 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 sceptered sway,

It is enthroned in the hearts 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. (4.1.180-202)

Not unlike the Duke, Portia argues for mercy without have read Shylock's bond. She urges that "the quality of mercy" emerges as the easiest path to resolution in this case. Mercy does not have to be forced, but has a "gentle" nature to it much like the Duke's request for Shylock's "gentle

answer" (4.1.34) earlier in the scene. With mercy, Portia argues that both the borrower and the lender prosper in this blest exchange. She insists that mercy arises as the best remedy for it grows out of "the hearts of kings" as godly. Mercy, for Portia, surpasses the "justice," which Shylock demands. Justice, unlike mercy, does not operate as a conduit to salvation. In mercy, we perform merciful deeds—like Shylock foregoing a sentence against Antonio. In essence, mercy unfolds as the best remedy, for this concept materializes as the godly resolution.

Despite Portia's "merciful deeds" argument, Shylock rejects them. He counters: "My deeds upon my head! I crave the law, / the penalty and forfeit of my bond" (4.1.203-204). This lender will worry about his own deeds. He will decide upon the consequences of his own actions. He does not seek this legal remedy, which is not grounded in contract law. Shylock wants the penalty and the forfeit of his bond. He wants this Venetian Court of Justice to enforce the language of the bond. This result, for Shylock, embodies the definition of justice.

After all of the failed arguments about mercy, Portia decides to look to the bond. Upon her review of Shylock's bond, she admits:

> Why this bond is forfeit,
>
> And lawfully by this the Jew may claim
>
> A bound of flesh, to be by him cut off
>
> Nearest the merchant's heart: be merciful,
>
> Take thrice thy money, bid me tear the bond. (4.1. 226-230)

Portia cleverly delivers her admission that Antonio has forfeited Shylock's bond, but the admission is couched in a counter-offer where she ask Shylock to take 9,000 ducats to resolve this matter. At

this point in the scene, Portia has shifted from the ecclesiastical remedy of "mercy" to a more legal remedy of restitution and damages. Here, with the offer of three times the amount of the contract, she offers Antonio a way out of the contract by giving Shylock the amount owed, and any inconvenience that he incurred in taking Antonio to court. Shylock also saves face in this community as a shrewd businessman who receives more than what is owed. In this way, Portia appeals to Shylock's reputation as a usurer who receives more money than he borrowed from the borrower. These financial lending practices (i.e. receiving more than borrowed) are the very lending habits, which Antonio criticizes Shylock in Act 1. This remedy rests at the seat of Antonio and Shylock's animus.

Again, Shylock refuses Portia's attempt to negotiate a settlement agreement between Antonio and Shylock. In this settlement agreement, each party will forego the original bond and agree to walk away under these new terms. However, Shylock does not desire this alternative remedy to the original bond:

> I charge you by the law,
>
> Whereof you are a well-deserving pillar,
>
> Proceed to judgment: by my soul I swear,
>
> There is no power in the tongue of man
>
> To alter me,-I stay here on my bond. (4.1.234-238)

He wants a judgment on the actual contract. He rejects this settlement offer, which Portia crafts before this Venetian court. Shylock insists that Portia—in spite of her persuasive arguments—will not deter him from his bond. He stands firm on this principle.

Utilizing all of her resources, Portia crafts yet another alternative to remove Antonio from Shylock's bond. She accuses Shylock of violating a Venetian criminal statute:

> Tarry a little, there is something else,--
>
> 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 doest shed
>
> One drop of Christian blood, thy lands and goods
>
> Are (by the laws of Venice) confiscate
>
> Unto the state of Venice. (4.1.301-308)

Cleverly, Portia uses the language from Shylock's bond—"a pound of flesh"—to prove that this lender has attempted to violate Venetian laws. She uses what is not present in the bond—"no jot of blood"—and what is present in the bond, "flesh," to implicate not only Shylock, but his bond. His bond emerges as the very proof of his criminal acts, which exposes his property to confiscation by both the state and Antonio, now the victim. Portia warns Shylock:

> Therefore prepare thee to cut off the flesh,--
>
> Shed thou no blood, nor cut thou less no 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. (4.1.320-328)

Now, Shylock transforms into the perpetrator of a crime instead of the plaintiff in a forfeiture case. He is now the accused instead of the aggrieved. He is now a criminal instead of an injured businessman. Instead of merely characterized as malicious and cruel, Shylock is now dangerous, for he seeks the life of a royal Venetian, Antonio. The new remedy, which Portia seeks becomes Shylock's entire estate—and possibly his life.

Portia uses the very laws of Venice to fell Shylock. For this man who "craved the law," she satiates him with the law's own bite:

The law hath yet another hold on you.

It is enacted in the laws of Venice,

If it be proved against an alien,

That by direct, or indirect attempts

He seek the life of any citizen,

The party 'gainst the which he doth contrive,

Shall seize one half his goods, the other half

Comes to the privy coffer of the state,

And the offender's life lies in the mercy

Of the Duke only, 'gainst all other voice. (4.1.344-352)

Portia now binds Shylock to this Venetian Alien Statute. The statute prohibits an alien who—intentionally or unintentionally—threatens the life of a Venetian citizen. The statute contains two types of penalties: one denies the alien's property and the other his liberty. Any such violation allows the victim to seize one half of the alien's property and the state of Venice to take the other half. The second half of the penalty denies the alien's liberty, at the discretion of the Duke. In the face of these laws, which cut against his very means and life, Shylock now wants to accept the previous remedy, which "pay[s] the bond thrice / And let the Christian go" (4.1.314-315). Yet, now Portia stands on "all justice" and will give Shylock "nothing but the penalty" (4.1.316-317). Now, Shylock will settle for "my principal and let me go" (4.1.332). Again, Portia insists that "he hath refus'd it in the open court, / He shall have merely justice and his bond" (4.1.334-335). Finally, Shylock wants to "dismiss" this matter as the Duke suggested at 104, and "stay no longer question" (4.1.342). Nevertheless, Portia pursues the alien statute, which posits Shylock as an attempted murderer. Now Shylock's life—not Antonio—lies in jeopardy. He now must surrender his goods and await the Duke's own mercy.

Here, the bond agreement reads as an instrument strictly possessed of illegality where one party, Antonio, has already received the benefit of Shylock's performance, but Shylock is neither returned to the financial position in which he initially began, nor offered penalties in interest after the alien statute is mentioned. Hence, the question arises: is the remedy equitable? Shylock's incessantly bombastic arguments seek neither to invite nor to convince, even if he has the law on

his side.[180] Earlier, Shylock insists: "I charge you by the law" at line 234 and "I crave the law" at line 202. This aggrieved litigant seeks redress from the court that yields a more finite application of the letter of the law. Indeed, Shylock embodies a figure who believes that the written evidence—his bond—wins the day for him at court.

However, in Portia's hands, the state of the law turns fungible. Her arguments suggest that this matter is no longer a civil one, but evolves into a criminal matter.[181] Still, if the matter is wholly criminal, no discussion should exist about the underlying forfeiture action and the bond agreement. I argue that the language of the bond should control as this instrument defined the relationship. At the outset of the case, Antonio confesses the bond. Yet, quite strikingly, the court allows Portia to offer an alternative interpretation of the contract. If the court had to rescind an offending clause to comply with "good faith" of the parties, or if the court determined that specific performance, or restitution was appropriate, then the bond agreement should not be dismissed. Daniel Kornstein explains "good faith" as an honest person acting in good faith will abide by the sense of a contract however expressed; a villain will look for a way out of a contract no matter how tightly drawn" (67). For the purpose of this analysis, I use "good faith" almost interchangeably with the idea of "good intentions" or "good motives."

Arguably both parties, Shylock and Portia, have less than honorable motives.[182] Nevertheless, I suggest that Portia's intentions supersede compelling Shylock to find mercy for

[180] In spite of Shylock's unsuccessful arguments, Barber insists that Shylock's character exudes pathos, which should appeal to the audience, but "it is being fed into the comic mill and makes the laughter all the more hilarious" (184).

[181] Also noting the legal shift from civil to criminal by the Duke's Court, legal scholar Richard Posner, mounts a fictional appeal on Shylock's behalf (Cormack et al 148).

[182] Posner argues that bad motives do not nullify the contract, particularly where Shylock had no intention to murder Antonio (150).

Antonio. Actually, Portia plays 'hardball'—unable to resolve the case as initially proffered to Shylock, so she prepares to win at all costs, even if the approach imprisons, bankrupts, and converts Shylock.[183] The tension between Shylock's arguments about the court's hypocrisy (and that of the people it represents) and Portia's arguments about national and religious principles, like "mercy," encapsulate a larger concern within early modern England itself. The scene is rich in its discussion of justice, mercy, and social intolerance. Shylock's speech on the hypocrisy of the court's impunity toward him as the city of Venice participates in the cruel practice of slavery itself turns quite vivid and difficult to deny at 4.1.35. This exposition develops as powerfully as Portia's 'quality of mercy' speech, where she highlights the bases for mercy in what functions as a promotion of Judeo-Christian principles at 4.1.180.[184] It grows difficult to determine who offers the more profound argument here as Shylock's bond and his life weighs in the balance. Portia's side of the argument is consistent with the popular thinking of this particular time. Hence, it is likely that the early modern audience would have rejected the argument by Shylock, this antagonistic foreigner with vindictive motives, as unconvincing, whereas Portia's call to mercy calls to a concept, which defines England, justice, and morality. Still, it also grows difficult to ignore Portia's calculating intentions. Portia's intentions are not to mitigate an equitable resolution to this matter, suggests Billelo, but instead attempts to compel Shylock's mercy by surrendering the penalty owed by Antonio (Jordan and Cunningham 114-117). However, I believe that Portia's strategy exceeds the

[183] These arguments carry with them serious implications for Shylock and the global marketplace in the fictional Venice and the real England. Shylock is depicted as "morally inferior" (Margolies 91). Here, in the seventeenth century, slavery was the fate of the insolvent in the Roman and Germanic tradition (Bailey 153). Hence, the law had an identifiable power to make and unmake persons. Bailey notes that "unlike the crime of debt, the crime of slavery was marked by a violation of God's organic, nontransferable property—it made that which should not be alienable exchangeable" (61). While debtor's prison was a common penalty for those who failed to pay, the crime of slavery surpassed the civil bondage found in prison.

[184] This "quality of mercy" speech has long been recognized as one of the key monologues in the play. In a surprising moment, Queen Victoria offers the actress, Ellen Terry, a cue as she begins the speech in an 1889 production of the play. See "Terry Prompted by the Queen" in *The New York Times*, 17 June 1889.

striking of the penalty clause from Shylock's bond. Like Shylock, Portia turns relentless. She persists in her effort to free Antonio from the entire contract.

Nevertheless, Portia's requested relief—incarceration and property divestment—appear strikingly inequitable, not unlike Shylock's initial request for Antonio's flesh. It is no surprise for me that Shylock questions: "Is that the law?" (4.1.310). While his lack of knowledge of *this* law will not protect the creditor, the question raises important ethical and legal implications for the Duke's Court. Shall this Court impose similarly inequitable remedies against Shylock the lender? Should not the quality of mercy, which Portia earlier asks Shylock to recognize extend beyond the mere saving of this lender's life? Now, I focus on how those potential resolution affect Shylock's troublesome bond.

Rendering the Appropriate Judgment

As an exceptional remedy to this matter, the Duke offers Shylock a pardon, "a remission from punishment," from these proceedings with criminal penalties.[185] To alleviate Shylock's predicament, the Duke determines that his entire estate shall suffice:

> I pardon thee thy life before thou ask it:
>
> For half thy wealth, it is Antonio's
>
> The other half comes to the general state,
>
> Which humbleness may drive unto a fine. (4.1.364-368)

[185] The *Oxford English Dictionary* uses the term, "remission from punishment," in both its theological and legal sense.

Accepting Shylock's property as sufficient punishment, the Duke forgoes the surrender of Shylock's life. However, Shylock rebuffs this supposed "pardon." He argues that no pardon of his life actually exists:

> Nay, take my life and all, pardon not that,--
>
> You take my house, when you do take the prop
>
> That doth sustain my house: you take my life
>
> When you do take the means whereby I live. (4.1.370-373)

In essence, at the outset of this scene, this court asked Shylock to use mercy, as the remedy, to relieve Antonio of his bond forfeiture. However, now the court decides that the mercy here, which shall be extended to Shylock will be giving him his life but taking his estate. Shylock objects to this proffered remedy.

At last, Antonio answers Shylock's objection with a modified remedy. Antonio the merchant addresses the court:

> So please my lord the duke, and all the court,
>
> To quit the fine for one half of his goods,
>
> I am content: so he will let me have
>
> The other half in use, to render it
>
> Upon his death unto the gentleman
>
> That lately stole his daughter.
>
> Two things provided more, that for this favour

He presently become a Christian:

The other, that he do record a gift

(Here in the court) of all he dies possess'd

Unto his son Lorenzo and his daughter. (4.1.376-387)

Now, instead of removing his entire estate now, Antonio refuses the one half, which the court would give him. This new remedy requires that Shylock give half of his estate to the state of Venice and the other half, at Shylock's death to Lorenzo, Jessica's newly wedded husband. Even further, Shylock must also now convert to Christianity and record this "gift" legally.

As its final judgment, this Venetian Court of Justice accepts Antonio's proposed remedy. The Duke makes the conditional nature of Shylock's pardon clear. The Duke finds that Shylock "shall do this, or else I do recant / The pardon that I late pronounced here" (4.1.387-388). To finalize this judgment, Portia says: "Clerk, draw a deed of gift" (4.1.390). Here, she draws the audience's attention to yet another legal instrument, where Shylock now pays the penalty. Beleaguered by the turn of events, Shylock resigns:

I pray you give me leave to go from hence,

I am not well,--send the deed after me,

And I will sign it. (4.1.391-393)

This written proof of Shylock's surrender, this deed of gift, never appears on the stage, but reminds the audience of his earlier bond with the severity of its penalties. Assenting to Shylock's departure, the Duke commands: "Get thee gone, but do it" (4.1.393). This new contract shall now emerge as the final judgment against Shylock in his losing battle against Antonio.

One could argue that James I displayed incredible mercy toward Raleigh by forgiving him the allegations of treason in the "Bye" and "Main" plots so that he might sail to Guyana and return to his king with all forgiven. Yet, again the consideration of geopolitics, the financial state of his English realm, and the notions of equity might also function more prominently in this moment. Here in 4.1, the scene's segue from law to religion transforms into an unorthodox way to "resolve" this contract dispute. The principles of equity demonstrate themselves in even more diverse manifestations when examining the most incomprehensible part of the judgment, which comes from Antonio who insists that Shylock convert from his Jewish faith. This move implicates the creditor's faith as the source of his vendetta against Antonio.

In this way, the Raleigh's case is instructive. The use of the pardon as a way to intervene upon the severity of the punishments facing Shylock emanates from a religious ideology more so than a legal principle. Determining that Portia as Balthazar has sufficiently made a case for applying the Venetia law regarding aliens, the Duke says:

> I pardon thee thy life before thou ask it:
>
> For half thy wealth, it is Antonio's,
>
> The other half comes to the general state,
>
> Which humbleness my drive unto a fine. (4.1.365-368)

Typically, pardons were used by the crown as a "matter of grace" in a criminal prosecution or by the church in an ecclesiastical matter (Baker 589).[186] In this particular moment, the use of the pardon as a remedy provides a fascinating contrast to Shylock's refusal to extend any such

[186] Read provides a brief discussion of several requests for Queen Elizabeth's pardon by Edmund Grindal, the Archbishop of Canterbury, William Parry, and Robert Devereux, the Earl of Essex (183-184, 300-301, 514-515).

demonstrations of mercy toward Antonio. Portia actually invokes the notion of mercy as she sues for application of this alien statute where the maximum penalty takes his wealth and his life. Where Aumerle accepts the pardon when his illegal bond is discovered in *Richard II*, here, Shylock actually refuses the pardon and desires the Duke to "take my life" (4.1.370) where all of his possessions will be removed from him—including "the means whereby I live" (4.1.373). Shylock's rejection of the pardon seems to be ignored. Still, living in the world of commercial exchange Shylock recognizes the realities of poverty where one is stripped of one's possessions. The play attempts to inject humor by illustrating the financial travails of Bassanio, Antonio, and ultimately Shylock as a mere trifle. Though the plot entertains, it cannot sell itself completely as a whimsical effort where Shylock's rejection of the pardon has more than economic implications, but has legal ones as well. At this moment, Shylock rejects this amorphous "settlement," which looks like criminal plea bargaining where his life and property are at jeopardy.

Within this scene of the play, the diverse judgments of Shylock by different characters represent the competing interests in the drama and the early modern society. Here in 4.1, the characters of Shylock and Antonio emerge as consumed with the notion of judgment. To illustrate, Antonio declares: "Let me have judgment and the Jew his will" (4.1.83). Equally important, Shylock asks the court: "What judgment shall I dread doing no wrong?" (4.1.89). These competing interests arise out of how the court interprets the surety relationship, the penalty clause, the available legal remedies, and Shylock's bond in general. Hence, the law of remedies develops as not only important for illustrating the principles of contract law, but for the principles upon which this realm will propel itself from the middle ages into this early modern era. For instance, in this scene, each of the judgments is grounded in common law concerns like notions of expectation,

reliance, and specific performance upon which contracts are based. Of course, the principles for the law of remedies here grounds itself in equitable notions, like fairness.[187]

In analyzing the different possible remedies, the competing judgments of Gratiano, Antonio, Portia, and the Duke unfold. In particular, these varied judgments operate as the source of the amalgam that is the final sentence in this case. The play uses the word, "sentence" (4.1.201, 294, 300), which implies criminality, where this legal matter begins as a forfeiture action—notably, a remedy in both contract law and in criminal law.[188] As I have said, the trouble with the case is that it shifts from civil to criminal sensibilities and gestures in its treatment of Shylock. At one point, Shylock is facing the death penalty. Arguably, such a "penalty" might function as poetic justice. In particular, he expresses no concern about Antonio's potential death from extracting a pound of flesh. Shylock even denies Portia's request for medical personnel to address the possible blood loss from the incision.

In spite of the less severe penalties assessed against Shylock, which flow from civil sanctions and religious atonement, Gratiano's judgment would have included a more corporal result. Gratiano suggests that had a jury trial been conducted for Shylock:

> In christ'ning shalt thou have two godfathers,--
>
> Had I been judge, thou shouldst have had ten more,
>
> To bring thee to the gallows, not to the font. (4.1.394-396)

[187] Spinosa discusses the struggle between equity and the common law in reading bonds and contracts (65-67).

[188] In Posner's mock appeal, his final judgment finds Shylock not guilty of attempted murder, restores his property, but denies him "the return of the three thousand ducats that he had lent to Bassanio" (151).

Gratiano seeks imprisonment for Shylock—not religious conversion. It is likely that a jury of Shylock's peers may have decided as Gratiano in this matter. Therefore, his judgment represents one, which may have been more commonplace for this period. Despite this pronouncement in Act 4, some scholars suggests that Gratiano had no knowledge of Shylock's motivations (Margolies 98). While it is possible that Gratiano's outrage grows out of the bond's fleshly penalty, it is difficult to resolve this 'lack of knowledge' argument with Gratiano's arguments for the gallows. In this legal matter, capital punishment would have been one of the options, where the litigation shifts from trivial dispute between commercial opponents to a case of import with global ramifications for this island port of early modern Venice. As evidenced by the Fraudulent Conveyance Act, such matters were similarly of concern to the British realm.

At the opening of Act 4, the Duke clearly sides with Antonio in this matter. At first glance, it appears that the disfavor of Shylock lies in the unconscionable nature of the "pound of flesh" clause. However, the nature of the judgment against Shylock suggests that more lies as the core of this almost uniform animus against this Jewish lender. Of note, there exists an issue of class difference as well, where the Duke refers to Antonio as "a royal merchant" (4.1.29) as he tries to convince Shylock to retract his forfeiture action. The Duke embodies a conflicted figure who vacillates in his judgment almost as much as the other characters. He grows as indeterminate as the play with its comic *and* tragic sensibilities. The source of this vacillation may be the rationale for Posner analyzing the play as if Shylock has appealed from the Duke's decision. He posits the legal irregularities, which occur at the original trial as the basis for an appeal for Shylock. Where Posner looks at the potential "bad motives" of Shylock, I weigh the intention and the tone of Portia, Shylock, Gratiano and the Duke (Cormack, et al 147-155). Such an examination is vital in determining the validity of the judgments—both dramatic and legal.

As the case evolves into a trial of and response to Shylock's religious faith, this legal matter struggles to remain within the domain of mercy, morality, and Christian principles as the Duke's court crafts its ultimate judgment. Still, it grows difficult to question the court's legitimate concern with geopolitics given that the court demands this foreigner, Shylock, to convert from Judaism to Christianity as many of its explorers, including Spanish explorers were demanding natives in distant climes.[189] Hence, this struggle between law and religion functions as a parallel in the struggle between comedy and tragedy within the play as well.[190] Like the play, the Duke's court struggles with the type of legal remedy that represents its essence, much like Shylock's bond.

Conclusion

"I cannot find it; 'tis not in the bond*"* (Shylock 4.1.258)

At the outset of this chapter, I argue that Shylock's bond emerges as the central instrument—legal and material—through which to read this play. As the acts progress, so does the biography and the urgency of this stage property—the bond. In spite of the extensive negotiating and the careful sealing of Shylock's bond, we demonstrate the bond's fallibility, in particular the penalty clause. Striking and severing terms of the contract could neither sustain, nor resuscitate Shylock's bond. The law of remedies sits appropriately at the center of this analysis, where equity was allowed a broad spectrum of approaches to resolve early modern cases. Though this Venetian court attempts to apply principles of equity, the result uncovers an inequitable application. Ultimately, Shylock loses his entire estate while pursuing enforcement of his bond, worth only

[189] Molly Murray also observes that John Donne and William Alabaster convert shortly before or after the Earl of Essex's expedition to Cadiz (69).

[190] Murray addresses *The Merchant of Venice* and the conversion of Jonson, Dryden, Donne, and others at 28-34.

3,000 ducats. If Shakespeare attempted to design a sympathetic response to Shylock, the inequitable result of his forfeiture case just might evoke it.

In essence, written evidence offers a way to complicate this stage property as it winds its way from the three-party surety agreement, the penalty clause, and the examination of remedies. While early modern history shows that despite the flaws in their available remedies, some penalty clauses like that of the King James I, Walter Raleigh, and Francis Bacon agreement were enforced. This drama breaks the penalty clause in Shylock's bond. In spite of the flaws, no matter how critics may minimize the importance of props on the stage, we as the audience are constantly reminded that a prop is not merely a prop, but evolves, much as Gosson proclaimed, as the soul of the play.

Finally, we may ask: was there justice and equity in the case of Shylock versus Antonio? Within the laws available to this early modern period, I argue that every effort should have been made to maintain the contract. The Duke's Court should have struck the illegal penalty clause as against the good faith that each of the parties should have within a contract. Antonio borrows 3,000 ducats on Bassanio's behalf and this amount should have been returned to Shylock. As this judgment was offered to Shylock before bringing this case before the court, Shylock would also be assessed court fees and any other costs, which Antonio or Bassanio may have accumulated to address this cause.[191]

[191] In Posner's opinion, he disagreed with me. He refused the 3,000 ducats to Shylock (Cormack et al 151).

CHAPTER 4

"What device is this / About a will": Proving Fraud in Will Contests in Jonson's *Volpone*

Introduction

"For the sincerity of testaments, and that no fraud should be practiced." –Henry Swinburne, *A Briefe Treatise of Testaments and Last Willes (1590)*[192]

Although later the Statute of Frauds (1677) required a written document for wills, Ben Jonson's play *Volpone* (1605) highlights both the earlier pitfalls as well as the importance of placing additional safeguards, like the subsequent requirements for multiple witnesses and public filings, for these legal instruments. In this chapter, I examine the significance of will formation, the illicit acts, which surround this process, like its compromise by fraud, the distinction between bribes and gift, and the intention of the parties.[193] While emphasizing the wrongs, which emanate from these written testaments, Volpone neither repudiates this process, nor the will itself, but offers a way to expand the breadth of individual rights, as the strictures of English subject diminish. Through most of the plot, the playwright does not offer any legal safeguards to protect will formation. However, in the end, Jonson does punish the wrongdoers; this tactic, I argue, evolves not only as legal ploy, but also in response to the anti-theatrical critics who insisted that these early modern playwrights failed to punish bad behavior in their comedies. In this effort to punish, Jonson responds to the corruption in will formation, but provides no solutions to anticipate or prevent it.

[192] See page 64.

[193] I delivered a portion of this chapter at Renaissance Society of America on the panel, "Re-considering accuracy, verisimilitude and truth claims in the early modern period across the disciplines," in New York, New York, in March 2014.

As I investigate this profiteering, I follow how the will functions as a stage property and the key piece of written evidence on this Jacobean stage—as well as an important document in legal jurisprudence. I utilize key moments in the material formation of the will, like its creation, its exchange, its reading, and its references. By investigating these moments in the life of the will, I reveal the evidentiary implications of this legal device.[194] The comedy *Volpone* offers evocative moments where the issues of fraud and will formation arise to intervene and implicitly comment upon the will-making process. I argue that the manipulation of this legal instrument invokes and the problematic nature of will formation, specifically the creation and the execution of the document and the fraudulent activity, which surrounds the will.

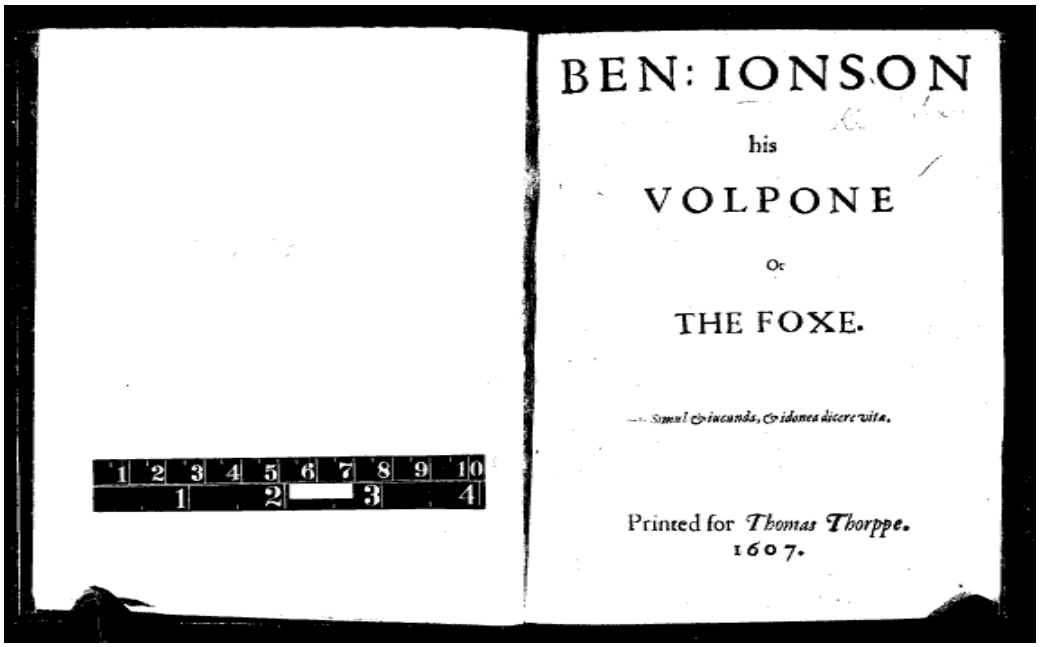

BEN: IONSON
his
VOLPONE
Or
THE FOXE.
Simul & iucunda, & idonea dicere vitæ.
Printed for Thomas Thorppe.
1607.

Figure 18 Frontispiece of Ben Jonson's Volpone, or The Foxe, 1607, © The British Library Board, C.34.d.2. frontispiece, EEBO STC 2nd (ed.). / 14783, Greg / I, 259 (a).

For instance, within this play, Volpone and Mosca convince several parties, namely Corbaccio and Corvino, to draft a will conveying their property to Volpone, and, in exchange,

[194] I explore here the physical biography of Volpone and Corbaccio's wills, which is separate from its legal biography, not unlike Igor Kopytoff's distinction between an object's physical and economic biography (Appadurai 68).

Volpone will designate the other party as the "sole" heir to his fortune; neither Corbaccio, nor Corvino realize that the other has been promised Volpone's fortune as well.[195] Eventually, the ruse is detected, but the case is eventually adjudged in court at 5.10 and 5.12. In these scenes, the court exposes the fraud, which surrounds this process of will formation. Unfortunately for Volpone, his acts evolve into the corruption of innocents as well. As a consequences, these innocents, Bonario and Celia, bring the matter of the "wills" to court in earlier scenes at 4.4-4.6, thereby revealing Corbaccio's will, which leaves his estate to Volpone. Though *Twyne's Case* (1601) confronts the matter of fraudulent conveyances to avoid debt, Jonson offers a similar course of events within his play.[196] In particular, Volpone promises several secret gifts, retains copies of the multiple conveyances, conspires with Mosca, and exposes the latent denial of wrongdoing in the final act of the play.[197] *Volpone* serves as an engaging way to address critical issues dealing with the manipulation of wills and the replication of fraud throughout the play.

As the theatrical stage dramatizes this fraud surrounding wills, the legal stage in early modern England evolved as a site where litigants attempt to perfect their frauds. Indeed, the myriad of court jurisdictions emerged as another way in which litigants in these probate matters could cloak deceitful intentions. While common law courts focused on the strict letter of the law, courts of equity, as the Court of Chancery, handled questions of equity, like fairness to the parties. Although they heard issues on contracts, other times they addressed the detailed issues surrounding wills. Ostensibly, this venue became the jurisdiction for many cases, which the common law courts

[195] While the play uses the term, "heir," the law recognizes the term, "devisee," since none of the characters inherit from Volpone by blood. He designates, or rather "devises," the future owner of his estate through his will. However, since the play uses the term, "heir," I will use the same word in spite of this legal distinction between heir and devisee, which developed through Henry VIII's acts 34-35, c 5 §17, of Parliament surrounding will formation in 1542-1543 *(OED*).

[196] See Ross's discussion of fraudulent conveyances in his monograph (101-112).

[197] See Twyne, 3 Coke 80; (1601) 76 ER 809.

declined to address. The Court of the Chancery had a meticulous reputation for record-keeping, which surpassed that of the common law courts and the ecclesiastical courts. The Court was especially active against the question of fraud where "all too often 'a man of straw' obtained the administration and handed over the profits" as in *Bennet v Wheler* (1596) (404).[198] With their limited jurisdiction, the Chancery Courts could decide cases that rested on the construction and the intent of the will. However, only the jurisdiction of the ecclesiastical court could determine validity, except where "the spiritual judges found difficulty in executing their sentence, [then] the Chancery could entertain the matter" (Jones 403-405).[199] In this respect, the duties of the Chancery, in part, involved a testamentary jurisdiction, which included probate law or the administration of wills. During the medieval period, church courts established an identifiable jurisdiction, which determined disputed wills and the procedure for establishing legal proof to anticipate such disputes. At times, the ecclesiastical courts and the common law courts found themselves ill-equipped to address a remedy sufficiently in probate disputes and had to draw on the Court of the Chancery.

For example, in the case of *Lucas* v *Burgess* (1573), Thomas Wotton certified that the will of John Lucas had been disproved in the Court of Arches, but the matter of the validity of the will still had to be decided by the Lord Keeper.[200] However, the plaintiff-heir could inherit part of the estate if the will was voided. Hence, the validity of the will was forwarded to two masters, Vaughan

[198] A "man of straw" was a dummy or man without means—hence, he was a legal fiction, as defined in an *Etymological Dictionary of Modern English* by Ernest Weekley (1427).

[199] The Bishop's Court was another reference for the ecclesiastical courts. These courts handled matters like adultery, bastardy, defamation, etc.; its jurisdiction is discussed extensively (Baker 146-154),

[200] The Court of the Arches is an English ecclesiastical court of appeals connected to the archbishop of Canterbury (Baker 147). The Lord Keeper of the seal was responsible for "the silver seal matrix, bearing the sovereign's effigy," and the great seal itself was "the most important mark of authentication in the realm" (Baker 115).

and Yale.[201] Both of these men reported that two judgments had been made in ecclesiastical court *against* the will. There were five witnesses—two examined before the ordinary and three in the Chancery Court.[202] All testified that the "will was in the hand of the testator;" one of the witnesses stated that the testator, John Lucas, shortly before his death made the will in his own handwriting.[203] Armed with this information, the masters concluded that the will was invalid, stating, "that these proofs in ecclesiastical law be not sufficient to make lawful proof of a will or testament, leaving the considering of the same, touching the lands, to the temporal laws and this honourable court."[204] In matters of the will, the examined witnesses had to be found "credible." In essence, the witnesses could not have an interest, i.e. financial, in the will.[205] Thus, the court found their testimonies insufficient to validate the purported will. While case illustrates the complex problems of will contests, exposes the issues with witness credibility, critiques the court's complicated judgments, the *Lucas* court fails to offer any safeguards to assure the testator's that his will shall be upheld for his heirs during this period.

Not unlike the *Lucas v Burgess* case, Ben Jonson's comedy *Volpone, or The Fox* (1605) serves as a dramatic site to represent these deceitful intentions, which surround the making of wills. In expanding upon the will's meaning, the emperor Justinian noted that "the Latin word, *testamentum*,…is as much as *testatio mentis*, that is to say, a testifying or witnessing of the mind" (Swinburne 3).[206] Within the play, this written instrument at once a familial legacy and theatrical

[201] Masters, using the Chancery Court as an example, were a part of the large staff of clerks who were often "doctors of law" and "deputized for the chancellor in both administrative and judicial affairs." They heard petitions and complaints and issued writs. Others dispatched litigations. Some, like the master of the rolls, kept the records of documents authenticated in the Chancery (e.g. patent rolls, close rolls, and treaty rolls) (Baker 115).
[202] The ordinary was a representative of the bishop. For instance, an ordinary was supposed to be in attendance at every gaol (or jail) delivery of clerks convicted in a criminal matter (Baker 586).
[203] The testator was the person who made the will for his or her property.
[204] See Jones 405-406, note 4.
[205] See 407, note 3.
[206] The word, "testament," is also used interchangeably with "the last will" (Swinburne 3).

centerpiece alters into one fraught with devices, schemes, and manipulations, which attack its purported validity. As a written legacy, this legal document emphasizes the significance of the Statute of Wills of 1540 (discussed in more detail later), which allowed individuals to devise their interests in land through their wills. Unveiling and exploiting this important piece of written evidence, *Volpone* dramatizes the problematic nature of will formation. In particular, I demonstrate how the play addresses the issues of testamentary intentions, the characterization of bribes and gifts to the testator, the will contests, and the perpetration of fraud on the court in a way, which highlights the multitudinous probate litigation during this early modern era. During those

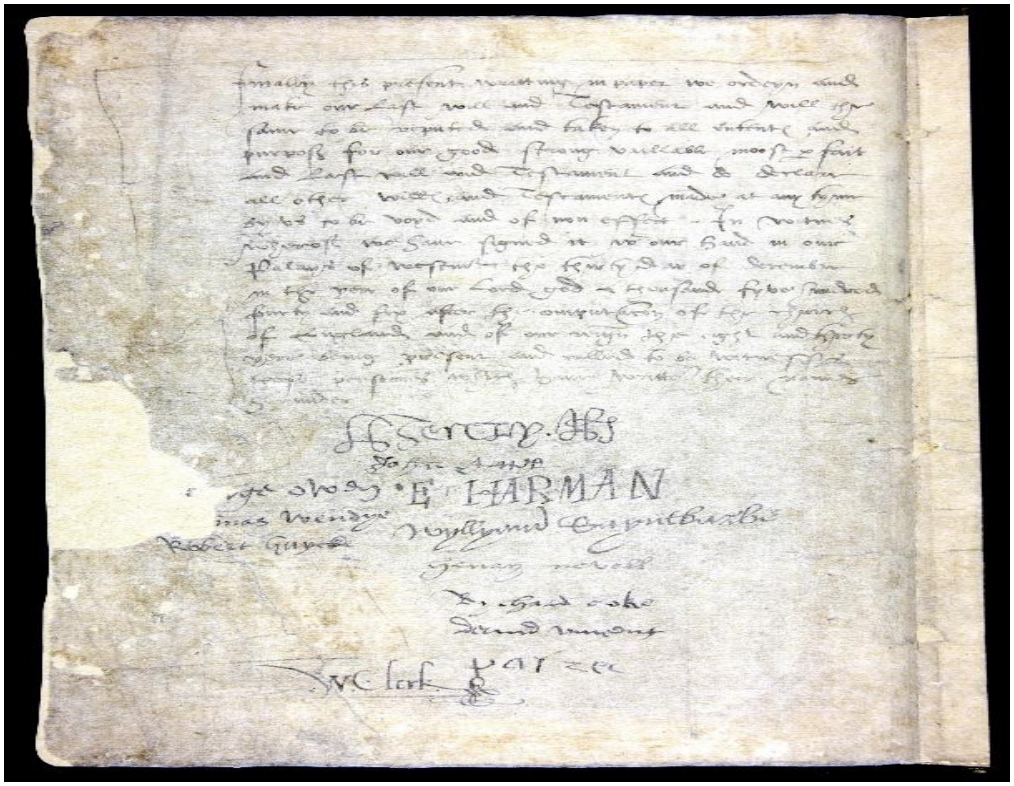


Figure 19 Henry VIII's Will, 1546, Parchment, The National Archives, Kew, Richmond, Surrey, E23/4, fol. 16v Dry stamp register, SP 4/1 membrane 19.

courtroom scenes, Jonson discloses the entrenched corruption within this will process, and the unsavory characters within the conspiracy, but punishes their illicit behavior publicly in view of the entire community. Furthermore, on the level of genre and in response to anti-theatrical critiques, he illustrates the punishment of the wrongdoers in the resolution of this comedy.

However, we should keep in mind that Jonson does not repudiate the importance of the will and its process, nor does he offer any preventative safeguards, which would forestall the shenanigans the audience witnesses during this drama. Beyond the building and felling of kingdoms, Jonson situates a comedy, which demonstrates that, even among individual subjects, the matter of legacy is filled with import and serious consequence.

In keeping with the importance of legacy, primogeniture inextricably linked family, property and power in the period. This law of succession develops as the subject of several early modern plays, like Shakespeare's *Titus Andronicus*, where the debate over which brother shall succeed the deceased father—the elder Saturninus or the younger Bassianus—is one of the opening dilemmas in the tragedy. Still, other plays wrestle with succession, among another set of rival brothers, as in *Richard III*, or others with the lineage to the throne, as in *Richard II*. Eventually, the concerns shift from putting one's affairs in order toward safeguarding the very property that one intends to leave.

In response to this concern for legacy and property, the subject of Henry VIII's Succession Act of 1544, addressing the succession of his own children, grew relevant to laws, like the Statute of Wills of 1540. This statute was enacted by Parliament and accepted by Henry VIII of England during his reign.[207] For the first time post-Conquest, property became legally permitted for transferal through a will. This event was a seminal moment in the history of will formation. In essence, individuals could now transfer their own interests in land to their heirs and devisees (i.e. non-biological beneficiaries) by a will. In addition, the statute gave testators more power by creating expansive future interests for heirs and devisees and eliminating extensive bureaucratic

[207] See 32 Henry 8 c 1 (1540).

delays for their heirs and devisees. The statute also aimed to eliminate "fraud, secrecy and confusion," which could result from these property issues (Hexter 178-179).[208] Henry VIII's acts of succession and multiple offspring from different wives read like a probate nightmare (see above image of Henry VIII's will (1546)). Still, in this case, we may also read the seeds of the intertwined notions of law, conscience, and testament from his reign.[209] The law of succession has been described as "an attempt to express the family in terms of property." Such was the social pressure with respect to one's estate that it was tantamount to a sin and very nearly a crime to leaves one's affairs without a will (Jones 400). Exploiting both sin and property, Ben Jonson uses the site of the will to dramatize these early modern foibles, following the 1540 statute, in *Volpone*.

In this chapter, I argue that Volpone's and Corbaccio's will highlight the problematic nature of will formation by emphasizing its creation, delivery, exchange, reading, and execution in this comedy. Although the very existence of wills implies a clear indication of the deceased's intention in distributing his or her property, the introduction of fraud in an apparent contest of wills presents complications, which surround the actual document that should offer clarity. When the Parliament enacted the Statute of Wills of 1540, the legislation replaced the Statute of Uses that governed the transfer of real property (i.e. land) from the deceased to other parties. Henry VIII instituted this statute under the demand of his people who sought to have more autonomy in how

[208] See Charles M. Gray's chapter entitled, "Parliament, Liberty and the Law" in *Parliament and Liberty from the Reign of Elizabeth to the English Civil War* edited by Jack H. Hexter (177-180).

[209] Henry VIII's will, like the rest of his life and that of the rest of England, went through many changes. After his death, it is said that there were included some undispersed gifts, or "legacies," to several parties, including Edward Seymour, who was made Dukedom of Somerset, his brother Thomas Baron Seymour of Sudeley, Dudley and Wriothesley were made Earls; each of them received cash gifts as well. Legacies are a sum of money, or articles, given to another by will (i.e. bequests) (*OED*). See also Swinburne's discussion of legacies (bequeath) (306-326). Swinburne discusses three sorts of gifts in consideration of one's death; Henry VIII's gift seems to fit the first sort where the giver is not moved by any "present peril, but moved with a general consideration of the man's mortality giveth anything" (54-55).

their property would be divided upon the death of the testator. Despite its intention, the statute failed at eliminating the fraud, secrecy, and other illicit behavior, which surrounded this legal process. This chapter's chief preoccupation explores an underlying concern with all written documents in this dissertation: how can the state safeguard the legal intentions of the contracting parties in the face of intervening fraud? While Jonson does not answer this question directly, he indirectly provides his own resolution in the form of a legal judgment against the "sins" of these characters. Was this move simply a response to some of the anti-theatrical tracts during this period, which called for a punishment of wrongdoers in comedy? Or from a legal perspective, it seems that Jonson offers an independent judgment of characters who may have escaped the hands of justice.

While this project, *Tainted Proofs*, builds on the work of Lorna Hutson and Subha Mukherji as they utilize evidence to examine early modern literature, their discussion of Jonson and, in this case, *Volpone*, does not address his contribution to the work of probate law, particularly the process, which surrounds will formation. Nevertheless, their analysis presents a useful discussion on how the juridical may read the dramatic. In particular, I find instructive Hutson's examination of Jonson's comedies and the evolution of plot, the use of rhetorical evidence and early modern judgment. She reads his plays, "where the close-ups of small talk, moments in the 'judicial observation' of what people are saying to one another, suddenly taking center-stage." Hutson investigates character, plot, and intrigue by considering evidence in an altered light. She focuses on anterior events like "a letter falling, a confession of child substitution, a witness to a rape or murder brought forward, someone thought dead brought from hiding." Hutson suggests that "Jonson abandoned the evidential relations of past actions that characterized *The Case is Altered* and embraced instead, a sequence in which no immediate dilemma is set out, and no history

emerges to resolve it" (307). Noting the "theatre as court" metaphor was pervasive throughout Renaissance drama, Subha Mukherji observes that "dramatists, like Kyd, Marlowe, Shakespeare, Jonson and Webster repeatedly open up the action of their plays, explicitly and implicitly to the judgement, even 'sentence' of the theatre audience" (1). Recognizing the gap between the law of courts and the law of conscience, she acknowledges that legal justice is "written out of" the theatre—a world apart from the Jonson's Venetian law court as in his *Volpone* (11).[210] Neither of these scholars focus on Jonson's work on will formation; hence, this chapter complements their interest in reading evidence in the drama of the period.

Other critics, however, Ronald Bedford, Lloyd Davis, and Philippa Kelly have produced work with wills within early modern dramatic, which cannot be overlooked, as they consider the diverse interventions of wills. They analyze the staging of will-making and its instructive value when played on the stage, particularly within early modern comedies, like George Chapman's *The Widow's Tear* (1605) and part one of Thomas Heywood's *The Fair Maid of the West* (1603) (206-211).[211] Though each of these scholars make interventions with evidence and writing, none of these works have examined specifically what contribution written evidence—particularly the will and its susceptibility to fraud—makes to early modern jurisprudence, where written evidence reveals its place as both an identifiable safeguard and a troublesome tension within this period in the theatrical courts, as well as in the legal courts.

[210] In addition, Richard Helgerson's argument that the writing of England's history becomes indelibly linked to the writing of the law in the battles between Bacon and Coke as justices and the writing of theatre through early modern playwrights like Shakespeare. Though Bacon favored the king and Coke favored the law, both legal scholars agreed on the project of writing the law (74). Helgerson also argues that "Shakespeare helped establish the new genre of the national history play and then gave that genre a singularity of focus that contributed at once to the consolidation of central power, to the cultural division of class from class, and to the emergence of the playwright—Shakespeare himself—as both gentleman and poet" (245).

[211] See Ronald Bedford, Lloyd Davis, and Philippa Kelly's *Early Modern Lives: Autobiography and Self-representation, 1500-1660*.

Still, other early modern dramas mention wills from King Richard II's admonishment to Aumerle, confidante to the king and son of the Duke of York, to "choose executors and talk of wills" (3.2.148) in *Richard II* to Mark Antony's presentation and reading of Caesar's will, "this testament," before the citizens of Rome (3.2.131) in *Julius Caesar*. Notably, the manipulated will consumes the plot in Jonson's *Volpone*. It dramatizes the complications caused by contesting wills produced with fraudulent intentions, racing to secure a valuable estate as we contemplate their bribes as "seeming" gifts, and attempting to contrive plots around both the litigants and the law-givers. Jonson brings an energy and an engaging plot surrounding not only the dramatic problem of wills, but its legal disputes to the play, *Volpone*. In this way, the playwright merges the legal, the political, and the cultural by exploiting the vagaries of the will, as a stage property for the theatre in response to the critical commentary on the theatre's promotion of immorality through anti-theatrical tracts.

Specifically, this chapter argues that this play will demonstrate how the early modern will process was fraught with illegality—fraud, bribes, confidence men, and criminals. The written document itself turns out compromised and its fraudulent state exposes a defect in early modern jurisprudence and with individuals and their heirs. Jonson's play touches upon this very anxiety. This drama exposes this staged piece of written evidence as both theatrical and legal. This "will contest" between competing and conspiring parties sits squarely within this play and this early modern moment. While considering Volpone's will and Corbaccio's will, which are presented in this play, I examine the problematic nature of will execution in these moments, rich with the social and the financial opportunism for these men and women, who seek their fortunes—and others.

Part 1 "Evaluating Volpone's Compromised Testamentary Intent"

In the first act of the play, I examine the collusion of Mosca and Volpone. They seek to obtain the confidence of those who desire Volpone's fortune. Several relationships evolve as central to obtaining advantage over these would-be heirs: Corbaccio, Voltore, Corvino, and Madam Would-be. I probe the testamentary intent (i.e. testator's intent to make a will), which provides clear proof of the testator's unwavering and unencumbered desire to give his property to his named heirs.[212] Within this intent, I critique Volpone's apparent mental capacity to make a will. In this way, I consider how the process of will formation presents the issue of validity as a concern during this early modern era. Also, I investigate how testamentary intent developed as difficult to prove for the ecclesiastical courts as well as for Chancery Courts, which operated as a more capable jurisdiction for detecting, proving, and punishing fraud.[213] Notably, the religious inflection abounds throughout this play, particularly in the opening monologue in first act and scene, which functions as a sharp contrast in this world of chicanery that surrounds wills and their formation.

Part 2 "The Contest of Wills and the Reading of Volpone's Will"

In this comedy, multiple wills are at play: Volpone's will and Corbaccio's will. While examining these wills, I explore the difficulties found in will execution, particularly the moment of its delivery and its exchange. While Mosca and Volpone scheme to obtain Corbaccio's will and thus his fortune, they convince Corbaccio to disinherit his son and heir, Bonario. I critique the moment where Corbaccio divests his son of any future financial legacy by surrendering his will to Mosca in a poignantly self-interested moment. Although these transactional moments of Corbaccio's will delivery and exchange advances a portion of Volpone's scheme, the drafting and

[212] See also Swinburne's *A Briefe Treatise of Testaments and Last Willes*, "Of the Office of the Executor," Part VI, 433, where he notes that "in all cases a court of equity must consider what was the real intent of the testator."
[213] See Jones 405.

the reading of his will emerge as dynamic moments as well. These sites function as pivotal events, which uncover these written instruments as evidence of fraud and sin. Within this critique of morality, Mosca's discussion on the nature of conscience grows conspicuous, and I address this seeming turn toward introspection and the repercussions of not only his illicit acts, but also that of all of the co-conspirators, including his master, Volpone.

Part 3 "Perpetrating Fraud on the Court with Wills"

Finally, I analyze how the dilemma presented by these wills shifts into a complication for the courts as well. In the play, the characters display no hesitation in perpetrating fraud upon the court. As a result of their financial schemes, Corbaccio not only disinherits his son, Bonario but Volpone also attempts to rape Celia, Corvino's wife. After Bonario and Celia take these matters to court, the financial and legal stakes raise, and the frauds unfold. In the court's final judgment, this play effectively responds to the anti-theatrical criticism directed at comedies and their failure to punish illicit behaviors—in essence, "sin." For instance, the final judgment that the court renders in this play surprises where Jonson punishes all who have conspired in the play, rather than only punishing Mosca and Volpone. While the playwright does not offer any legal safeguards as such, the punishment on the stage serves as a cautionary legal as well as moral tale for the early modern audience.

Now, I analyze how Jonson's dramatic plots complicate the ideal conditions for will formation by introducing issues of potential mental incapacity of the testator, Volpone, his diverse conspiracies with Mosca, and his eager heirs and their bribes.

PART ONE: 1.3: Evaluating Volpone's Compromised Testamentary Intent

"And, on first advantage, / of his gained sense, will I re-importune him / Unto the making of his testament" – (Mosca 1.4.88-90)

At the beginning of the play, Volpone's opening monologue at 1.1.1 presents a wonderful scene that creates, for this period, a blasphemous worship of money, particularly gold, that sets the scene for the entire play:[214] While "lying here amongst my other hoards" (1.1.7), Volpone luxuriates in his glorious possessions:

> …let me kiss,
>
> With adoration, thee, and every relic
>
> Of sacred treasure in this blessed room. (1.1.11-13)

Although the preamble to most wills eschew any conspicuous praise of the pound, this monologue embraces this love of money and possesses a strong ecclesiastical influence.[215] As he worships his things, Volpone reveals that men will do anything for money at the sacrifice of their virtue:

> Dear saints,
>
> Riches, the dumb god, that giv'st all men tongues:
>
> That canst do naught, and yet mak'st men do all things;
>
> The price of souls; even hell, with thee to boot,

[214] At 3.4, the First Servant asks, "How! What does his cashiered worship mutter" in Shakespeare and Middleton's *Timon of Athens*? Volpone's mutterings hearken to this 'cashiered worship.'

[215] Some of this ambiguity may be accounted for the shift from the Catholic to the Protestant affiliation, which occurred during Henry VIII's realm; notably, by 1537, at least ten percent of preambles to wills dropped the language: "which bequeathed one's soul to God, the Blessed Virgin Mary, and the Holy Company of Heaven, and replaced it with a simple neutral, bequest of soul to 'Almighty God'" (Zell 200).[215]

Is made worth heaven! Thou art virtue, fame,

Honour, and all things else! Who can get thee,

He shall be noble, valiant, honest, wise— (1.1.21-27)

He proclaims that all men know "the price of souls." For these "riches," men "do all things." At line 70, his first soliloquy sets up the problem of the play. Within this speech, Volpone tells the audience how he will use his affluent circumstances with "no wife, no parent, child, ally, / To give my substance to" (1.1.73-74). He will trick those who seek his fortune by accepting their many gifts and seek to "play with their hopes / And am content to coin 'em into profit" (1.1.85-86). His soliloquy like the will, a person's last testamentary documentary, vacillates between the legal, the illegal, the religious, the social, and the theatrical. For Volpone, the will, his final testamentary intent, functions as a financial ploy to relieve his "clients" of their wealth (1.1.76). In principle, the will embodies the last intention of one who contemplates the legal division of all of the property that comes under one's ownership. During this early modern era, the will exists as a new legal device to chart one's own legacy of land, instead of the crown.[216]

In the first act of the play, Jonson introduces the audience to several characters who provide instrumental roles in carrying out the fraud that Volpone and Mosca, his parasite, perpetrate upon the other characters, who, in their own greedy ambition, seek Volpone's fortune.[217] Volpone, who is without a legitimate legal heir, where his progeny, according to Mosca, consists of"

Bastards,

[216] For some scholars, this legal document becomes revealing at the level of gender as well (Ferguson, Buck & Wright 16).

[217] For further discussion of the role of wills and succession in early modern comedies, see *The Widow's Tears* (1605) by George Chapman and Thomas Heywood's *The Fair Maid of the West* (1603) (Ferguson, Buck & Wright 223-224).

Some dozen, or more, that he begot on beggars,

Gipsies, and Jews, and black-moors, when he was drunk.

Knew you not that, sir? 'Tis the common fable,

The dwarf, the fool, the eunuch are all his. (1.5.43-47)

As poorly as Volpone and Mosca may be characterized for duping these poor, unknowing fools, Jonson offers the audience a way to understand these "victims" in this will contest, where he characterizes them as carnivorous animals like vultures (i.e. Voltore), ravens (i.e. Corvino), and carrions (i.e. Corbaccio).[218] Seemingly, in recompense for their covetous behavior, Volpone crafts a charade against these "would-be" heirs by convincing all of them that they will assume the roles as his sole heir and executor. Nevertheless, there exists a caveat: Volpone requires all contestants to surrender their estates to Volpone—after all "what's mine is yours," or more preferably "what's yours is mine." This particular act demonstrates Mosca and Volpone's depraved duplicity, and the similarly unethical behavior of the prospective "heirs." The first part of this discussion critiques intentionality and will formation. From the declaration to the proposal and the exchange of wills, each of these moments crafts a particularly amusing, but highly intelligent way of "pulling an early modern heist" or robbing each of the contestants who wish to be his heirs. Volpone and Mosca pilfer not only of the contestants' plates, pearls, diamonds, and *cecchines*, or gold coins, but also the remaining contents of their estates.[219] In this way, the will operates as an instrument of opportunity—for the devisees, Volpone, and Mosca.[220] Invalidating the testamentary intent, the

[218] It is possible that Jonson's use of animalistic metaphor, as Robert Shaunessy argues, hearkens to "an extended beast fable in which the greedy Voltore, Corbaccio, and Corvino…are outwitted by his Fox, whose willingness is inspired in part by Caxton's *History of Reynard the Fox* and by *Aesop's fables*" (38).

[219] Cecchine: "sequin, gold coin worth 9s. See line 1.3.66 note in G.A. Wilkes, ed., *Ben Jonson: Five Plays* (Oxford and New York: Oxford UP 1988).

[220] Both Mosca and Volpone are made heirs in the two wills, which appear on the stage in this drama.

fraud in this will contest manifests itself, false declarations, an ailing testator, the promised reciprocation, and bribes.

Critiquing the Mental State of the Testator and his Conspiracies

I begin with a premise from an early modern legal treatise that "mad folks, and lunatic persons, cannot make a testament, nor dispose of any thing by will" during their furor or insanity of the mind (Swinburne 117). At first glance, the testator's mental state would seem to be of


A BRIEFE TR
OF TESTAMENTS AND
LAST WILLES,
Very profitable to be vnderstoode of all the Subiects of this Realme of England, (desirous to know, the better, the hereof, and How, they may make their Testaments: and by what meanes the same may be effected or hindered,) and no lesse delightfull, as well for the rareness of the worke, as for the easines of the stile, and method:
Compiled of such lawes Ecclesiasticall and Ciuill, as be not repugnant to the lawes, customes, or statutes of this Realme, nor derogatorie to the Prerogatiue Royall.
In which Treatise also are inserted diuers Statutes of this land, together with mention of sundrie customes, as well Generall as Particular, not impertinent thereunto:
Besides diuers Marginall notes, and Quotations not to be neglected, especially of Iustinian the, for young Students of the Ciuil Law:
Two Tables, the one Analyticall, describing the generalities of the whole Treatise: The other Alphabeticall, declaring the particular contents thereof: Both at the beginning, this at the end of the booke.
By the Industrie of Henrie Swinburn, Bachelar of the Ciuill Law.
2. Kings 20.
Put thine house in order, for thou shalt die and not liue.
LONDON
Printed by Iohn Windet. 1590.

Figure 20 Frontispiece for Henry Swinburne's A Briefe Treatise of Testaments and Last Willes, 1591, Paper, The University of Michigan, EEBO STC/977:05.

supreme importance if this document, the will, may be accepted as a valid, legal instrument by the early modern courts. For example, over the course of Shakespeare's *King Lear*, many aspersions are cast about the "madness" of King Lear (3.4.21) *after* he decides to divide his kingdom among his daughters; such a devise would be legal.

Here in Jonson's comedy, while the eager contestants for his estate suspect his impending death, Volpone, at first glance, appears of sound mind and body. Yet, he puts upon a façade to the

"money-grabbers" that he is frail, weak, of body and mind: "I cannot now last long—/…./I feel me going, uh, uh, uh, uh. / I am sailing to my port, uh, uh, uh, uh?" (1.3.26, 28-29). In spite of the charade, he knows the extent of his property. Even if there were arguments that Volpone was mad, madness was difficult to prove. The courts required that the witness "did see him do such things or speak such words, as a man having wit or reason would not have done or spoke" (e.g. see him throw stones against window or spit in men's faces, or hiss like a goose, or bark like a dog) (Swinburne 121). Some of the requirements serve as key in declaring the capacity of the testator.

In this case, Volpone's mind and body *appear* severely weakened to the prospective heirs. While the strength of Volpone's mind and body play an important factor in analyzing his state of mind, Jonson raises, even more significantly, these as potential issues in the crafting of the early modern will. Volpone's mental state emerges as important in considering the validity of the will. Here, Volpone plays a role of one who can neither hear, nor see the wiles of the men who seek their ambition through this fortune. He seems to these men—Voltore, Corvino, and Corbaccio—as one who is deathly ill, who shall not long be with the living, and who has no meaningful quality of life remaining. However, one exception exists: Volpone possesses the ability to devise his will in favor of one who seems loving, deserving, and hopeful.[221] Of course, those who would inherit his estate ignore his *actual* mental state.

For centuries, naming ceremonies play an important role in culture.[222] In the realm of estate planning, the naming of one's heirs emerges as essential. The courts must be confident that the

[221] In his article, Leinwand discusses Volpone's "feigning death" and compares to other Jacobean comedies at note 19.

[222] For instance, the naming of a child at his birth has been recognized even in ancient Greece (Garsney 48-90).

testator knows not only the extent of his or her property, but also knows the heirs. Errors in the naming of one's heirs could derail an estate.[223]

In separate instances over the course of this drama, Mosca declares to Voltore, Corvino, and Corbaccio: "You are his heir, sir" (1.3.27). This absolute certainty that Mosca now asserts grows quite momentous. This designation, as Volpone's heir, establishes, or at the very least heightens, the financial, the social and the political status of the named heir. For instance, Mosca lauds Volpone's supposed praises upon Voltore the advocate:

> He ever like your course, sir that first took him.
>
> I oft have heard him say, how he admired
>
> Men of your large profession, that could speak
>
> To every cause, and things mere contraries,
>
> Till they were hoarse again, yet all be law. (1.3.51-55)

Voltore, this vulture, represents an important figure of the law in this play. To bolster his confidence as *the* supposed heir, Mosca applauds his "course," admires his "large profession," and praises his ability to "speak / To every cause, and things mere contraries." Ironically, Voltore, like the others, plot, scheme, and maneuver to obtain Volpone's estate. In spite of this dishonorable behavior, Mosca seals Voltore's confidence with this flourish of compliments. With such assurances, each heir believes that he is special. This declaration of inheritance proclaims him as such. These false statements by Mosca and Volpone dupe each potential heir.

[223] Swinburne also notes the potential for error in the naming of the person to whom the testator bequeaths the property, or the property that the testator owns (890).

Not only does Volpone and Mosca take advantage of this situation where the testator may "name" an heir, but Voltore, Corbino, and Corbaccio do the same. There is an advantage to being named a person's heir, particularly where he has no identifiable biological child. In a note on the eve of the promulgation of the Statute of Wills of 1540, one of the problems that Cromwell mentioned to Henry VIII arises. This issue parallels the matter of heirs: "the wards of your tenants be taken away by wills" (Elton 144). The legal ability to dictate the future of one's own land evolves as financially and socially meaningful. The subject-sovereign relationship yields to individual rights, through the power to make wills.

In the world of Jonson's drama, the principles upon which the will is based in the Statute of Wills of 1540 have descended into a conspiracy plot. Here, the plot does not exist in terms of treason as found in my discussion of *Richard III*, nor murder in *Titus Andronicus*. Nevertheless, the collusion fosters a rumination upon the principles of law found in the drafting of the early modern will. How we interpret the apparent complicity between Mosca and the prospective heirs is crucial in determining whether there is a valid agreement to conspire. Fraud exists where the drama reveals collusion between Volpone and Mosca and between Mosca and the prospective heirs. "Fraud" accurately describes the nature of these relationships, yet, as Douglas Brooks notes, Mosca never admits that the will is a fraud (131). While the Fraudulent Conveyance Act governs the transfer of property, the Statute of Wills of 1540 would seem to supersede the previous statute where the "will" here provides the centerpiece of the discussion in Jonson's *Volpone*.

Initially, it appears insignificant if one considers the soliloquy that Volpone offers at 1.1.70-90. Here at the end of the first scene, Volpone admits to the audience that he engages in:

> playing with their hopes,

> And am content to coin ‘em into profit,
>
> And look upon their kindness, and take more,
>
> And look on that; still bearing them in hand,
>
> Letting the cherry knock against their lips,
>
> And draw it, by their mouths, and back again. How now! (1.1.85-90)

The language reads like one of seduction, “letting the cherry knock against their lips.” Purposefully, Volpone teases these men with his property. He will deny them the cherry as he “draw[s] it, by their mouths, and back again.” The flirtatious teasing will not be intermittent, but incessant. With their own irresistible “fruit,” Mosca and Volpone conspire to remove as much property from these men who, with much encouragement from Mosca, consider themselves Volpone’s heirs.

In the midst of these outrageous conspiracies, the significance of these fraudulent relationships not only mobilizes the plot, but also dissects the issues of the early modern day on the theatrical stage, like the testator’s mental capacity, the secret drafting of wills, and the problematic nature of fraud within this will-making process. The state of the will, legally, emerges as vital when the drama reveals that the parties actively, with dishonorable intentions, seek to corrupt the legal system, which determines the future property of identifiable heirs among early modern citizenry. These on-going moments of illegality infuse the play where we must determine, which instance of fraud is more profound. Both Volpone and Mosca act in legally culpable ways, yet when weighing the guilt of those who act within the conspiracy, it becomes difficult to determine, which behavior is more disturbing—the architect, Volpone, or the face behind each act,

Mosca. Yet, not to be overlooked, the drama does not paint Voltore, Corvino, and Corbaccio as innocents; a strong argument could be advanced that they assume roles with just as much culpability for their greed. For instance, Harold Bloom suggests that "Volpone preys only upon those who deserve to be fleeced, and thus defrauds only the fraudulent" (23). Within this conspiracy of fraud and greed, the unredeemable depiction of each of the players is unsurprising, for this play is immensely concerned about both religious morals and legal ethics of which these players sorely lack.

Beyond the cony-catching of *Bartholomew Fair*, Jonson exposes, in this comedy, a series of fraudulent acts, which surpass mere theft and surround the drafting of the early modern will. The playwright addresses a question about upholding the validity of documents. For example, if the court finds the will invalid, the testator's design for his property will fail. Even further, if the court finds that the will is not only invalid, but develops as a part of some financial scheme, the court will find an intentional effort to not only defraud the testator, but to also perpetrate a fraud upon the court. Hence, Jonson's comedy illustrates the dangers in will-making. In spite of these moments, which invalidate testamentary intent, Jonson likewise reaffirms the ostensible sanctity of the will. In one conspicuous example, Mosca declares: "But that the will o' the dead must be observed" (5.3.87). The many schemes and devices of the characters reveal a need to ensure that the will remains inviolate.

Examining the Exchanges: The Bribes

Instead of functioning as an authentic document of truth, legality, and charity, the will, in this drama, sits at the center of a series of moves—deceptive, illegal, and greedy. Within this drama, Jonson exposes the vulnerabilities of this written testament. He does not criticize the importance of the will, rather he demonstrates the several moments in the life of the will, which

fall susceptible to the secrets, the fraud, and the low morals of fortune-hunting men and women. In each scene, the potential heir uses the gifts (1.1.92, 1.4.69, 1.5.6) as bribes to the testator, here Volpone. To influence Volpone's choice of heir, Voltore, Corvino, and Corbaccio present gifts to Volpone so that they might receive his great fortune.[224] Although the early modern system of legal jurisprudence might have esteemed the will as an inviolate, yet this document, in this play, represents corruption. Because of dubious intent, the bribes of these potential heirs exploit this crucial part of the will process. Here, the seeming gifts, which presented to Volpone, betray any good intentions, as these self-interested inducements seeks to sway Volpone to make a decision in the favor of the one presenting the gift. Even Sir Francis Bacon, lawyer, statesman, and intellectual, admittedly accepted bribes in his role as a jurist; later in 1621, he was committed to the Tower of London, fined £40,000, and expelled from court as High Chancellor (More xxvii). Clearly, examples abound during this period, where there exists a seductive quality in the use of gifts to convince, here Volpone, to aim his fortune in the direction of the gifter.

Indeed, more than seduction, this dilemma of intention veers recklessly towards unlawful behavior where such "gifting" might be interpreted as undue influence by these potential heirs. In weighing lawful and unlawful conduct, several hypothetical scenarios may be considered. If the gifts actually play an essential role in the decision-making of the testator, Volpone, then it is possible that the gift is no longer a gift, but a bribe.[225] A clear legal line of demarcation between the gift and the bribe must be identified. While Jonson portrays these tokens as bribes, I complicate this portrayal. As Thomas More argued about his utopia, the excessive wealth of Volpone and his cohorts anticipates that fraud and bribery will ultimately corrupt this Venetian commonwealth

[224] Kings and jurists have sworn to maintain and keep inviolate enacted laws (Travitsky & Cullen 36).
[225] Anglo-Saxon and Early Medieval scholar Mary Lou Fellows offers that these exchanges could also be interpreted as contracts. Electronic Message. 12 March 2015.

(45). In spite of the alleged corruption, the courts must determine the testator's intent. The courts usually interpret any unlawful intention, or deliberation, without the benefit of the testator's testimony. Still, in most cases, the will has the final word. If the court learns how these parties influenced the document, with their "gifting" or bribery, then such behavior would become important in calculating with careful consideration of the testator's own will. This early modern drama offers an engaging exercise in which to play out these hypothetical legal scenarios in a caricatured form.

While Jonson sets the play in Venice, I apply the laws of England. Within this discussion, I assume that these wills should come into compliance with Henry VIII's 1540 Statute of Wills governing the transfer of land through a will. Quite possibly, they fall in the 'gap' where personal property does not have the governance by the state. While some wills provide for gifts, or legacies, wills offer a way for the testator to transfer—land. For instance, Mosca constantly asks for the wills, as he does with Voltore the advocate:

> When will you have your inventory brought, sir?
>
> Or see a copy of the will? (Anon!)
>
> I'll bring em to you, sir. Away, be gone,
>
> Put business i' your face." (1.3.76-79)

Though each of these men bring personal property to "persuade" Volpone in his decision to name them heir, it is not clear what Volpone's fortune entails; it is quite possibly includes land, which would be governed by the Statute of Wills of 1540. While the drama is unclear, I assume because Jonson uses the will that Volpone's estate contains land.

During this early modern period, the existence of wills evolves also as an estate planning phenomena. The Tudor reign brought this legal tool to the masses. In the play, Volpone and Mosca use the will and its chief function, transferring all property to a chosen heir, rather than one who has been held out as one's biological heir, which seems to be the tradition covered by the Statute of Uses. This statute was the controlling legislation before the Statute of Wills of 1540. Although the Duke of Norfolk argued that the Statute of Uses was the worst statute ever made, the Statute of Wills arose out of the complaint from the Pilgrims of Grace in 1536. In this controversy, Richard Aske, a barrister at Gray's Inn and one of the ringleaders, wanted to leave part of land by will so that landowners could pay their debts, provide for their children's marriages, and deter those lawyers from exploiting the loopholes in the legislation. In a swift response, Henry VIII refuted that such matters were relevant to "base commons," and executed Mr. Aske. Ironically, the matters, which Aske raised, were placed in the preamble of the Statute of Wills of 1540 (Baker 679).[226]

Some of these gestures by the crown invalidate the truth and the transparency of the will. For example, the truth of the testator's intent gets lost in the political gamesmanship. The testator's final intent, in *Volpone*, transforms into motives inconsistent with the 1540 statute, which creates an identifiable way to leave his land to his heirs and to reduce any legal bureaucracy that would interfere with the will's intent. The play also offers a scheming posture, for truth is far afield. For example, Volpone and Corbaccio intend to steal the other's estate—this motive lacks the finality, which is an essential part of one's *last will*. The wills seem transparent, yet the activities of the characters, which surround the drafting of these wills complicate the face of the will. The rhetoric, the language, and the performance all give the audience reason to distrust the will.

[226] This text is Baker's *The Oxford History of the Laws of England volume VI: 1483-1558.*

In the following section, I explain two problematic events, which interfere in this process of will formation: will contests and the reading of wills. Again, in this moments, Jonson demonstrates how vulnerable this written document emerges in these key moments in the life of these legal instruments and the stage properties, like their exchange and their reading.

PART TWO: 3.9, 5.2, and 5.3: The Contest of Wills and the Reading of Volpone's Will

"I shall have, instantly, my vulture, crow, / Raven, come flying hither, on the news? To peck for carrion, my she-wolf, and all, / Greedy, and full of expectation—" (Volpone 5.2.64-67)

In this segment of my analysis, I consider the "contest of wills." Though this contest exposes the darker agendas of each of these characters, this dramatic exercise actually achieves what the phrase embodies, "it 'tests' the 'wills' of these 'cons.'" Within this scenario crafted by Jonson at 3.9, Volpone and Mosca have baited each of the characters, Voltore, Corbaccio, Corvino and later Madam Would-be, the knight's wife. Where each of the characters are offered the riches of Volpone's fortune, it is only Corbaccio who demonstrates his rigor and fortitude to this contest by submitting his own will to Mosca and disinheriting his son for interfering in their schemes. Assuring Mosca of his dedication to this test of wills, Corbaccio affirms: "This act shall disinheriting him indeed: / Here is the will" (3.9.8-9) (which I discuss further below). After years where the eldest son automatically inherits his father's land, this submission by Corbaccio to disinherit his biological heir arises as profound and compelling commentary on this broader function of the will and the concomitant increased legal and societal vulnerabilities. For instance, the dialogue between Corbaccio and Mosca reveals their disposition as "greedy, and full of expectation" (5.2.67). Corbaccio asks Mosca: How does [Volpone]? Will he die shortly, thinkst thou?" Mosca responds: "I fear / He'll outlast May." Shocked that Volpone possesses even this diminishing show of strength, Corbaccio asks Mosca: "Couldst thou not gi' him a dram?" (3.9.12-

14). Though apparently serving Volpone's desires, Mosca's tactics to obtain Corbaccio's fortune by will naturally raise questions about his role in this conspiracy; such calculating antics provide another layer of complexity and fraud. Eventually, in this contest, Mosca expresses regret and a change of conscience, however brief, as he mentions throughout the play. Indeed, such moments appear latent, lacking in sincerity, and ethos within this romp, and ultimately permeates the seemingly unrepentant comedy, as a charade. For each of these confidence men, they surrender this vital, moral part of themselves in their effort to pervert the almighty will.

Still, in the "contest of wills," this phrase offers more than a metaphor for the multiple agendas that the characters offer here in this play, as I look for meaning, transparency, and truth within the multiple written testaments. In the execution of these wills, I also find moments, where the law fails when it must rely upon these hollow documents hoarded by their carnal authors with greedy expectation. These written proofs represent evidence, but often reveal the tensions between the legal and the illegal, evoking deception, much as Iago confesses to Roderigo in *Othello*: "I am not what I am" (1.1.64). Much like people, the documents take on a two-faced demeanor—while presented as truth, they embody deception.

Although I consider the acts of fraud and undue influence in the execution of the will, I argue that the problem in the contest of wills is this corrupted instrument, and involves this transfer of property to and from characters, who are just as unethical, and disreputable in nature as the other. Here at 3.9, Voltore the advocate properly asks: "What device is this / About a will (3.9.20-21)?" The trouble that the early modern will—this written device—creates for this society manifests itself in the inability to trust its contents. In spite of these difficulties, Jonson neither renounces the importance of wills, nor attempts to jettison its use. Normally, the execution of a will may be trusted if signed, sealed and delivered before with four witnesses to revoke a power

of a deed, by a writing, under hand, and seal, with three witnesses (Swinburne 76). Yet, within this contest, the presence of duplicated, modified, and secreted wills raises questions about reliability.[227] Jonson presents to this audience a tension that is identifiable as a legal document, tangible in its physical materiality, and perhaps prevalent in its constant use within this particular period.

The Will Exchange

In a perverted display of the process in will execution, the importance of the will exchange is highlighted in the play's replication of the failed "delivery" of the will. This moment of exchange, even a failed one, arises as significant in the life of the will. This physical exchange implicates both the material and the legal life of this stage property in Jonson's play. This physical event brings attention to this stage prop. With this attention, the drama emphasizes the life that this will has not only on the stage and in the theatre, but in the courts as well. For instance, the delivery possesses not only physical, but legal implications. According to the law, the heirs have a right to demand delivery from the executor in equity (Swinburne 38, 1045).[228] By analogy, the drama *Volpone* provides such a provocative exchange of wills and an opportunity for deception, at 3.9 and 5.2, where Corbaccio the old gentleman gives his will to Mosca at 3.9 and Volpone gives his will to Mosca at 5.2. With their game threatened, Mosca informs Corbaccio:

> Your son, I know not, by what accident,
>
> Acquainted with your purpose to my patron,
>
> Touching your will, and making him your heir;

[227] See Hutson's commentary on Patricia Parker's discussion of reliability of evidence (309-310).
[228] Heirs are also referred to as legatees by Swinburne.

> Entered our house with violence, his sword drawn,
>
> Sought for you, called you wretch, unnatural,
>
> Vowed he would kill you. (3.9.2-7)

Undaunted and unrepentant, Corbaccio says: "this act shall disinherit him indeed: / Here is the will" (3.9.8-9). In a striking show of trust, Corbaccio gives Mosca—not Volpone—the will. At a moral and ethical level, Jonson galvanizes the audience where the outrage of Bonario, Corbaccio's son, turns into our outrage. In the face of this chicanery and greed, the disinheritance of one's son in this scene plays, as Jonson may have intended—as sinful. Despite its moral implications, this moment is filled with enormous legal consequences, which exposes the weaknesses of the Statute of Wills. Within *Volpone*, from the moment when wills are delivered in contravention to the requirements of the law, the possibility for legal action develops. The playwright provides the audience with visual proof that the legal evidence, Corbaccio's will, is unlawful. These evidentiary proofs, Corbaccio's will and Volpone's will, have been prostituted much like Volpone attempts with Celia the merchant's wife: "Yield, or I'll force thee" (3.7.265). This will exchange is cheapened, and corrupts the very process that would help the courts prove the validity of the will.

With its legal and physical implications, the exchange of the will should not be overlooked. To analyze this act of delivery, I draw upon the notion of intertheatricality. The concept of "intertheatricality" emerges as "concerned with the material culture of the stage—that is the working and reworking of theatrical matter including the actor's body and accessories." In this way, "intertheatrical interpretation," Jonathon Gil Harris notes, "attends the bodies of actors, their costumes, their techniques of movement, gestures, and verbal delivery." In the tradition of Aristotle and Marx, he suggests that intertextuality develops as dynamic material that is "worked

upon and transformed by theatrical praxis" (Harris 68-70). Within this examination, two distinctions must be made. Harris focuses his analysis of the intertheatrical in Shakespeare's works, where I here examine Jonson. While he emphasizes the idea of "verbal delivery" (67, 72, 126), I follow the movement revealed in the delivery of written stage objects. He also uses the actor's body to bridge the secular and the religious (73), where I use written evidence as a bridge. Specifically, Volpone's will functions as the foci—bridging both the material and legal.

Beyond the evidentiary importance of the moment, it is worth emphasizing the audience witnesses two will exchanges—one between Mosca and Corbaccio the old gentleman and the one witnessed later between Mosca and Volpone. The level of greed demonstrated by these characters unfolds distinctly in contradiction to that sin—greed—among those seven deadly sins against which early modern audiences were warned as a part of their religious instruction.[229] Though we do not deal with money lenders as dramatized in Shakespeare's *The Merchant of Venice*, we still have the sacred tenet against the love of money.[230] In this play, this love supersedes all manner of ills, including the suborning of perjury, averting a rape charge, and offering up two innocents, Bonario and Celia, to avert the suspicion that is growing against Volpone at The Scrutineo (the Venetian law court).[231] These exchanges of wills turn into a part of the larger conspiracy to increase Volpone's wealth, and divest those would-be inheritors of their riches. Easily embodying the clever conman, Mosca as the obedient and the loyal servant to Volpone goes over and beyond his duties in this scheme. Battling both sin and illegality, this play easily encapsulates the torn

[229] See page 146 in Richard Newhauser and Susan Janet Ridyard's edited collection, *Sin in Medieval and Early Modern Culture: The Tradition of the Seven Deadly Sins*. See also Anna Bayman's discussion of several pamphlets on the topic in *Thomas Dekker and the Culture of Pamphleteering in Early Modern London* (71, 125-128, 138).
[230] See reference to Newhauser's article on "The Love of Money as Deadly Sin and Deadly Disease" at note 25 (115), note 30 (116), and a discussion of "avarice as an inordinate love of money" (232).
[231] The word, "scrutiny," originates from late Middle English and Latin, "scrūtinium," which means "the action of searching, of scrutinizing, derivative of scrūtārī, "to search" in *The New Oxford American Dictionary, Third Edition* (1572).

jurisdictions between the ecclesiastical courts and the Chancery courts—fighting fraud, forgery, and foolishness as litigants attempt to validate and execute wills.[232]

At 5.2, Volpone's will appears as the second presentation of wills in this contest. Jonson provides this moment where the greedy expectation of the potential heirs might overwhelm the normal testator, where those potential threats, the intimidation, and those repercussions from deciding to give one's estate to one individual over another becomes enormous. However, Volpone embodies the uncommon testator, and offers another dimension to considering wills in his exchange with Mosca the parasite. In particular, Volpone says:

> 'Tis true, I will ha' thee put on a gown,
>
> And take upon thee, as thou weret mine heir;
>
> Show 'em a will: open that chest, and reach
>
> Forth one of those, that has the blanks. I'll straight
>
> Put in thy name. (5.2.69-73)

Again, Volpone asks Mosca to put on a façade that continues the fraudulent game in this will contest. Mosca must "play" at acting as Volpone's named heir. With great abandon, Volpone tells Mosca: "Show 'em a will" (5.2.71). There exists no <u>one</u> will here, which develops as definitive, as would be the typical case. Not only will he provide this display for the competitors, Corvino the merchant, Voltore the advocate, and Corbaccio the old gentleman, but Volpone further directs Mosca: "open that chest, and reach / Forth one of those, that has the blanks" (5.2.71-72). In this

[232] See David Chan Smith's *Sir Edward Coke and the Reformation of Laws* (2014), specifically his discussion of the spiritual jurisdiction of the ecclesiastical courts (129-137) and his chapter entitled, "Chancery, Reform, and The Limits of Cooperation" (213-248).

pivotal moment of will creation, Volpone introduces a chest, which contains several "blank" wills so that he might place multiple wills in "play" in this comedy about the quandary with wills. Though it was not uncommon to have multiple wills during this early modern period, for the testator's circumstances of life evolved (e.g. marriages, divorces, births, deaths); still, multiplicity breeds duplicity in this play.[233] Because the conveyance of property occurred many times over the lifetime of a testator, individuals had several wills drafted to reflect the distribution and acquisition of real property. Most importantly, this discussion of wills necessarily implies a discussion of land. This transfer of land provides another complication in this movement backwards and forwards between these conveyances through contracts, gifts, and here most especially wills. Volpone goes further here, and not only possesses blank wills, but he asks Mosca to "put in thy name" (5.2.73).[234] When Mosca asks Volpone how he shall substantiate this farce of his master's death, Volpone provides a plan.

> Mosca: But, what, sir, if they ask
>
> After the body?
>
> Volpone: Say, it was corrupted. (5.2.76-77)

Tutored by his master, Mosca assumes an integral part of this contest—this game—that Volpone creates over the course of this play. Notably, Jonson injects "playing at the baloo," a ball game, in act 2 of the play.[235] Arguably, this reference to playing ball offers another allusion to "play," "games," and "sport" in this Venetian culture. As a logical nexus, this mixture of game-playing,

[233] See Becker 157. See also Lloyd Bonfield's discussion, "Multiple Wills: Conflicting Documents," in *Devising, Dying and Dispute: Probate Litigation in Early Modern England*.
[234] The legality of directing another to sign the will for the testator (i.e. proxy) also offers a fruitful legal inquiry into the authenticity of the document.
[235] See Jungman 64.

character and the law are not without their ties to the depiction of this "will-mill" that Jonson offers in this play.

In addition to the discourse upon playing games, the representation of corruption reveals an evocative dialogue where Mosca asks, as cited above: "But, what, sir, if they ask / After the body?" (5.2.76-77). Immediately, Volpone responds: "Say, it was corrupted" (5.2.77). With this exchange, Jonson again underscores this theme of corruption in this play, which, like *The Merchant of Venice*, is also set in Venice. The characters constantly discuss, particularly through the knight, Sir Politic Would-Be and Peregrine, the traveler.[236] Within their dialogue, Jonson highlights for the audience the Venetian setting, and contrasts the experiences of the knight and the traveler with the society, which the playwright creates for this comedy. Through their repartee, Jonson asks the audience to draw distinctions between this locale in Italy and other locales, like London. Sir Politic Would-Be the knight tells Peregrine the gentleman traveler that "to a wise man, all the world's his soil" (2.1.1).[237] Though the two men speak lightly upon the affairs of the world in Venice, London, France, and Spain, they have meaning. For instance, Peregrine speaks to the audience in an aside about Sir Politic:

> Oh, this knight
>
> (Were he well-known) would be a precious thing
>
> To fit our English stage: he that should write
>
> But such a fellow, should be thought to feign
>
> Extremely, if not maliciously. (2.1.56-60)

[236] Ratcliff considers Sir Politic as a "projector character" as he discusses in his article (note 8, 340).
[237] This phrase also echoes Jaques's line, "all the world's a stage" (2.7.139) in Shakespeare's *As You Like It*.

Here, the playwright asks the audience to read Sir Politic as false. Even the reference to Sir Henry Wotton, ambassador to Venice for almost twenty years, at 2.1.17 does not appear inadvertent.[238] Wotton was known to have said of the role as ambassador: "An ambassador is an honest gentleman sent to lie abroad for the good of his country."[239] Apparently, while asking the audience to consider the world's affairs, Jonson displays, through even these ancillary characters, corruption and lying and its political implications for the audience in this scene.

While the exchange of wills complicates the document as evidence and the characters, which handle it, the actual presentation of Volpone's will appears most distinctively at 5.2 where Volpone says to Mosca: "Hold, here's my will" (5.2.80). With unmistakable language, some parchment is presented to the servant on the stage so that he might continue the play highlighting the affluent society in Venice, men and women, young and old, merchants and advocates.[240] Jonson offers different characters, which would represent property owners at this time. Yet, what is fascinating is Jonson's depiction of each of them who falls prey to the corruption found in ambition, greed, and calculated fraud. These characters develops as fodder for the early modern audience who witnesses these men and women dissemble swiftly into Volpone's fraudulent practices. Though the Scrivener's display of Lord Hastings's death warrant amplifies the fractured

[238] G.A. Wilkes, editor for the Oxford edition of Jonson's *Five Plays* (1988), notes the reference in his footnote at line 17 at 2.1. This is the edition to which I use in the line numbers for the play for this entire chapter.
[239] See page 287, note 9 at *Loves' Labours Lost* in *The Plays and Poems of William Shakespeare, vol IV*. Ed. Richard Farmer, Nicholas Rowe, George Steevens, Alexander Pope, Edward Capell, Edmond Malone, Samuel Johnson (London: F.C. and J. Rivington 1821). See also *The Life and Letters of Sir Henry Wotton* ed. Logan Pearsall Smith (1907) where Wotton tells Charles I: "Rome he had found the very sink and seat of all corruption, religion being converted there 'from a rule of conscience to an instrument of the State, and from the mistress of all sciences, into a very handmaid of ambition'" (19-20).
[240] In response to Voltore's question, "But am I sole heir?" (1.3.44)Mosca refers to "parchment" at 1.3.45-47: "Without a partner, sir, confirmed this morning; / The wax is warm yet, and the ink scarce dry / Upon the parchment."

state of the crown, Richard, and England in *Richard III*, here in this comedy the fractures occur squarely with the individual—Volpone, Mosca, and the "would-be" heirs.

The Reading of Volpone's Will

The reading of the will is a significant legal and communal function for those who have an expectation of an inheritance.[241] Like the exchange of the will, the reading of the will emerges as

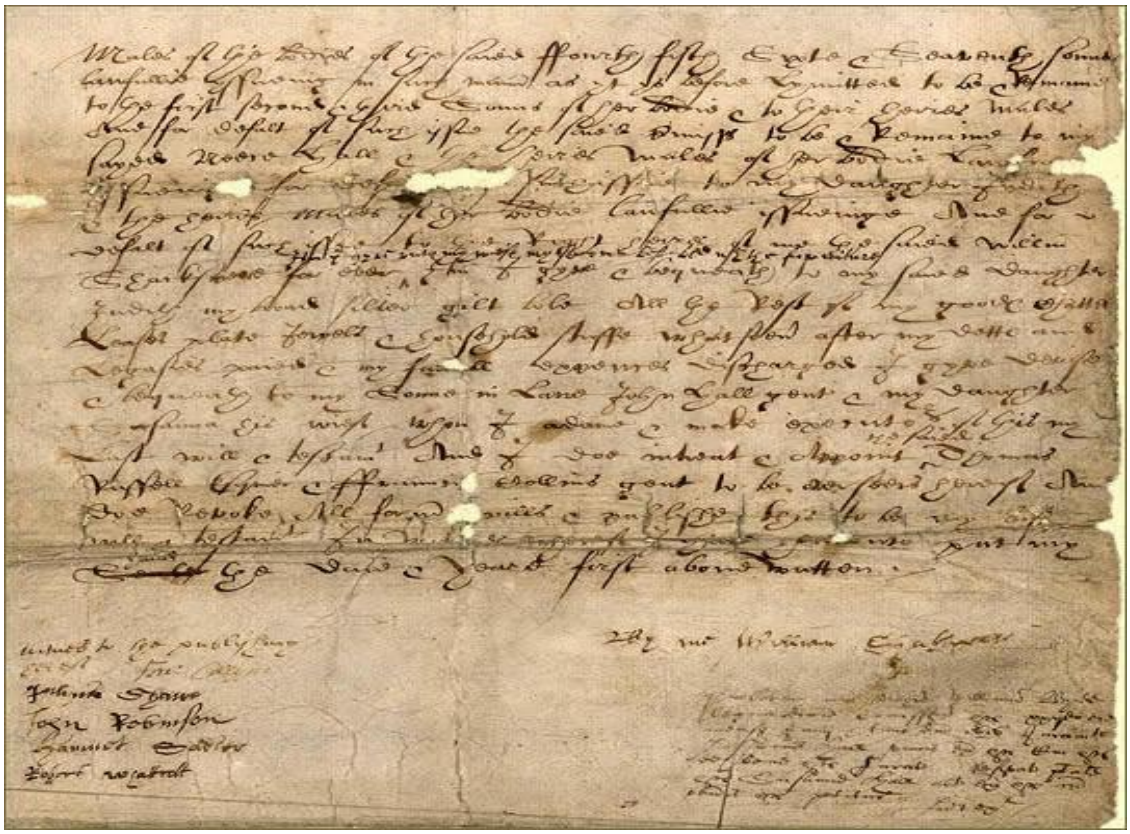


Figure 21 William Shakespeare's Will, 25 March 1616, Paper, Shakespeare Birthplace Trust, f.22v, The National Archives Kew, Richmond, Surrey.

meaningful as well. The reading of this document on the stage illuminates the material properties of this will from its movement across the stage to its ultimate repose. In spite of its material import, the reading of the will should not be legally diminished. In *Nash v Edmonds*, the reading of the will before the testator's death prevented an inaccurate devise (Swinburne 12-14).[242] Generally,

[241] Inheritance practices discussed as possessing religious and mortuary ritual as 'resurrective practices' by Benedict Anderson (Ferguson, Buck & Wright 123).
[242] See Nash v Edmonds, Cro Elizabeth 100, et Dyer, 172, note 2.

each individual gathers when either the lawyer, the executor or the designated person reads the contents of the will. Interestingly, Jonson provides just such a moment in this play as well. At 5.3, while Volpone "peeps from behind a traverse" (5.3.9), Mosca presents the corrupted will to the would-be heirs. As instructed by Volpone, Mosca plays at itemizing the breadth of Volpone's extensive property. Corbaccio the old gentleman asks: "Is that the will?" (5.3.14). After reviewing the contents of the will, Voltore, the advocate reads the pertinent portion of the will, and announces: "Mosca the heir" (5.3.22). Corbaccio responds: "What's that?" (5.3.23). Ignoring their confusion, Mosca continues to inventory the elaborate wealth of Volpone as the gravity of this moment impacts this gathering of Venice's elite and the significance of their loss in this contest of wills becomes realized. Relishing his triumph, Volpone observes their disparate reactions:

> Look, see, see, see!
>
> How their swift eyes run over the long deed,
>
> Unto the name, and to the legacies,
>
> What is bequeathed them there—. (5.3.17-20)

In this sequence, he notes how Corvino the merchant faints, and the lady swoons. Still, Corvino recovers and makes a comment, which reveals his perplexed state: "But, Mosca—" (5.3.27). Still disturbed, a dumbfounded Corvino asks: "Is this in earnest?" (5.3.28). With surprise, Mosca boasts: "Good faith, it is a fortune thrown upon me—" (5.3.31). Here, Mosca is not false, exactly, for this present charade *is* foisted upon him by Volpone.

Nevertheless, in this moment, Mosca plays the hapless servant effectively by ignoring the confounded state of these would-be heirs. Vividly, he displays a dismissive attitude and plain words about their willing participation in wrongful behavior with Corvino the merchant as "a

declared cuckold" (5.3.53) and Lady the knight's wife as an opportunist with her feminine wiles.[243] A devastated Corbaccio the old gentleman simply repeats Voltore the advocate, but this time as an interrogatory: "Mosca, the heir?" (5.3.63). Having regained his tongue, Corvino calls Mosca out: "I'm cozened, cheated, by a parasite-slave; / Harlot, thou'st gulled me" (5.3.64-65). In spite of this emotional display, Mosca responds with probably the most biting revelation to the others:

> Are not you he, that filthy covetous wretch,
>
> With the three legs, that here, in hope of prey,
>
> Have, any time this three year, snuffed about,
>
> With your most groveling nose; and would have hired
>
> Me to the poisoning of my patron? Sir?
>
> Are not you he, that have today in court
>
> Professed the disinheriting of your son?
>
> Perjured yourself? Go home, and die, and stink;
>
> If you but croak a syllable, all comes out:
>
> Away and call your porters, go, go, stink. (5.3.67-76)

Candidly exposing their hypocrisy, Mosca has placed these would-be heirs in a seemingly unredeemable position where they have calculated to obtain Volpone's fortune by devious means, yet if the ruse becomes public, all plots would have grave consequences for them. Here, these

[243] Hutson notes the "the thrilling and horrible efficiency with which words can be detached from their point of origin, and reiterated to bring about their original speaker's destruction" (Craik 456). In her article on Ben Jonson, she also notes how Jonson adapted from Latin poetry the use of "sexual codes" to heighten his own dramatic style (1073).

defeated contestants have been duped while trying to swindle Volpone, and have lost to their handler, the artificer, Mosca.

In this dramatic instance, the reading of Volpone's will emerges as powerful. In his analysis of stage properties, Douglas Bruster discusses the "reading effect." He observes that "plays are full of objects, and while many of these objects fail to draw extended notice from the plays themselves, they remain integral to their dramatic worlds—not despite but because of their ordinariness." Bruster notes as problematic when the audience might read a stage object in the same way as the dramatic characters. We run the risk of merely limiting our analysis to the effect of the object (Harris & Korda 77). Here, the reading of Volpone's will elicits an identifiable effect on those who sought Volpone's fortune. Yet, the reading of the will evolves as more meaningful.

As discussed at the outset of my analysis, the will is the legal document, which defines testamentary intent and the final say for the departed. The courts rely upon this document unless they have sufficient cause to discount its veracity. Resting upon this knowledge, Mosca uses the strength of the evidence—and duress—that he has before him against these would-be heirs.[244] With finality, Mosca the parasite says in this scene, as I noted previously: "But that the will o' the dead must be observed" (5.3.87). Yet, the statement bears repeating, for this issue has found its conclusion where Mosca says: "I'm his heir: / And so will keep me, till he share at least" (5.5.14-15). As we have discovered in this scene, even the swindler sometimes gets swindled.

Within this final section of the chapter, I explore how the illicit behavior, which surrounds the wills of Corbacciothe old gentleman and Volpone reaches its pinnacle display within the

[244] Swinburne discusses the prohibitions in the law of England against duress; that is, when a person has been found to have his or her want of ability or freedom of will restrained (140). In addition, Baker discusses duress, incapacity (infancy), suspicion, or tampering after execution as several ways to invalidate a deed (369).

Venetian court in Jonson's comedy. The final judgment by the court, which Jonson crafts, unfolds conspicuously in response to the anti-theatrical critics.

PART THREE: 4.2 and 5.10: Perpetrating the Fraud on the Court with Wills

"Come, / Put not your foists upon me; I shall scent 'em." (Voltore 3.9.21-22)[245]

Using courtroom scenes, Jonson's *Volpone* offers two provocative moments, which include a perpetration of fraud on the court with wills.[246] Occurring across several scenes at the Scrutineo, the first court moment at 4.4-4.6 presents itself as an early attempt to expose the deceitful shenanigans of Volpone and Mosca, which surround these written testaments: Corbaccio and Volpone's wills. For instance, at 4.5, the Avocatori (which is made up of four magistrates) enter to begin the proceedings, where several charges are leveled against Volpone and Mosca.[247] In their initial accusations, Bonario and Celia accuse Volpone with the attempted rape of Celia, Corvino the merchant's wife (3.9.50). While the court does not know, the audience witnesses Corvino's earlier attempt to prostitute his wife for Volpone's pleasure to win the will contest. In addition, they charge Mosca and Volpone with collusion in the disinheritance of Bonario by his father, Corbaccio the old gentleman (3.9.27-39). Katharine Maus emphasizes the masterful rhetorical display, which Voltore presents before the Avocatori in this first trial, in spite of the "fraudulent testimonies" (129). Of course, I insist that the on-going discussion of wills, particularly Bonario's disinheritance, functions as the representative thread in this first trial. During the second court

[245] Here, Voltore makes this statement to Mosca. Editor G.A. Wilkes defines "foists" as "trick" and "stench" at note 22 for 3.9.22 (297).

[246] In Henry S. Turner's edited collection, *Early Modern Theatricality*, Richard Preiss's chapter entitled, "Interiority," discusses the perpetration of fraud on the theatre—at the Swan and at Northumberland Hall—where "con men" make playgoers pay for plays, which they never see. These con men, Richard Vennar in 1602 and Qualitees at Northumberland House decades earlier, flee with the returns to leave the playgoers bereft of their money and the entertainment (59-59).

[247] See the Avocatori listed as four magistrates in the list of "The Persons of the Play" provided by this Wilke's edition of the play. Of note, they enter discussing the charges without stating the formal legal charges.

scene at 5.10 and 5.12, the allegations accuse Mosca and Volpone in their collusion surrounding Volpone's will. These scenes grow particularly telling where the entire play has centered upon the fraudulent drafting of wills, the instigating of testators surrendering estates under false pretenses, and the disinheriting of rightful heirs.

Bonario and Celia v. Volpone and Mosca: Trial I

Once the fraud shifts from the environs of Venice to the actual courthouse, the lies now evolve into perjury. At 4.4 the scene opens at The Scrutineo. Here, the parties, Voltore the advocate, Corbaccio the old gentleman, Corbino the merchant, and Mosca, have conspired to commit perjury in this "carriage of business" (4.4.1) in court where they promise "constancy" (4.4.2) as part of an agreement where Mosca asks:

> Is the lie
>
> Safely conveyed amongst us? Is that sure?
>
> Knows every man his burden? (4.4.3-5)[248]

Every conspirator has his part, and every lie depends on their mutual agreement to carry out this conspiracy. With these series of questions, Mosca voices this concern, for his safety from legal jeopardy depends upon each man bearing his own weight in this plot.[249]

While Volpone, this "fox," is a consummate teacher, Mosca displays his own masterful touch for maintaining multiple plots within this larger conspiracy. With equal cunning, they devise this scheme to increase Volpone's wealth at the expense of these would-be heirs. Still, Mosca,

[248] See also The Scrutineo described as the Senate House (Craig 556).

[249] Again even within this conspiracy, there exists additional plots where Mosca promises Corvino that he has devised a formal tale, "That salved your reputation" (4.4.7-8), where Corvino asks: "But knows the advocate the truth?" (4.4.6)

Volpone's "parasite, / his knave, his pandar" (4.5.15-16), finds a way to assure each of these men who is unaware of his priority in this contest for Volpone's fortune. Corbaccio, the "croaker" (4.4.12), is aged, and Mosca uses his age to dismiss his possibility as a competitor in the claims to Volpone's estate. Mosca scoffs at Corvino the merchant as a dupe in his own right as a publicly attested cuckold in this scandal surrounding Celia, his wife. At court, Voltore the advocate serves as an asset for his legal prowess, but merely for the benefit of the conspirators in Volpone's riches. Ultimately, Voltore too is expendable, where Mosca says: "Hang him: we will but use his tongue, his noise" (4.4.11). The croaker, the cuckold, and the tongue emerge as mere tools in this conspiracy, and all grow easily dispensable.

Before the proceedings begin, Mosca makes an interesting move, as he offers what might be interpreted as a "blessing," or prayer, for Voltore's successful elocution:

> Worshipful sir,
>
> Mercury sit upon your thundering tongue,
>
> Or the French Hercules, and make your language
>
> As conquering as his club, to beat along,
>
> (As with a tempest) flat, our adversaries:
>
> But, much more, yours, sir. (4.4.20-24)

In this monologue, his mythical allusions to Mercury and Hercules introduce connotations of strength and power to equip Voltore in this adversarial process. Although Mosca seeks Voltore's success in defending the cause set before them at The Scrutineo, the advocate's success transforms

into a troublesome result. Here, the collusion with the other would-be heirs/witnesses unfold to complicate their legal victory.

Inevitably, this court exposes another startling facet of the fraud. Here, the allegations against Volpone accuse him as an "impostor" (4.5.8) and "a true voluptuary" (4.5.10), and his acts interpreted as "so monstrous" (4.5.7). Apparently, the Avocatori, the four magistrates, summoned each of the parties and the witnesses to The Scrutineo to answer the charges made by Bonario and Celia. In spite of the summons, Volpone's absence grows conspicuous at the legal proceeding. Keeping the conspiracy cloaked, Voltore the advocate, attempts to dissuade the Avocatori from requiring Volpone to answer the summons claiming, "Himself's so weak, / So feeble—" (4.5.14-15). Despite this effort, the four Avocatori will not be persuaded. As a result, they ordered the officers to bring Volpone to the Senate-House. The answering of a court action (or writ) is one of the most vital precepts in the rules of law (Baker 63-83). Nevertheless, Volpone's absence serves as a violation of the law for the Avocatori. While Voltore attempts to explain, these magistrates think of the law and how individuals try to "skirt" the law: What fraud does Voltore, the advocate attempt here? How can they decide a matter accurately without the presence of all the parties? With one accused with such morally debased allegations as Volpone, his presence is not merely required—here, the Avocatori demand it.

Though the matters before this legal body include both attempted rape, and what amounts to fraud, the discussion, which addresses the will, develops as most insightful. At the outset, it appears that the Avocatori has made its decision against Volpone based upon the prior reputation of both Bonario, Corbaccio the old gentleman's son and Celia, Corvino the merchant's wife—both "of unreproved name[s]" (4.5.4). In spite of these uncompromised reputations, somehow Voltore,

this advocate newly blessed by the compellingly, loquacious Mosca, succeeds in transforming a strong case against Volpone to the probable incarceration of Bonario and Celia.

In a convincing display, Voltore weaves a tale—one of the most vicious character assassination before a legal body in dramatic literature. In his version of the facts, Voltore proclaims Celia as a "lewd woman" and "a close adulteress" (4.5.34, 37), and casts Bonario as a "lascivious youth" (4.5.38). Instead of the figures of reputed purity, the pair converts, in Voltore's estimation, into a dastardly couple who plagues the very environs with their sinister nature. In warning, Voltore the advocatetells this Venetian court:

> Wherein, I pray your fatherhoods,
>
> To observe the malice, yea, the rage of creatures
>
> Discovered in their evils; and what heart
>
> Such take, even from their crimes. (4.5.49-52)

This beleaguered state of the pair requires Bonario's father, Corbaccio, to endure the "foul fact" (4.5.54) of the crimes committed by Bonario and Celia. According to Voltore's oration, Corbaccio, this now sympathetic figure, had no choice but:

> Preserve himself a parent (his son's ills
>
> Growing to that strange flood) at last decreed
>
> To disinherit him. (4.5.57-59)

Voltore doctors the facts, spins the focus, and ingratiates the conspirators to these magistrates. Effortlessly, Voltore the vulture, weaves his web of lies for this court with finesse, prowess, and experience.

Even with this well-weaved facts against Bonario, the son has not yet assumed the role as *persona non grata*. Voltore must provide a scandalously scintillating story for this court, which provides the alleged motives for Bonario's violent actions against Volpone. The fraud upon the court will not find completion without the right framing of these key facts. Voltore must deflect the attention away from their on-going will contest. To seal Bonario's fate, Voltore argues to the Avocatori that Bonario's actions should be read as one who sought to commit murder against his father, "parricide" (4.5.66) with "so foul, felonious intent" (4.5.75). Shockingly, this advocate proclaims: "It was, to murder him" (4.5.76). Voltore also tells the Avocatori that Bonario's own efforts were meant to:

> stop
>
> His father's ends; discredit his free choice,
>
> In the old gentleman; redeem themselves,
>
> By laying infamy upon this man. (4.5.88-91)

In this trial, the first Avocatori ask Voltore: "What proofs have you of this?" (4.5.93). While attempting to discredit Voltore, Bonario criticizes his "mercenary tongue" and how "his soul moves in his fee" (4.5.94, 96). Yet, the Avocatori asks Voltore to "produce your proofs" (4.5.101). In a parade of perjury, the co-conspirators, Corbaccio, Corvino, and Lady Politic Would-be the knight's wife, testify against Celia and Bonario until the Avocatori leave the court to determine "what punishment the court decrees upon 'em" (4.6.62).[250] While Voltore and company will secure a judgment in their favor, the delayed judgment against Bonario and Celia offers a temporary

[250] Maus discusses how Voltore presents "Volpone's invalid body" as evidence of the implausibility of Bonario and Celia's accusations (129).

reprieve for Volpone and Mosca. The rhetorical proofs, which Voltore provides, are insufficient. The early modern law, even in the Chancery Courts and ecclesiastical courts, wanted written evidence—even then, those cases, like *Lucas v Burgess*, did not always favor the written proofs.[251] The scheme for this first trial will disintegrate, for it was built upon witness testimony alone; the second trial, built upon written proofs, will provide the finality to this matter. With this brief amnesty, their plots have been removed from the court's eyes so that they might continue their game with these would-be heirs.

Bonario and Celia v. Volpone and Mosca: Trial II

With this second trial, a different result occurs in the final court scenes at 5.10 and 5.12. Crafting a play filled with dichotomy, Jonson imbues the scene about con men, fraud, and vice with constant references to religion, conscience, and virtue. Instead of language peppered with legalese, Voltore's final confession may be read almost as a spiritual one where he tells the Avocatori: "For which; now struck in conscience, here I prostate / Myself, at your offended feet, for pardon" (5.10.11-12). In a startling display, he refers to the Avocaori as spiritual advisors:

> It is not passion in me, reverend fathers,
>
> But only conscience, conscience, my good sirs,
>
> That makes me now tell truth. (5.10.16-18)

Throughout the play, this constant reference to conscience and truth operate as running themes. This drama, as consumed as it is about the law, these wills and evidence, engages especially with

[251] Citing *Lawrence v Kete et al Alleyn* Rep 54, see also Skinner 72, Swinburne notes the court's finding: "That an actual devise by word, is no sufficient grounds for a stranger to write a will, but there ought to be an actual will and desire that it should be written, and a bare wishing is not sufficient, but there must be an actual willing" (79).

concepts like conscience, repentance, and truth, which surround this religious motif. While at key moments Jonson invokes these ecclesiastical principles, the playwright ironically imbues this drama with a sense of seriousness that would seem out of place in comedy with a less skilled hand than Jonson.

In spite of its apparent effect, this confession appears at once problematic for Voltore, this advocate, who lays blame for his abuse "out of covetous ends" on Mosca, the parasite (5.10.9). Voltore insists "that parasite, / That knave hath been the instrument of all" (5.10.18-19), and takes no ownership for his own covetous actions, his preying upon the wizened wealthy, and his fraud upon the court. His "confession" reads more like a reluctant admission, for he has no other "card to play" in this game of wills. In effect, Voltore the advocate has lost the contest of wills and possibly more if he does not *play* the repentant advocate.

While serving as the site of Voltore's blame, Mosca's character emerges as a key factor before this Avocatori. Instead of finger-pointing at Volpone, this group of malefactors make Mosca assume this role. Finally, truth begins to unfold after all of the fraud, the pimping, and the games. Contriving his own description, Corbaccio the old gentleman tells this judging body: "The advocate's a knave: / And has a forked tongue--…So is the parasite, too" (5.10.45-46). Clearly, they no longer function as a united group of conspirators, so Corvino the merchant refutes Voltore by telling the Avocatori:

> He does speak,
>
> Out of mere envy, 'cause the servant's made
>
> The thing, he gaped for; please your fatherhoods,
>
> This is the truth: though, I'll not justify

The other, but he may be some-deal faulty. (5.10.27-30)

Abruptly and completely, the co-conspirators dissemble, as Corbaccio claims that both Mosca and Voltore are knaves. Then, Corvino insists that Voltore speaks with envy against Mosca because Mosca inherited Volpone's estate. Even more, Corvino accuses that Voltore "may be some-deal faulty." When considering the testimony of each Corbaccio and Corvino, they both agree that Voltore is false. Although Corvino tells this governing legal body that truth may not be found with Voltore, the merchant attempts to speak truth. Ultimately, the co-conspirators give up the fraudulent conspiracy to defraud each other and the courts. Again, the resolve for truth appears, as they find themselves losers in the contest of wills and without any further moves to make on Volpone's fortune.

At 5.12, the final scene develops in two important ways. First, the scene portrays an examination and an explanation of Volpone's "will." Second, the final court room scene functions as Jonson's response to the anti-theatrical Puritans who suggested that sinners are not punished on the stage but merely forgiven. Jonson aligned himself with the conservative sect in London (Leinwand 11). In a letter that Jonson wrote in 1607 dedicating the Quarto to Oxford and Cambridge, he addresses many of the issues, which seem quite evident in the drama where religion and the law function together in the issue of will formation (McEvoy 53). In part, Jonson writes:

> And though my catastrophe may, in the strict rigour of comic law, meet with censure, as turning back to my promise, I desire the learned and charitable critic to have so much faith in me, to think it was done of industry: for with what ease I could have varied it nearer his scale (but that I fear to boast my own faculty) I could here insert. But my special aim being to put the snaffle in their mouths, that cry

> out, we never punish vice in our interludes, etc. I took the more liberty; though not without some lines of example, drawn even in the ancients themselves, the goings-out of whose comedies are not always joyful, but oft times, the bawds, the servants, the rivals, yea, and the masters are mulcted: and fitly, it being the office of a comic Poet, to imitate justice, and instruct life, as well as purity of language, or stir up gentle affections. (*Volpone*, Dedication, 101-114)

In pondering this scene, Jonson draws from the classics, answer his critics, "imitate justice and instruct life." His endeavor responds effectively to the perpetration of fraud on the court consistent with "comic law" and "the office of comic Poet." Not unlike crafting a will, the use of ecclesiastical language as a preamble to wills effectively marries both religion and the law in the drafting of early modern wills.

Then, the moment arrives where Volpone's infamous will must be presented to the court, and the falsity of the will exposed. The first Avocatori says: "Show him that writing, do you know it, sir?" (5.12.39). Surprisingly, Volpone does not denounce the document. Rather, he explains to the court: "Yes, I do know it well, it is my hand: / But all that it contains is false" (5.12.41-42). Not only does he admit that he recognizes the writing, but Volpone admits that the will is fraudulent. In this drama, each will is drafted with false intentions. Corbaccio's will and Volpone's will both come before the court as corrupted documents, which are finally revealed to the court here at 5.12. Though Volpone refutes that Mosca is guilty, this bold declaration reveals its insignificance when compared to the dialogue, which follows, between the disguised Volpone and Mosca.

When Mosca enters disguised as Clarissimo, Volpone asks Mosca to confirm that he, Volpone, is "living" (5.12.54). Yet, in an inspired move, Mosca refuses to do so, and haggles with Volpone for his wealth. Having learned well, Mosca uses this moment to vie for a portion of the imperiled Volpone's riches, where initially, the parasite asks him for one-half of the fortune. With much reluctance, Volpone finally agrees. Then, abruptly, Mosca changes his mind and then determines that such an amount is insufficient. Finally losing trust in his parasite, Volpone determines that Mosca will not be reasonable and so he unveils himself to the Avocatori, and admits that he is Volpone, and disparages Mosca as "knave; this, avarice's fool; this, a chimera of wittol, fool, and knave" (5.12.90-91).

Once everyone is "unveiled," the Avocatori passes judgment. The magistrates sentence Mosca to be whipped and imprisoned for life. Volpone's wealth is confiscated "since the most was gotten by imposture, / By feigning lame, gout, palsy, and such diseases" (5.12.121-122). Thereafter, he shall go to prison. They banish the advocate Voltore from the legal profession and from the environs of Venice. Much like Shylock's wealth in *The Merchant of Venice*, the magistrates give Corbaccio's wealth to his son, Bonario, and confine Corbaccio "to the monastery of San' Spirito" (5.12.131). They sentence Corvino to be rowed around Venice "wearing a cap, with fair, long ass's ears, / Instead of horns: and, so to mount (a paper / Pinned on thy breast) to the berlino—" where his "eyes beat out with stinking fish, / Bruised fruit, and roten eggs—" (5.12.137-139, 140-141). The merchant Corvino must also return his wife, Celia, to her father with triple her dowry. Surprisingly, unlike Shakespeare's Portia, Celia is blamed for hurting her innocence by "suing for the guilty" where she pleads mercy to the Avocatori for her husband, Corvino (5.12.106). The first Avocatori concludes that mischiefs feed / Like beasts, till they be fat, and then they bleed" (5.12.150-151). While Syme suggests that the Avocatori is questionable

and the court does not exist as the source that roots out corruption (70), I argue that the court does expose, through happenstance, the corruption.

Conclusion

"Likewise, he be circumvented by fraud, the testament loseth his force: for albeit honest and modest intercession, or request, is not prohibited, yet these fraudulent and malicious means, whereby many are secretly induced to make their testaments, are no less destestable than open force"—Henry Swinburne, *A Briefe Treatise of Testaments and Last Willes (1590)*[252]

Richard Aske's sacrifice in the rebellion at Pilgrim's Grace in 1536 provides the impetus for not only the Statute of Uses and the Statute of Wills of 1540, but also the continued critique of illicit behavior, which surrounds will formation. With his life, Aske reaped the consequences of the illegality of his rebellion against Henry VIII. In spite of his execution, these ground-breaking statutes led the way for individuals to proscribe the future for their own landed estates. As Parliament drafted this legislation, they attempted to address the problematic nature of will formation with its secrecy, its fraud, and confidence men and women.

By 1605, more than fifty years after the promulgation of the Statute of Wills, the fraud, which surrounds formation persists. Jonson uses his comedic vehicle, *Volpone*, to highlight this fact. Within this drama, Volpone, supposedly wise and wealthy, eschews the life of peace and plenty and the legal process, which was purposed to safeguard his riches, encourage truth-telling and expose lies, deceit, and conspiratorial relationships within this Italian village. Within the scenes of this drama, warring for wealth, theories of evidence, and notions of punishment function

[252] See page 22.

at the epicenter. Most problematically is that Venice is filled, with characters who create, covet and collude in the obstructionism that advanced fraudulent wills.

As Jonson's comedy struggles with the question of written evidence and how to safeguard its integrity, the early modern era likewise struggles to find its way as it begins to mandate against fraud, forgery, perjury, or "oath-breaking." Legal institutions, like the Chancery Courts though once the central force, meticulous master and arbiter of wills, devolve into a role as passé in the growing complexities of jurisdiction, equity, and individual rights. This early modern legal community rests its confidence on the statutes of Wills and Frauds, the parole evidence rule, and the vigilant body of jurists, like Henry Swinburne who zealously defended the sanctity of written proofs like wills. Hence, the debate over the level of protection of proofs and the growing field of probate serve within *Volpone* and in early modern culture to guide the way to the next century of legal and literary scholars.

CHAPTER 5

"I'll tear your libel for abusing that word": Staging Sanitonella's Libelous Brief, Sexual Reputation, and Legal Advocacy in John Webster's *The Devil's Law Case*

Introduction

The brief is at once a legal document—commanding attention in Webster's *The Devil's Law Case*—and serving as a problematic source of scandalous libel, which is used, like Aaron's letter in *Titus Andronicus*, to exploit familial and sexual relationships.[253] This exploitation destabilizes Rome and its empire in *Titus*, but its effect alters in the Neopolitan society and the family unit here in *The Devil's Law Case*. Where King Philip in Shakespeare's history play *King John* uses his reference to the "brief" metaphorically (2.1.103), this legal document offers more than its use as a legal resource or a typical stage property in Webster's drama. In full view of the audience, its appearance on the stage evolves also an oddity since the document is not typically presented in a public forum. In general, a legal brief would contain instructions for conducting a case in court, summaries of witness statements and pleadings (i.e. legal statement of the case).[254] While traditionally the brief could also request advice (i.e. an opinion) or provide a draft of a pleading, the legal document offers a way to frame the entire argument for a case; it effectively guides the advocate in his representation of a client. For example, a brief for a defendant is pictured

[253] In February 2015, I submitted a portion of this chapter for the seminar, "Post-Shakespearean Seventeenth Century," as a part of the conference Shakespeare Association of America in Vancouver, British Columbia.
[254] A pleading is a formal written statement in a civil case, which sets forth the cause of action or the defense (*OED*).

below regarding a debt action, where John Fanshaw sued Carew Mildmay (1657), and the defendant used several pieces of written proofs, including inquisitions, deeds, and agreement, to support his claim.[255]

Within this chapter, I examine how the play dramatizes the drafting of Sanitonella the law clerk's legal brief and the illicit, vengeful, and unethical behaviors, which instigated its creation: these include falsely tainting one's sexual reputation, attempting to murder Contarino a nobleman and Ercole a knight, and taking false and frivolous legal claims to court. In this way, the play illustrates the problem of impugning one's own sexual status, in ecclesiastical terms, such as fornication, adultery, and bastardy. Throughout this chapter, I will refer to these illicit pregnancy

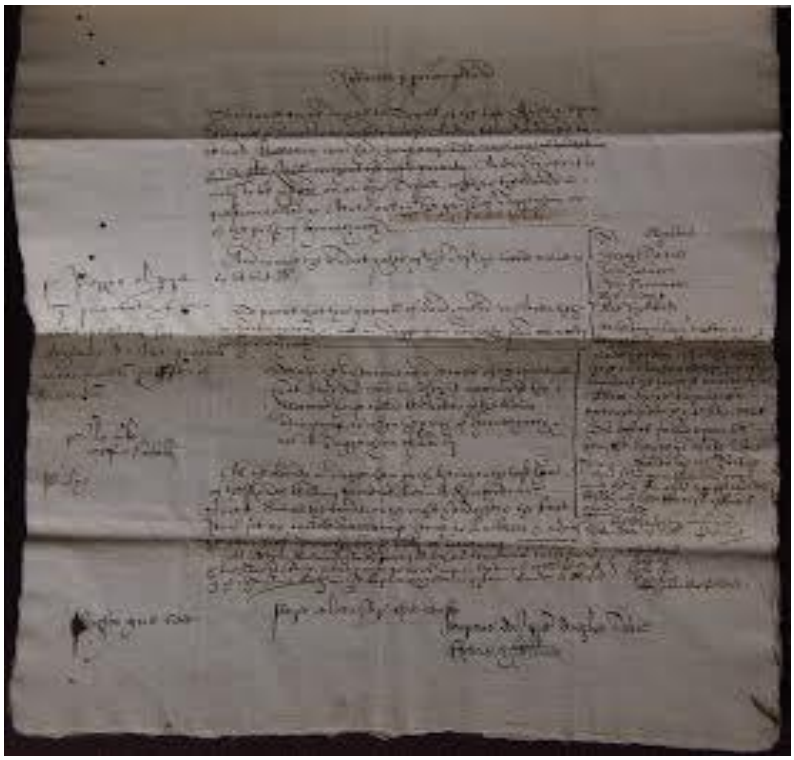


Figure 22 Legal Brief for a Defendant, 1654, Paper, J.H. Baker.

[255] In this case, the evidence for the defended included: an inquisition of 1556-1557, a decree of spiritual court in 1562, a deed of 1596, an inquisition post mortem 1605-1606, an agreement of 1638, a perambulation of the forest in 1642 and the testimony of six witnesses. Baker, J.H. Electronic Message. 13 June 2014. Opinions were usually written at the foot of the legal brief. The brief pictured above was provided courtesy of J.H. Baker of Cambridge University. See also Baker's *The Law's Two Bodies: some evidential problems in legal history* (2001) (69-70, 87-89, 171-186).

cases as "bastardy" as that was the legal term during this era. In addition, I interrogate the way in which the play utilizes Leonora's sexual reputation to seek revenge, specifically against her son, Romelio. As the drama presents its own examination of the brief by law clerks, lawyers, and future judges, I critique an identifiable concern about legal ethics and the role of legal professionals, which rests at the center of these dialogues. The legal brief emerges as susceptible to not only sexual and ethical deceptions, but also to material vulnerabilities, given that the physical document is destroyed by a legal advocate. How does this tearing of the original brief and the use of the copy also implicate the problematic deployment of the brief and the attempt to safeguard such legal documents from duplicitous claims? Finally, this chapter determines how Sanitonella's legal brief makes the case of Leonora versus Romelio unprecedented not merely in terms of the legal claims, but also in the presentation of this stage property, as the centerpiece in the early modern drama.

Indeed, nothing about this brief or this play, so Webster argues, is typical, from "the decency of the language" to the "ingenious structure of the scene." In so doing, the playwright offers wisdom and freedom "from those vices, which proceed from ignorance" (*The Devil's Law Case*, "To the Judicious Reader," 2-3, 13-15). Though used often in the legal community, this legal instrument is rarely depicted on stage by early modern dramatists. Yet, in Webster's play, the brief emerges a tool intended for vengeance so that Leonora may act out her vehement anger against her son Romelio for the attempted murder of Contarino—the object of Leonora's unrequited love. Still, as Romelio fails to kill Contarino, Leonora's vendetta against Romelio likewise fails. Given the early modern appetite for dramatic blood-thirst, I find a fruitful discussion in how this play—especially in its use of vengeance—struggles, like Shakespeare's *The Merchant of Venice*, in its genre as a tragicomedy. Interestingly, the brief and this stage piece, signifies this generic blurring, given that not only the failed attempts to achieve revenge, but also the comic relief that the play

seeks after the bloody act of dueling—offsetting the dueling, which operates as bookends—occurring both before and after the trial.[256]

While examining Webster's dramatic presentation of a bloodless bastardy trial, it is useful to consider the early modern ecclesiastical trial as a way of charting the cultural discourses, interests, motives, and constraints, as they shape the interplay of connections, between two institutions—the theatre and the church courts.[257] Since the time of King Edward I, the ecclesiastical courts had been given unfettered jurisdiction over marriage, bastardy, wills and family matters, [such as] the "punishment of mortal sin, such as fornication, adultery or gluttony" (Baker 149-150). In general, the church courts had been for many years an arch enemy of Sir Edward Coke, named Solicitor General by Queen Elizabeth I and a staunch advocate for the courts' reformation, but even he admitted that "the temporal law and the ecclesiastical law have been so coupled together that they cannot exist the one without the other" (Ingram 15, 35).[258] This coupling made these church courts professionally appealing. For instance, during the early modern era, the diocese at Salisbury included three archdeaconries: Salisbury, Berkshire, and North Wiltshire.[259] The North Wiltshire archdeaconry offers a provocative insight into the nature of early modern church courts. (22-23).[260]

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[256] Webster's dramatic presentation of dueling is significant; in the allegations of defamation, J.A. Sharpe observes that "defamation, in the form of scandalous words provocative of a duel was one of the main types of litigation in several courts, particularly the common law courts at Westminster, the church courts, the Star Chamber, and the High Courts of Chivalry—particularly in the High Courts reconstitution between 1623 and the Civil War (5).

[257] See Stephen Greenblatt's discussion in *Shakespearean Negotiations* (15-16, 113).

[258] Coke was concerned that the church courts might expand their jurisdiction over matters, which were not spiritual. See David Chan Smith's discussion on page 136 in *Sir Edward Coke and the Reformation of Laws* (2014).

[259] The archdeacon's courts, which is the lowest ecclesiastical court, "held in the archdeacon's absence before a judge appointed by himself, and called his official." See page 266 in Coke's *Systematic Arrangement of Lord Coke's First Institute of the Laws of England: On the Plan of Sir Matthew Hale's Analysis, volume 3* (1836).

[260] Act books provided vital information including the number of suits, the names of the parties, home parish, residence, and the sex of the involved parties (Sharpe 6-7). A presentment is "the action or an act of laying before a court or person in authority a formal statement of some matter to be legally dealt with." In ecclesiastical law, a presentment is "a formal complaint or report of some offence or fault, made by a churchwarden or other parish

These archdeaconries are interesting case studies, especially if one reads their anomalies, alongside the proceedings for cases of fornication and adultery in the Elizabethan Wiltshire, the Jacobean and the Caroline Wiltshires. From these we can learn of the pervasive social preoccupation with tracking, controlling, and punishing adultery and fornication in the period. In the Elizabethan Wiltshire in the North Wiltshire church courts, the number of fornication and adultery cases from 1587 to 1599 increased involving single and widowed women. Based on these shires, the reporting of unmarried sex increased significantly in the span of time since Shakespeare's portrayal of the adulterous Tamora, Queen of the Goths and Empress of Rome, in *Titus Andronicus* (1593/4). Actually, in the years that followed, the reporting of unmarried sex for women almost doubled. Still, remarkably as of 1623, the year in which John Webster's *The Devil's Law Case* was published, the numbers overall declined, but the reports involving married women increased. Clearly drawing on the society's deep and complex concerns about sexuality and sexual license outside marriage, Webster dramatizes anew the problems of unmarried sex—the dangers to innocent maidens and virile widows included lost dowries, stolen livings, and the burden of bastardy.

Thus, reviewing the consistent reporting of sex outside of marriage, I analyze how the playwright, Webster, centered the plot among the allegations of adultery and bastardy in this

authority to the bishop or archdeacon at his visitation." An information was in English law "originally a complaint or charge presented to a court or magistrate in order to institute (routine) criminal proceedings without formal indictment (now ***hist.***). Later: a statement in which a magistrate is informed that a named person has committed a stated offence and a summons or warrant is requested." An information is "a complaint presented by the Crown in respect of a civil claim, in the form of a statement of the facts by the Attorney General, either ***ex officio*** or on the report of a private individual" (*OED*). Bastardy was the type of case least likely to be overlooked and more likely to lead to a presentment, as R.B. Outhwaite notes in *The Rise and Fall of the English Ecclesiastical Courts* (2006). In *Courtship, Illegitimacy, and marriage in early modern England*, Richard Adair notes that "A certain arbitrariness is often to be found in church court presentments, where individual whims and personal prejudices could influence whether or not a case came to court" (153).

Jacobean tragicomedy, *The Devil's Law Case, Or When Women Go to Law, the Devil is full of Business*. He offers a method of examination distinct from Shakespeare's *Titus Andronicus*, where those allegations of adultery, bastardy—and treason require a deadly sacrifice. Even more striking in this play, the legal brief, which summarizes the case for the solicitor, becomes the central document through which to read the play in its practice of libel as the foundation for a bastardy case.[261] To use Igor Kopytoff's phrase, I craft "the eventful biography of a thing" (Appadurai 90)—here, a legal brief and all of the events, which surround it, to weave this story. Similarly, Webster's entire play may be read through Sanitonella's brief where the subplots of broken engagements, murder attempts, illicit affairs, and financial gamesmanship all lead to a climactic center surrounding the bastardy trial. Though typically prepared as a tool before going to court, the legal brief is written by Sanitonella the law clerk and presented to Ariosto the advocate, and the contents of this libelous document later figure prominently within the court proceedings. Sanitonella gives Ariosto a summary of the case against Romelio, based on the libelous statements provided by Leonora—the client and the mother of Romelio.[262]

The brief serves as the impetus, I argue, for unfolding and positioning the play as a way of reading the socio-political climate in regards to the issues of bastardy and adultery during the early modern era. Webster's drama responds to the scandal of bastardy, the intervention of the church courts, and the subtle and unsubtle machinations of the key characters. In legal jurisprudence, the brief sets out key evidence in preparation for court, and does the same for the audience in the theatre. Not only does the brief itself operate as a site of an unlawful and illicit taint, but also each

[261] A solicitor is one properly qualified and formally admitted to practise as a law-agent in any court; formerly, one practising in a court of equity, as distinguished from an *attorney* **(***OED***).**

[262] Consistent with the English court system, this Neopolitan locale likewise does not submit the legal brief to the court. In contrast, American jurisprudence uses the legal brief in court.

of the preceding plot lines, like Romelio's fornication with Angiollela the nun, attempted murder of Jolenta's suitors Contarino and Ercole, and Leonora's effort to punish Romelio by befouling his inheritance with her own allegations of adultery and bastardy. Actually, Sanitonella the law clerk's brief functions as a thread, which connects my analysis, and intervenes with notions, of sexual reputation as a form of vengeance, professional ethics as a form of legal advocacy, precedent as dramatic and legal device, and the legal and physical vulnerabilities of the document.

To appreciate the value of the brief, this analysis follows the movement of the brief—the preparation of the brief by Sanitonella the law clerk, its delivery to Ariosto the advocate, the use of the brief's libelous statements in court by Contilupo the lawyer and Leonora, and its cultural impact on this Neopolitan society. This "bother with the brief" begins when Leonora the client conspires with her maid, Winifred, to seek revenge against her son Romelio for his alleged murder of Contarino, her love interest; thus, she confesses to adultery and its resulting pregnancy.[263] In furtherance of this conspiracy, Leonora finds a willing partner in Sanitonella the law clerk who must engage an advocate to take this scurrilous cause to an ecclesiastical court.[264] Within this drama, Webster enacts the early modern concern about bastardy and its proliferation in the Italian city of Naples.[265] This chapter follows the trail of the libelous brief as it corrupts the ecclesiastical system of jurisprudence, exposes its weaknesses in protecting the courts from the taint of such defamatory evidence, and sets a precedent, or establishes a custom, in how to handle bastardy cases

[263] Simon Morgan-Russell has argued that the "male expectation of desire can be destroyed by the rebellion offered by an alliance of women" (Coleman 23). Though Lenora and Winifred ally themselves against Romelio, ironically the impetus for this vengeance, Contarino, is both alive and in love with Leonora's daughter, Jolenta, who is in love with Ercole.

[264] The ecclesiastical jurisdiction, or rather "the bawdy court," exercised its power over cases involving drunkenness, bastardy, fornication, and such, as Amy Louise Erickson notes, in *Women and Property in Early Modern England* (2002) (35).

[265] Instead of the small shires in the Salisbury province, this city of Naples is more reflective of the larger Court of the Arches, Chancery, and the like, which also handled ecclesiastical matters (O'Day 153-154)

in this early modern era. The story of Sanitonella's legal brief provides a means to discuss the idea of precedent as it merges, both dramatically and legally, in several ways: the appearance of the brief on the stage, the portrayal of the law office consultation, Leonora's invocation of her sexual reputation as revenge, as well as considering how this bastardy and adultery case suggests a specific strategy for a resolution. Much as the records for the bastardy cases included various anomalies in the Salisbury archdeaconries, Sanitonella's brief offers just such an example of the unreliable evidence present in many of these cases.

To complicate the reading of *The Devil's Law Case*, my use of the word "evidence" in this dissertation has been perhaps broader than merely proofs that are presented before the courts, which I address in other chapters in this project, as in my discussion of the letter in Shakespeare's *Titus Andronicus*, the bond in *The Merchant of Venice*, and the will in Ben Jonson's *Volpone*.[266] I am also considering evidence in a more general sense when revealed to litigants, attorneys, court employees, servants of the crown, etc. These documents, like the legal brief here in *The Devil's Law Case*, and the indictment and the warrant in *Richard III*, become important vehicles to supply different entities (i.e. courts, churches, theatres, prisons, and people within the early modern community) with information—many times, false information. Though the brief is used to summarize the case for the solicitor, in this chapter, I explain how Sanitonella's libelous brief inserts itself within the main action of this play.

This analysis builds upon the work of several scholars who have considered John Webster's *The Devil's Law Case*. Most importantly, while Subha Mukherji does not discuss Sanitonella's

[266] Evidence is defined as "[i]nformation, whether in the form of personal testimony, the language of documents, or the production of material objects, that is given in a legal investigation, to establish the fact or point in question" (*OED*). This project focuses upon this "language of documents" to comment upon early modern culture.

brief, she reads legal and dramatic realism in this play and Webster's *The White Devil* about women initiating as well as disrupting court procedures. In these dramas, she suggests that Webster portrays women's participation in the courts as salacious, where, in *The White Devil*, Judge Monticelso of the papal court scathes Vittoria, saying: "she scandals our proceedings." In her book, *Law and Representation in Early Modern Drama* (2006), Mukherji concentrates upon Webster's dramatic representation of the law and the depiction of a fictive experience, which women have in early modern courts. The play's "treatment of court-space and audience [demonstrate] how traces in imaginative literature can point us to historical realities otherwise inaccessible" (206-207).[267]

While advancing the argument of *Tainted Proofs*, I argue in this chapter that written evidence in the form of a solitary brief in *The Devil's Law Case* offers a critique of the ecclesiastical courts and its litigants. I contend that practicing libel corrupts the ecclesiastical system, and exposes its weaknesses when it comes to the evidence upon which cases are litigated and the litigants and litigators who bring these actions to the court. By illustration, this argument suggests that, in several key scenes, false evidence is produced, presented, and positioned as substantive evidence to fell the play's protagonist, Romelio. Within these scenes, characters contrive, collude, and manipulate evidence to "con" the court. Though Romelio operates as an

[267] Where Mukherji emphasizes evidentiary and theatrical representation, David Gunby contributes wonderfully to the scholarship with a chapter entitled, "Strong Commanding Art:" The Structure of *The White Devil*, *The Duchess of Malfi* and *The Devil's Law Case* where he focuses at length on the structural distinctions of this play in the *Words that Count: Essays on Early Modern Authorship in Honor of Macdonald P. Jackson* (2004); in his chapter, Gunby highlights Webster's sense of artistry and unity in dramatic structure unlike the arguments of some of his critics (Boyd and Jackson 219). In one of his many observations on the play, he suggests that the third act often parallels the first act in Webster's play, performing ironic counterpoints with varying "parallels and repetitions" and with resulting "complex and thoroughgoing" patterns across these three plays (210). Gunby notes that the subplot involving Crispiano and his son Julio offers just such a parallel and the antagonist Romelio is reformulated as a parody of Marlowe's Barabas in *The Jew of Malta* (217-219).

instrument for chicanery in this play, Webster uses a woman, as he did in *The White Devil*, as a provocatively, compelling site of vengeance within the courtroom.

Most importantly, I utilize three important moments to illustrate this argument. First, at 4.1, the vengeful Leonora colludes with Sanitonella the law clerk to hire Ariosto the solicitor to litigate her allegations of bastardy and adultery to disinherit her son Romelio. She claims that Romelio is a bastard—born as a result of a sexual liaison with her husband's friend, "a Spanish gentleman" (4.2.178); thus, Romelio must surrender all rights to the property he inherited from his reputed father, Leonora's husband, and forego inheritance rights to his sister, Jolenta.[268] This moment is particularly crucial in demonstrating how Leonora and Sanitonella use the libelous brief to distort the purpose of the legal process.

Second, in dramatic fashion, Ariosto the solicitor destroys the suspected maligning legal brief. The attempt to eradicate—materially—the substance of the brief is dramatically striking. After Ariosto's refusal to comply, Sanitonella the law clerk finds Contilupo the lawyer whose personal morals and professional ethics fit the complexion of Sanitonella's "foul copy" of the brief. This scene conveys the concerted effort to disrupt the legal process by using the brief in furtherance of petty vendettas.

Third, the trial is actually conducted; though the brief disappears, its metaphorical presence and its defamatory substance are exposed along with several conspiracies, yet even more importantly the characters Contarino and Ercole—both Jolenta's aspiring love interests—and Sanitonella the law clerk discuss the case serving as "precedent" at the end of 4.2. I use the word, "precedent," beyond its strict legal sense, and consider the concept more broadly to include those

[268] Leonora's husband was Romelio Francisco (4.2.161).

circumstances, which addressed "the practice of libel," particularly in cases of bastardy. Webster presents for the audience a moment to reflect upon the notion of legacy in relation to the effect of the brief on the theatrical and the legal profession within the seemingly benign framework of a play and its theatre. I will discuss the different ways that Sanitonella's legal brief emerges as precedent, as a stage property for future plays and as a legal instrument for future cases. After the conclusion of the case of *Leonora versus Romelio*, the play examines not merely the case, but this moment theatrically, and perhaps legally, to consider the larger implications of the legal and ethical issues, which surround this ecclesiastical court proceeding.

But first, I shall begin with the introduction of Sanitonella the law clerk's libelous brief and demonstrate how this legal instrument exposes the illicit, vengeful, and unethical behavior, which surrounds the brief. While discussing the nature of this false brief and Leonora's motives, I also study Webster's portrayal of a law office consultation between the client Leonora and the different legal professionals from Sanitonella the law clerk and Ariosto the advocate to Contilupo the lawyer.

FIRST SCENE: The Practicing of Libel

"Do you call this a brief?" (Ariosto 4.1.10)

Conspicuously, the opening of the scene at 4.1 places significant emphasis on the written evidence—this legal brief.[269] Typically, this legal instrument was used for legal preparation for court. Yet, here in Act 4, Webster creates an elaborate subplot around the production, the presentation, and the destruction of this brief. The playwright uses both Sanitonella, who produces

[269] Recall causa papers. See Baker's discussion on "causa" in his *Collected Papers on English Legal History* (2013).

the libelous brief, and Ariosto, who critiques the brief, to advance the intrigue surrounding Romelio and Leonora. Though the brief summarizes the case for the solicitor, Webster spends some time allowing the characters to reveal the legal brief, through description—much as the Scrivener describes his indictment at 3.6 in Shakespeare's *Richard III*. Clearly, a distinction exists between the indictment and the brief, for the brief summarizes the case and is prepared by solicitors for court, but an indictment is prepared by the court staff and is a charging instrument against an accused. In his opening soliloquy, Richard boasts about his own practice of libeling: "Plots have I laid, inductions dangerous, / By drunken prophecies, libels, and dreams, / To set my brother Clarence and the King / in deadly hate, the one against the other" (1.1.32-35). As Richard discloses, the practice of libel is a practice of inciting internal familial strife. As a business practice, even scriveners who also appear in Webster's *The White Devil* are accused as the culprits who conspire to create the "fake evidence," like writs, which lawyers "antedate" to expedite cases (4.1.60 note).[270] Again, Webster's dramas continue to point to the unreliable libel—here, in *The Devil's Law Case*, it is the legal brief.

While considering the brief's legal implications, I suggest that Webster's *The Devil's Law Case* serves my discussion of early modern evidence well. This drama supports my premise in *Tainted Proofs* that important legal documents, which are presented as proof in and around the courts, are both false and unreliable. Here, Sanitonella's legal brief is false in that it is filled with Leonora's lies. The brief presents a story of Leonora's case whose catalyst is grounded in a seething rage with and an unwieldy revenge against her son, Romelio. Thus, there becomes no reasonable grounds to believe the truth of the brief as credible evidence. These standards, credibility and reliability, were the ear-marks for witness testimony (Macnair 168, 245), but

[270] This reference refers to the John Russell Brown edition of Webster's *The White Devil*.

written proofs were held to this requirement even more so, since people, like Leonora and Sanitonella, were fallible—and hopefully their lies were palpable.

Yet, in an age where writings were preferred (92), the brief in this drama presents a provocative twist on truth and transparency. Because briefs were always in writing, their truth and transparency were assumed. Later, common law jurisprudence became synonymous with a rigid reliance on proof in written form.[271] Where in the English courts briefs were not admitted as evidence, in this drama the brief likewise is not presented in court—but to the audience, during a portrayal of a lawyer-client consultation *before* the legal proceeding. Though Sanitonella the law clerk collaborates with Leonora's deception, Ariosto immediately confronts the defamatory brief, and refuses to be seduced into this scheme. Using the brief, Leonora falsely declares her own adultery, thereby cuckolding her deceased husband and impugning her son's bastardy. While Ariosto's protestations are filled with vitriol and reproof, Sanitonella and Leonora forge ahead with an alternative lawyer, Contilupo, whose base character and ethics fit those of Sanitonella and Leonora. Ultimately, with Contilupo's assistance, Leonora successfully introduces a legion of lies to this Neopolitan court. The legal brief serves as a precedent in its unique presentation of an adultery-bastardy case brought by a woman who lambasts her own sexual reputation. Such an introduction of libel effectively distorts the brief's purpose, disrupts the legal process, and disgraces the legal profession. This legal instrument emerges as evidence not before a courtroom, but before the theatrical audience, which assesses its value as truth and weighs its effect on the later action.

[271] Bacon defines common law as "no text law, but the substance of it consisteth in the series and succession of judicial acts form time to time, which have been set down in the books we term as yearbooks or reports' (12.85)" (Helgerson 76). Yet, here we see that ecclesiastical courts rely heavily upon their texts, like records of proceedings, litigants, and the law.

I argue that in Act 4 the production, the presentation and the precedent, which surrounds Sanitonella the law clerk's legal brief, reveal the falsity of Leonora's allegations of adultery and bastardy and the efforts to thwart the distribution of truth with an earnest legal inquiry by Ariosto the advocate at 4.1 and Crispiano at 4.2. For example, Quintilian argued that "there is always a certain tacit prejudice against documentary evidence, since no one can be forced to give such evidence save of his own free will, whereby he shows that he harbours unfriendly feelings toward the person against whom he bears witness" (Book V, ch 7, 2-7). For the most part, only the audience and Winifred, Leonora's waiting woman, know of Leonora's "unfriendly feelings toward" Romelio. Yet, she hires Sanitonella the law clerk and attempts to recruit Ariosto the advocate to her legal team. In an unassuming way, Leonora the plaintiff/client seeks representation from Ariosto the advocate. In this first part of the chapter, I shall address Leonora's unfriendly motives and the production of libel through the legal brief in Act 4. Initially, I explain how the problems of the legal brief are played out in its presentation to and among these characters—most of whom appear at 4.1 at a law office.[272] As she enters the office, Leonora is accompanied by the willing Winifred. Naturally, the charge of bastardy implicates the ecclesiastical courts and the ramifications for seeking redress here, particularly by a woman; the church court's *raison d'etre* was the prosecution of "sin."[273] Webster presents a tragicomical exploration into the legal ramifications of "sin" and its reception by this secular society, where the practice of libel positions this Jacobean play as a provocative vehicle for investigation.[274]

[272] The action in 4.1 occurs in either a law office or court office. In the Dramatis Personae, Aristo is listed as an advocate, who pleads cases in court. Yet, later in the play, he will become a judge.

[273] Lady Eleanor Douglas's "Hell's Destruction" (1651) notes: "What is not true is false; Ergo, Libel bastard slips, and sinister actions imposed on his people, unlawful to be fathered on Gods VVord, his Law thereon either erring not in a tittle" (16). EEBO. 27 June 2014.

[274] See the exchange between Dr. Pole and the Archbishop Cranmer's trial in John Foxes's *Book of Martyrs*.

Leonora's Libelous Motive

While considering the brief's presentation, it becomes apparent that 4.1 cannot be read without implicating the final moments of Act 3, for 3.3 serves as an impetus to the action at 4.1. After Romelio confesses that he murdered Contarino, Leonora decides: "I'll be a Fury to him" (3.3.256). Indeed, Leonora's desire to seek vengeance against her son becomes the filter through which the audience understands this entire act, but especially this scene where her revenge is acted out in a legal setting. Here, this woman does not act out the physically, violent revenge that one might find in a revenge tragedy such as Webster's *The Duchess of Malfi* or *The White Devil*. In this tragicomedy, Leonora's vengeance is taken to the courts for battle amongst the law clerks, the lawyers and the judges, and allowed to escalate in this familial war. Before examining the brief itself in this legal setting, we should examine the vengeful motives, which will culminate later in the courts. Having worked her calculating maneuvers upon the waiting Winifred to win her participation in this contemptible conspiracy, Leonora makes an impassioned vow of vengeance filled with all of her deeply-rooted enmity in 3.3 on hearing of Romelio's deceptive plots, particularly his murderous schemes against Contarino, the man who is her daughter's suitor, but whom Leonora desires:

> I remember
>
> I let a word slip of Romelio's practice
>
> At the surgeons'. No matter, I can salve it.
>
> I have deeper vengeance that's preparing for him.
>
> To let him live and kill him: that's revenge

I meditate upon. (3.3.339-344)

Here, Leonora's plans of a "deeper vengeance" arise, as she ironicaly observes that she will "let him live and kill him," thus avoiding a bloody response to Romelio's bloody practices. Though this play discusses and presents the shedding of blood for "bloody unnatural revenge" (4.2.289), Webster constantly reminds the audience of the comic genre with scenes like 4.1 with its less than cordial banter exchanged between Sanitonella and Ariosto, as we might find among legal professionals. Yet, the playwright demonstrates how easily his play teeters between comedy and tragedy when we contrast such comic scenes with Leonora's scene at 3.3 filled with all of the dark pathos found in revenge tragedies. With seemingly dark intentions, Leonora continues to ruminate upon her vendetta against Romelio, in this internal blood feud in an aside at the end of Act 3:

I was enjoined by the party ought that picture,

Forty years since, ever when I was vexed

To look upon that. What was his meaning in't

I know not, but methinks upon the sudden

It has furnished me with mischief, such a plot

As never mother dreamt of. Here begins

My part i'th' play: my son's estate is sunk

By loss at sea, and he has nothing left

But the land his father left him. 'Tis concluded,

The law shall undo him. (3.3.344-354)

Though Romelio operated as the focal point of the play earlier, Leonora asserts her place of prominence with this feud. She embraces her "part i'th' play." It is this "deeper vengeance," the furnished mischief, and the unfathomable plot, which takes Leonora and Winifred to the law for Romelio's undoing.[275] To seize an advantage, Leonora uses Romelio's maritime loss, where the bulk of his estate was sunk, as an opportune moment for devising social and financial ruin for him. From this other stage property, a picture, she recalls an unnamed man, "the party," from her past, "forty years since," who owned the picture, and now hatches a plan for revenge on Romelio. Leonora means to divest her son of his only remaining wealth: his father's land.

This ruination is designed for public consumption.[276] Though Winifred advises "all privacy" in ministering this revenge (3.3.383), Leonora has other plans:

> Privacy? It shall be given him
>
> In open court; I'll make him swallow it
>
> Before the judge's face. If he be master
>
> Of poor ten arpents of land forty hours longer,
>
> Let the world repute me an honest woman. (3.3.384-388)

[275] These issues of revenge and bastardy appear in Shakespeare's *Titus Andronicus*; yet, here in Webster's play, the playwright offers a different avenue for revenge than the shedding of blood to save the child born of this illegitimacy as Aaron does in *Titus*. Romelio seeks to pass the child off as the offspring of his sister and one of her intendeds, and the vengeance blossoms into Romelio's own bastardy case and not one of murder.

[276] Recall lines of violence and vengeance from Webster's *Appius & Virginia* at 2.3 where Appius says: "Lend me a patient ear: to right our wrongs/ We must not menace with a public hand; / We stand in the world's eye, and shall be tax'd / of the least violence, where we revenge." See also Deborah Willis's article, "'The Gnawing Revenge': Revenge, Trauma Theory, and *Titus Andronicus*" (2002).

Here, she offers the audience the rationale for going public in the court. Leonora cannot stomach Romelio's affluence. She wants a living death—"let him live and kill him" (3.3.343). She will make Romelio's suffering, his financial ruin, and social suicide quite public.[277]

The Neopolitan Law Office Libel at 4.1

As we return our attention to 4.1, the following lighter exchange between Leonora and her legal representatives offers a way to read the underlying brief, which is exhibited in the scene for the first time. Yet, the exchange below cloaks Leonora's true intentions to divest Romelio of his inheritance. At first, Sanitonella the law clerk introduces Leonora to Ariosto the advocate:

> Sanitonella: --Sir, this gentlewoman
> Entreats your counsel in an honest cause,
> Which, please you, sir this brief, my own poor labour,
> Will give you light of.
> [*He gives the brief to Ariosto*]
>
> Ariosto: Do you call this a brief?
> Here's, as I weigh them, some fourscore sheets of paper.
> What would they weigh if there were cheese wrapped in them,
> Or fig-dotes?
> Sanitonella: Joy come to you, you are merry.
> We call this but a brief in our office.
> The scope of the business lies i'th' margin.

[277] Mukherji dedicates one of her chapters, entitled, "Locations of law: spaces, people, play," to discuss the public spaces of early modern trials (174-205).

Ariosto: Methinks you prate too much.

I never could endure an honest cause

With a long prologue to't.

Leonora: You trouble him.

Ariosto [*studies the brief*]: What's here? O strange; I have lived

This sixty years,

Yet in my practice never did shake hands

With a cause so odious. Sirrah, are you her knave?

Sanitonella: No, sir, I am a clerk. (4.1.7-22)

To begin, Ariosto's interrogatory, "Do you call this a brief?," becomes important not only for this exchange between Ariosto the advocate and Sanitonella the clerk, but also one, which I ponder for this dissertation. In answering this question, it becomes necessary to define the brief, detailing its function, purpose, production, and its presentation here in the play, but also within those entities in which it might be presented in the larger society (e.g. courts, churches, prisons, etc.). By defining the brief within these terms, I find meaning not only for the play, but for this period. The brief is more than a stage property in this theatre and an exhibit in the court—it is a cultural artifact, which merges the courts, the stage and the early modern people.

Let us now explore the ramifications of this unfolding scene for an understanding of the issues I raise in the preceding. Here, in the space of this law office, Ariosto cross-examines Sanitonella on his brief. The advocate assumes the role of a wizened, legal scholar, and answers a familiar, but unasked question for this cause: "What is the truth?" (Macnair 255). In answering the question, this dialogue vividly mocks the brief as a piece of physical evidence, "fourscore sheets of paper," but also provokes the audience's curiosity about the "odious cause" of this business. A

seemingly light dialogue here, leads us to consider the content, socio-political implications, and veracity of its charges, which I will discuss in this chapter. I begin my analysis with the language, which connotes veracity. For instance, at the outset of this exchange, Sanitonella attests to the brief, which details Leonora's "honest cause."[278] Attesting to the brief's veracity, he explains that "this brief," a product of his labor, is indeed worthy of being called—truthful. Also, Sanitonella suggests that the brief, in its main purpose, will enlighten Ariosto as to Leonora's worthy cause. While a brief may have legal authority, this authority does not guarantee the truth of the document itself. As a legal document, there exists an assumption of its truth.[279] Utilizing this assumption,

[278] The early modern poet George Wither uses the phrase, "honest cause" in his reference to "Vertue's honest cause" in his work *Britain's Remembrancer* (1628) as Ernest Gilman notes in his *Plague Writing in Early Modern England* (105).

[279] This brief has a life, character and history all of its own and its veracity may be vetted just as one might vet witness testimony as Shapiro instructs in her chapter, "Classic Rhetoric and the English Law of Evidence" in Kahn and Hutson's *Rhetoric in Law and Early Modern Europe*.

Sanitonella claims that Leonora brings "an honest cause" (4.1.8).[280] But, Ariosto's dismissive response also implies that the audience is unconvinced.

In spite of Sanitonella's claims of honesty, challenged by Ariosto, Webster creates a play that is consumed with the dichotomy found in dishonesty and its opposite, honesty. Ironically, Ariosto responds by stating that he "never could endure an honest cause" (4.1.17). This line by Ariosto the advocate seems to imply that the law possesses an affinity with treachery and deceit. As evidence of the play's tendency toward treachery, in an earlier scene at 3.3, Romelio tries to convince his honorable sister to proceed with the deceit of a false pregnancy so that she might hide

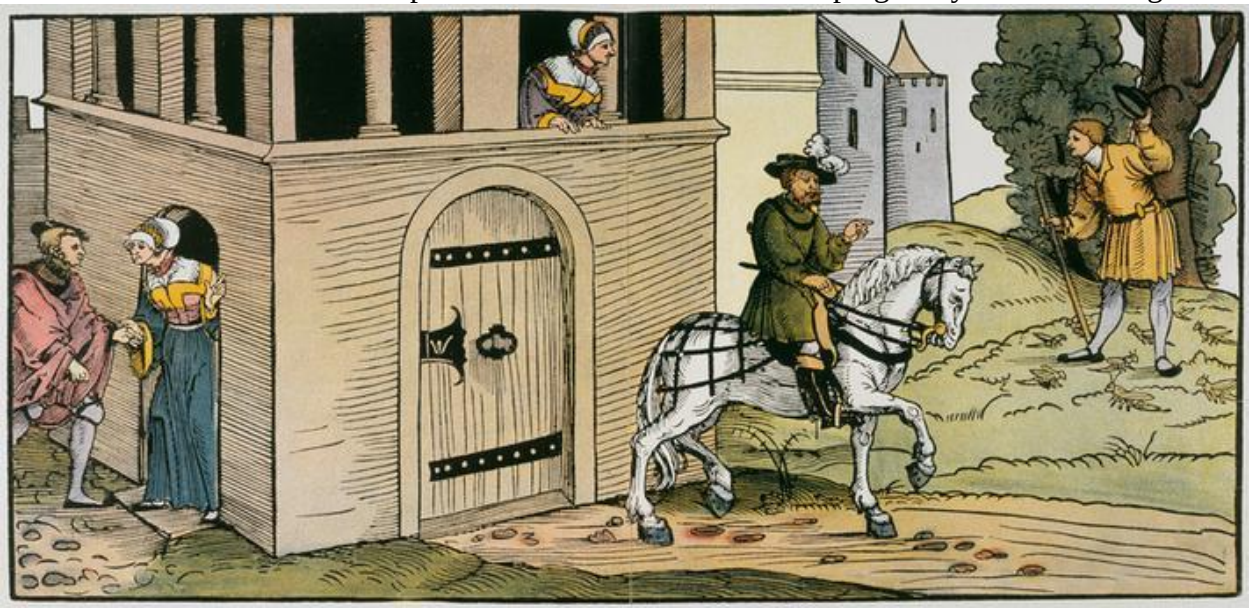

Figure 23 The unfailthful wife, Woodcut, Nuremberg, 16th century: colour applied later. Reproduction copy: E.Fuchs, Illustrierte Sittengeschichte, Renaissance, Munich (A.Langen) 1909, after p. 216.

his adultery with a young nun, Angiolella. Simultaneously, the pregnancy would convincingly win Jolenta the inheritance of both Contarino and Ercole, her aspiring love interests. Coveting their

[280] Recall: *The rule of the most blissed Father Saint Benedict patriarke of all munkes*. by: Benedict, Saint, Abbot of Monte Cassino. Printed at Gant: By Ioos Dooms, [1632]: EEBO. This document sets out the rules for not just monks but nun. Specifically, the ecclesiastical rulebook is addressed to Evgenia Povlton and encourages a life of purity. By contrast, Leonora's behavior in this play fails to epitomize integrity, honor, truth—there is an absence of purity.

wealth, Romelio would assume control of their properties as Jolenta's brother and patriarch. Though initially eschewing this distasteful proposition, Jolenta assents:

> since I have found the world
>
> So false to me, I'll be as false to it:
>
> I will mother this child for you. (3.3.153-155)

Yet, her agreement does not come without her own question posed to Romelio:

> Must I dissemble dishonesty? You have divers
>
> Counterfeit honesty; but I hope here's none
>
> Will take exceptions. I now must practice
>
> The art of a great-bellied woman, and go feign
>
> Their qualms and swoonings. (3.3.166-169)

Just as Romelio feigns true concern about his sister Jolenta's marriage contracts, his true loyalty lies with amassing vast amounts of wealth and displaying soul-sapping ambition. He willingly sacrifices his sister's sexual reputation (i.e. her virtuous name and character) for the sake of financial advantage.

Almost mirroring the earlier moments when Romelio teaches Jolenta to practice deceit, this scene is consumed with Leonora teaching Winifred the practice of libel. Romelio foists honesty—and its cousin, patience from his person. Ariosto the advocate counsels patience—characteristics associated with the divine. Yet, finding no redeeming value in such traits, Romelio scoffs: "What practice do they make of't in their lives?" (2.3.37). To the audience, Romelio and

his mother share their practice in deceit. While having no knowledge of the foregoing treachery of Romelio and Leonora, Ariosto detects dissimulation—which emerges as the scene unfolds.

Even more pressing, in this scene, is issue of the brief's content. Ariosto refers to the cause as "odious," but at this time Webster withholds from the audience the nature of the cause—bastardy (4.1.21).[281] Does this suggest that bastardy was a matter that may appear repugnant to this society?[282] For example, here in *The Devil's Law Case*, Ariosto and Sanitonella engage in a repartee that becomes so impassioned, yet they never reveal to the audience the scandalous nature of the brief, its unverifiable facts, nor its lewd circumstances. The source of this passion is incited by Ariosto's comic but sincere tone in this dialogue. For instance, he berates Sanitonella's character as a legal professional for his role in this cause with this caustic inquiry:

> Why, you whoreson fogging rascal,
>
> Are there not whores enough for presentations,
>
> Of overseers, wrong the will o'th'dead,
>
> Oppressions of widows or young orphans,
>
> Wicked divorces, or your vicious cause
>
> Of *plus quam satis*, to content a woman,
>
> But you must find new stratagems, new purse-nets? (4.1.22-28)[283]

[281] There existed both Jacobean and Carolinian statute against the lewd behavior of women arising out of the bastardy cases (Walker 227). See *Crime, Gender, and Social Order in Early Modern England* by Garthine Walker.
[282] Where Antonio observes that "Great princes" do not begrudge their officers accumulation of wealth, so they will not complain / Lest thereby they should make them odious / Unto the people" in *The Duchess of Malfi* (3.1.31-35). Yet, the insinuation of bastardy supersedes the resentment of wealth in the lower classes.
[283] *Plus quam satis* means "more than enough" (4.1.23 note, 256).

Filled with ribaldry and gravitas, Webster aligns a serious matter of law—that is, the veracity of the legal brief—to criminality and deceit in a range of examples of "vicious" causes.

While reacting to the contents of this legal cause, the characters also paint for the audience the quite visual and physical image of Sanitonella's brief, which beckons each of the five senses—taste, touch, sight, smell and hearing. For instance, using a deceptively simplistic interrogatory, Ariosto asks Sanitonella to pass the eye-test, in essence: "Do you call this a brief?" (4.1.5). The earlier exchange contemplates the physical appearance of the brief and its substantive content. As part of its visual characteristics, the document is described as "some fourscore sheets of paper," not parchment (4.1.11). After touching the document, Ariosto's comment suggests that the brief exists in approximately eighty sheets of paper. This brief seems antithetical, for it figures more as a tome than anything described as "brief." Also, Ariosto suggests that Sanitonella's brief in explanation of Leonora's cause possesses "a long prologue to't," not unlike a play (4.1.18). Even more, Ariosto accuses "methinks you prate too much" (4.1.16). Disturbed by what he hears, Ariosto suggests that Sanitonella "prates" or speaks unwisely, overbearingly, to little purpose, or even tells stories, possibly unsupported (i.e. false) against someone—in this case, Romelio (*OED*). Sanitonella has written this brief, yet Ariosto's reception of its aesthetic and physical attributes demands that the audience should receive the information contained therein with great skepticism.

Even further, the substance (and mysterious contents) of the brief alludes to another complication. In a notably contrary display against Ariosto's hyper-emphasis on the length of the document, Sanitonella tells Ariosto bluntly: "We call this but a brief in our office" (4.1.14). Ever the ultimate salesman, a convincing mouth-piece in his own right, Sanitonella the law clerk insists that these legal papers suggest nothing extraordinary, yet he discloses that "the scope of the

business lies i'th' margin" (4.1.15).[284] Apparently, even Sanitonella intimates that the real story lies on the periphery—not in the main pages of the brief. As the drama continues to play upon the language of the law and business, we might also construe Sanitonella's comment as way of encouraging Ariosto to read *swiftly* the margins rather than the entire matter so that Leonora the plaintiff-client, Ariosto the advocate, and Sanitonella the clerk may *speedily* conclude this business of the brief. Emphasizing the greedy cunning of the legal practitioner, Sanitonella appears impatiently enthusiastic about "the pleasure in taking of the clients' fees" (2.1.56-57). He fits Phillip Stubbes's criticism of lawyers as "thieves under colour of the law" with "fees too high" in his *The Anatomie of the Abuses: containing, a discouerie, or briefe summarie of such notable vices and imperfections, as now raigne in many countreyes of the world* (1583) (14, 16).

Furthermore, unlike the jurists depicted in Stubbes's bombast, Ariosto embodies a different legal practitioner—honest and forthright. In this vein, Quintilian describes the acceptable lawyer as "no hack advocate, no hireling pleader, nor yet, to use a harsher term, a serviceable attorney…But rather a man…uniquely perfect in every detail and utterly noble alike in thought and speech" (Book XII, ch 1, 23-26).[285] Ariosto embodies most, if not all, of these qualities. Demonstrating his own disdain for this clerk and his ethics, Ariosto responds: "The devil take such fees, / And all such suits i'th' tail of them!" (4.1.30-31). Suspicious and outraged, Ariosto insults the clerk. Having quite lost his patience, Ariosto asks Sanitonella: "Sirrah, are you her knave?" (4.1.21). By itself, Ariosto's question implicates Sanitonella as "a dishonest unprincipled man, a cunning unscrupulous rogue, a villain" (*OED*). Essentially, Ariosto, without having knowledge of Leonora's plan for vengeance, senses that something is amiss. Still, Sanitonella responds: "No, sir,

[284] Many of the early modern briefs had comments by the jurists within its margins.
[285] See also O'Day's discussion of the attorney in *The Professions in Early Modern England, 1450-1800* (148).

I am a clerk" (4.1.22). Though the tenor of the conversation seems infused with comical overtones, an important moment arrives where Ariosto must determine whether the brief that summarizes this reputedly "honest cause" may be trusted, and he discloses: "Yet in my practice never did shake hands / With a cause so odious" (4.1.20-21). Considering the potential for knavery, Ariosto becomes visibly discombobulated at the reading of the brief's contents, and candidly accuses Sanitonella of having "writ false Latin" (4.1.33)—all the while leaving the contents cloaked in mystery for the audience.

If the language is false, might not the content be false as well? It is possible that Ariosto's consternation arises more from considering the brief as mere fluff, but as compromising the very social structure of this early modern society. If a false brief might topple a man, a woman, and thereby a family, might it also topple a community of people with implications for the larger society? Arguably, the false brief reflects the potential vulnerabilities to the ecclesiastical system of jurisprudence whose jurisdiction might succumb to its critics; these critics, common lawyers, believed that the church courts were obsolete and limited in their early modern utility (Macnair 26-27).[286] Ariosto seeks to preserve the utility of the courts, specifically the church courts. Apparently, Ariosto's reaction to reading and studying the brief is to assume that this cause is *no*t honest. Without express knowledge, has Ariosto's legal practice nevertheless become a party to the practice of libel? Does his expressed outrage with Sanitonella and Leonora sufficiently distance Ariosto from the "tainted" brief, and its later exposed libels?[287] Like the brief, Ariosto's behavior

[286] The church courts ultimately was abolished (Adair 177-178).

[287] Later, because Ariosto tears up the brief, Sanitonella gives Contilupo what he calls, "a foul copy," or what the editor René Weis calls a draft of the brief (4.1.73). I discuss this tearing of the brief later in the chapter.

at 4.1, along with Sanitonella and later Contilupo, is susceptible to claims of inappropriate professional ethics.[288]

The Business of Libel

The practicing of libel before this early modern audience is significant, as the drama confronts the problematic nature of written evidence, whose truth or falsity must not be assumed. Such an assumption would destabilize the system of jurisprudence. It is possible that the audience is familiar with the practicing of libel in the theatres, as one finds such scenarios played out in "scurvy pamphlets and lewd ballads" (4.2.28-29).[289] Within Webster's dramas, documents should be trusted neither here in *The Devil's Law Case*, nor Ferdinand's letter written by Bosola to Antonio, the Duke of Malfi at 5.3 and 5.5 in *The Duchess of Malfi*. For instance, Bosola reads the letter to the Duchess of Malfi: "Send Antonio to me; I want his head in a business" (3.5.28). Immediately after the letter is read, the Duchess "distrusts" her brother Ferdinand as Ferdinand "distrusts" Antonio's love for her (3.5.38). Even Vittoria's reputed love letters convict her falsely of adultery in *The White Devil*. Here again, Webster displays another version of an internal blood-feud—the business of libel also becomes the business of revenge. This practicing of libel "taints" and exposes the taint to this early modern audience.

[288] See Rosemary O'Day's discussion of professional ethics in her text, *The Professions in Early Modern England, 1450*-1800 (147-149). Though his book, *The Origins of Adversary Criminal Trial*, does not raise ethics, Langbein mentions "the moralizing tone" of Session Papers published in the late seventeenth century, where it discoursed upon high-profile crimes, and property crimes. See also discussion of "the standard of moral persuasion" (423).
[289] See Raymond Joad's discussion of "a base and scurvy pamphlet" in his *Pamphlets and Pamphleteering in Early Modern Britain* (187). In her *Women as Translators in Early Modern England*, Deborah Umar discusses "audience as witnesses" in her analysis where she "translates" the staging of Greek drama (73). In my previous research, I considered Kahn & Hutson's discussion of jurors in their text and Mukherji's comparison of the jurors and the audience in her text (136).

In addition to the issues of trust, the scene, of course, demonstrates quite simply the problems with libel. The brief is filled with statements, which are false.[290] Though Ariosto mentions the brief as "libel" once in the play (4.1.40), and Jolenta accuses her brother Romelio of "odious slander" once (3.3.8), the potential political and legal implications in early modern society were numerous.[291] Within the play, Webster's *brief* mention of libel and slander barely prepares the audience for the trial where the practice of libel sits directly at the center of an ecclesiastical proceeding on bastardy and adultery. Even in *The Duchess of Malfi*, libel receives limited attention, as Antonio accuses Bosola: "You libel well, sir" (2.3.40). Such "slanderous report[s]" (3.1.47) deemed:

> one of Pasquil's paper bullets, court calumny,
>
> A pestilent air, which princes palaces
>
> Are seldom purged of. (3.1.49-51)[292]

In this brief exchange, accusations of theft, treachery, and attempted murder surround this statement in this tragedy. Such accusations of libel weigh heavily in mere dialogue, yet here in *The Devil's Law Case*, the brief represents an *actual* site of libel within this consultation between Leonora and her legal advisors—not within this Christian court, which handled bastardy cases. Still, this brief circulates around the court—outside its doors, within its corridors, and amongst its

[290] See *Le digest des briefs originals et des choses concernants eux [microform] / compose per Simon Theloall*. London: Printed by the assigns of Richard and Edward Atkins ... for Thomas Bassett et al, 1687. See also *The common and piepowder courts of Southampton, 1426-1483*, ed. Tom Olding; with an introduction by Tom Olding and Penny Tucker. Southampton, England: The University of Southampton; Cambridge, MA: The Ames Foundation, [2011].

[291] There evolved a body of words, which became actionable, implicating criminal action, some infectious disease, and professional corruption as discussed in *Defamation and sexual slander in early modern England: the church courts at York* /by J.A. Sharpe (7-8).

[292] See the note in *The Duchess of Malfi* edited by Leah Marcus at 3.1.49.

litigants. Webster raises this issue of bastardy in a society not unfamiliar with the gravity of such allegations like those in Henry VIII's divorce action against Catherine of Aragon a century earlier.[293] Even in this royal cause, allegations of forgery abounded, where papal briefs were viewed with skepticism.[294]

In a decidedly scandalous fashion, this bastardy brief reaches its pinnacle in the scene in 4.2, when it is placed before an ecclesiastical court. In open court, Contilupo the lawyer reveals what heretofore the audience could only surmise. He brazenly proclaims: "I will leave all circumstance, and come to th'purpose: / This Romelio is a bastard" (4.2.150-151). Exposed publicly as a bastard, Romelio is now a social pariah. In her testimony, Leonora explains that Romelio was begotten from a sexual tryst, where she was unfaithful to her husband while he was out of town. She insists: "[Francisco Romelio] was not his father" (4.2.163). In an unguarded moment, Romelio responds to Leonora's surprising testimony:

> Yet, why do I
>
> Take bastardy so distastefully, when i'th' world
>
> A many things that are essential parts
>
> Of greatness are buy by-slips, and are fathered
>
> On the wrong parties. (4.2.302-306)

Acknowledging that "many things that are essential parts / Of greatness," Romelio embraces the possibility of his illegitimacy in this cynical speech. Having fathered his own bastard, it is no surprise to the audience that Romelio takes a more open view of bastardy. The jurists are astounded

[293] In *Cobbett's State Trials*, these briefs were addressed in the Divorce of Catherine of Aragon (1485).
[294] Both Princesses Mary and Elizabeth (later Queens of England) faced the stigma of bastardy.

that Leonora would implicate herself in the sin of adultery in this bastardy case, for the result is to not only divest her son of any legitimate right to her husband's property, but also to disinherit herself and expose them both to public shame. Commending her disclosure, Crispiano the lawyer from Seville explains:

> There was a main matter of conscience.
>
> How many ills spring from adultery!
>
> First, the supreme law, that is violated
>
> Nobility oft stained with bastardy,
>
> Inheritance of land falsely possessed,
>
> The husband scorned, wife shamed, and babes unblessed. (4.2.430-434)[295]

This "wifely shame," which included the whipping of early modern women for the guilt of bastardy, usually meant that the parish would have the financial burden of caring for the child (Walker 109, 227-228). Yet, here where Romelio is in the prime of his youth and able to care for himself, such concerns are not mentioned.[296] Still, the stigma remains not only for Leonora, but Romelio as well. Ironically, Romelio cares not for the stigma he brings to Jolenta earlier in the play when he asks her to slander her own name—and her sexual reputation, and here Leonora heartily embraces the downfall awaiting her son Romelio with such allegations of bastardy and adultery. Both characters are thus tainted by their lack of a moral compass. In spite of the shame and the stigma, Leonora surrenders her most valuable asset—her sexual reputation—as a tool to

[295] Recall Henry VIII's discussion of his "wounded conscience" at 2.2 in the great matter of his divorce of Catherine of Aragon in *Henry VIII*.

[296] Merry Wiesner-Hanks observes that men were rarely prosecuted for sexual crimes in *Christianity and Sexuality in the Early Modern World* by Merry Wiesner-Hanks (2014).

fell her son in the most powerful tool that he possesses—his financial and social status. Leonora is willing to accept her own exile and disgrace in this cynical ploy to ruin her son.

Extending his conversation of bastardy and adultery, Webster implicates ecclesiastical courts in other dramas as well. In the arraignment of Vittoria in Webster's *The White Devil,* allegations of adultery abound, where Vittoria is tried for adultery in a Christian court, and Bracciano accuses Isabella of the same.[297] Yet, Vittoria is convicted and sentenced to a house of "convertites" (3.2.264) or "penitent whores" (3.2.267), and Leonora sentences herself and her maid, Winifred, "[to enter] into religion" (4.2.514) as a "place of penance" (4.2.554) for the false allegations of adultery and bastardy.[298] For each of Webster's dramas, adultery is scandalized and quite often the women emerge as the *reputed* source of the scandal. This dramatic depiction flies in the face of evidence, which shows that ninety percent of the defamation cases with a female plaintiff in the ecclesiastical courts at York were brought "against slanderers of sexual reputation" from 1590-1690 (Sharpe 15). Here, in a strange contortion of typial practice, a woman defames herself, and uses her own agency to launch a powerful, sexual warfare against a man. Some scholars, like Richard Adair, suggests that such moments of libel or "mistake" were less common when women brought cases before the court (153).[299] In her chapter "When women go to Law, the

[297] Johanna Rickman observes that "the debate about illicit sex abounded in the late 1620s." Attempts were made to pass legislation. Note also her discourse on different types of bastardy from "general bastardy," "special bastardy," "pauper bastardy," "bastardy per se," and the like in Johanna Rickman's *Love, lust, and license in early modern England: illicit sex and the nobility* (2008) (20-23, 204). See also *An act for suppressing the detestable sins of incest, adultery and fornication* (1650): EEBO.

[298] See *The White Devil* edited by William Hazlitt for phrase, "penitent strumpets" where he uses the plot outline by Mr. Genest from his account for the English stage (4).

[299] In *Ritual and Conflict: The Social Relations of Childbirth in Early Modern England*, Adrian Wilson observes: See footnote 118: "A rate of one *case* in12 going to Quarter Sessions is suggested by the numbers for three Essex parishes (12/144 *cases* pooled). Constant with this picture, the Wiltshire Sessions saw about seven cases per year (85 cases in 12 sampled years), the Hertfordshire Sessions about two to three cases per year (107 cases in 42 years). Most of these figures came from various dates between 1560 and 1646, though those from Hertfordshire may be biased upwards by including 1650s (cf below at note 144). For Essex parishes, see Macfarlane, "Illegitimacy and illegitimates" (80); Wrightson, "The nadir of English illegitimacy," 189; Levine and Wrightson, "The social context of illegitimacy," 163 note 4. For Wiltshire see Ingram, Church Courts, 339; for Hertfordshire see King, "Punishment for

Devil is full of Business: women, law and dramatic realism," Mukherji suggests that one of this play's main "preoccupations is with the especially elusive field—the experience of women at law" (207).[300] Here, offering perhaps a common early modern theme, Webster offers a play, which contemplates bastardy, adultery and libel, with an identifiably gendered perspective.

Webster's fascination with illicit relationships like fornication, adultery, and their potential consequences—bastardy—comes to its fruition in *The Devil's Law Case*. Interestingly in this drama, those who commit adultery, like Romelio, find imperfect success in hiding their illicit relationships, as in impregnating a nun, convincing his sister to accept the baby as her own bastard, and attempting to murder his sister's suitors for financial gain. Those who admit, falsely, to fornication, like Jolenta, and adultery, like Leonora, are castigated and ostracized, yet share the fate of some of Webster's other female characters—Vittoria in *The White Devil* and the Duchess in *The Duchess of Malfi*. Webster continues where Shakespeare has left off with *King Lear* and *Titus Andronicus*. In this drama, Webster crafts what happens when claims of bastardy are removed from the darkened shadows of private dealings, and are brought into the light of public view.[301] Here, "when women go to law," (the drama's title), women, like Leonora, must answer

bastardy," 136-7. See also footnote 119: "In the North Riding of Yorkshire between 1605 and 1612, about 10 *bastardy cases* per year went to Quarter Sessions (79 cases in eight years). This is consistent with the suggested rate of one case in 12; if we assume for the North Riding at this time 3,000 births per year and an illegitimacy ratio of 4 percent, there would have been 120 bastard births per year there at this time.

[300] There is evidence of property cases when their inheritance is a question before the court, as evidence in Jordan and Cunningham's *Law in Shakespeare*.

[301] J.A. Sharpe discusses how the Star Chamber developed the distinction between libel and slander, and the dichotomy that survived the court's own demise in 1641 in *Defamation and Sexual Slander in Early Modern England* (1980) (4-5, 7); the libel cases revealed the use of the word, "bastard" as a term of abuse and the decrease in the number of cases reflected a changing attitude about bastardy as noted in *Bastardy & Comparative History* by Peter Laslett, Karla Oosterveen and Richard M. Smith (1980) (85); Richard Adair notes the church courts requirement of proof in a bastard case was "a common fame" *Courtship, Illegitimacy, Marriage in Early Modern England* (1996) (153-154); Garthine Walker notes the different types of libels from their use in mocking rhymes to cases involving physical violence, verbal and sexual misconduct in *Crime, Gender, and Social Order in Early Modern England* (91, 100, 107); *Why Bastard? Wherefore the Base?: Representing Bastardy in Early Modern England* by James P. Saeger (1996).

for adultery, and men, like Romelio must deal with the state of their bastardy and its consequences. The law would divest each of the benefits of their social and financial station.[302] Yet, Webster crafts a drama where the practice of libel would seem to interfere with such dire consequences. Apparently, the "Devil is full of business," or chicanery, when libel is involved.[303]

In this next section, I investigate the ethical and moral implications, which flow from the illicit, vengeful, and unethical behaviors that surround Sanitonella's brief. This play presents the figure of Romelio, who operates as a masterful manipulator, but the women around him, like his mother Leonora and his sister Jolenta provide an identifiable contrast. Within this presentation of the legal brief and these jurists, I consider their individual ethical concerns or the absence thereof. In these moments, Webster provides a critique of the legal profession by legal professionals on this dramatic stage. In essence, these jurists respond to an effort of self-evaluation from those within the field of law, rather than from those outside of the law.

SECOND SCENE: Legal Ethics: Avoiding the Appearance of Impropriety

"I'll tear your libel for abusing that word" (Ariosto 4.1.40)

As women carefully guarded their sexual reputations, lawyers had cause to care for their much sullied reputations as well. In *A Phillip Stubbes's The Anatomie of the Abuses: containing*,

[302] Martin Ingram discourses upon libel cases in *Church Courts, Sex and Marriage in England* (1990) (48, 56, 117, 401-403).

[303] William Prynne, a Presbyterian lawyer, along with Henry Burton, clergyman, and John Bastwick, physician, were found guilty of seditious libel in June 1637 by the Court of the Star Chamber based on their scurrilous derision of stage plays and masques, which they called "chief delights of the Devil" and "most mischievious plagues that can be harboured in any Church or State," which Leo F. Solt observes in *Church and State in Early Modern England, 1509-1640* (Oxford UP 1990) (185-188); in most years, almost half the cases were related to sex (fornication, adultery and incest) in with the exception of the 1590s, in Scotland particularly, as noted in *Limits of Empire: European Imperial Formations Early Modern World History* (Ashgate Publishing 2013) by Tonio Andrade and William Reger; *The Rule of Women in Early Modern Europe* by Anne J. Cruze and Mihoko Suzuki (University of Illinois Press 2009); *Defining Community in Early Modern Europe* by Miacheal Halvorson and Karen Spierling (2008); *Women in Power in the Early Modern Drama* by Theodora Jankowski (University of Illinois Press 1992).

a discouerie, or briefe summarie of such notable vices and imperfections, as now raigne in many countreyes of the world (1583), English lawyers were touted as "rascally," "rogues" and "greedy" (vii, 10, 12). They were reputed to "suck marrow out of poor folks's bones in the Law-Courts" (123). Stubbes wrote that "lawyers are necessary and can serve God: but English ones don't, they've such cheveril consciences" (12). Still, even forty years after the publication of Stubbes's text, Webster does not offer his audience "English lawyers," but Italian and Spanish ones. He does not depict lawyers, who avoid questions of ethics, propriety, and professionalism—but these jurists confront these issues of openly.

Among his other Jacobean dramas, Webster offers the stage a depiction of several improprietous lawyers. For example, as a dismal portent from her tyrannical brother, the Duchess of Malfi, accused of bastardy, is introduced to a "mad lawyer" (4.2.45). As another example, Vittoria, accused of adultery, is encumbered with a speech-impaired "mouth-piece," who struggles to represent her with "hard and undigestible words" at her arraignment in *The White Devil* (3.2.37).

Now here, in the latter portion of 4.1, when Webster presents the outrage over this libelous brief in *The Devil's Law Case* through the character of Ariosto the advocate, the socio-religious concerns about the ramifications of Sanitonella's legal brief reaches its peak. One of the ways in which the matter of the brief reaches its apex is in the display of violence. This material physical mutilation—at once moral and legal—highlights a new type of "staged violence."[304] Specifically, this stage violence is committed upon the *document* in dramatic fashion where Ariosto "tears up the brief," according to the stage direction at line 41. With this attempt to eviscerate the material of the brief, Webster offers this early modern audience a rarely performed law office consultation,

[304] See Erika T. Lin's discussion of physical mutilation and stage violence in *Shakespeare and the Materiality of Performance* (2012). Compare Lavinia's mutilation in *Titus Andronicus*.

which has gone seriously awry. As we learn from the beginning of 4.1, Sanitonella the law clerk has interviewed Leonora the potential client, expended energies in drafting a summary of the case, set up a consultation with Ariosto the advocate, and taken a fee. Yet, the lawyer, here Ariosto, has become apoplectic over the nature of the brief. His response questions the legal capabilities of the law clerk, Sanitonella, and the sanity of the client, Leonora. Though its contents have remained thus far a mystery to the audience, Ariosto's conspicuous response heightens the mystery. Armed with notions of honor, Ariosto wages a war against the beleaguered reputation of lawyers and their status—much wounded by Dick the Butcher's call in Shakespeare's *Henry VI, part II*: "The first thing we do, let's kill all the lawyers" (4.2.71). Still, what would make any well-seasoned attorney with over thirty years of practice possibly reject a legal fee from a wealthy client? The wise Ariosto flaunts Sanitonella's insistence upon taking the client's fee:

> The devil take such fees,
>
> And all suits i'th' tail of them! See, the slave
>
> Has writ false Latin. Sirrah Ignoramus,
>
> Were you ever at the university?" (4.1.30-34)

Here, Ariosto refuses to sully himself with the appearance of impropriety by not merely rejecting this case—but potentially "all suits," which are "writ false Latin."[305] Though Ariosto the advocate refuses the fee, Webster offers an alternative solution to this problem of representation with a less scrupulous lawyer, Contilupo—he will forge ahead as Leonora's legal representative. With these

[305] See footnote 308 on the "Notes of the Case of Cardigan" in Langbein's *The Origins of Adversary Criminal Trials*. Here, Langbein discusses evidential problems associated with the appearance of impropriety and jury issues.

ethical polar opposites, Ariosto and Contilupo, the play injects a serious debate about early modern legal ethics as well.[306]

While investigating the physicality of this document, this part of the chapter focuses upon the violence committed against the legal brief here at 4.1:

> Ariosto: I'll tear your libel for abusing that word,
>
> By virtue of the clergy. [*Tears up the brief*] (4.1.40-41).

This act of violence upon this "false brief" is significant. The tearing of legal brief may be likened unto the biblical "renting of garments," much like Ahijah the Shilonite prophet rent the new garment of Jeroboam, servant to Solomon. The renting of this new garment was symbolic and represented the tearing of the nation of Israel, which was promised to David and his progeny. Yet, communicating God's dissatisfaction with this nation, Ahijah "caught the garment and rent it into twelve pieces."[307] In Webster's play, Ariosto's tearing of the brief actually implicates the ability to forestall or to destroy the libel. Ariosto tries to somehow eradicate the taint that has been introduced into the legal system, thereby into the culture, by this violent act. This violence upon the brief may be analogized, more than the rending of garments in biblical times, but with the violence, which occurs in the play—particularly, the attempted murder of Contarino at 3.2.108 where Romelio stabs him to secure the land that Contarino willed to his sister Jolenta.[308] Here in Webster's drama, the implication takes on an additional facet—financial gain.

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[306] Recall some of the legal training manuals suggest not just filing papers as in the Chancery, but in manual on ethics. See manuals for specific training of lawyers: Richard Robinson's *The Perfect Instruction of An Attorney in the Commonplace…With all Rules, Orders, Actions, Writtes…*(1592), Thomas Powell's *The Attorney's Academy* (1623), and Anonymous's *The Practick Part of the Law* (1658) (O'Day 167-168).

[307] See biblical verses at 1 Kings 11:26-43 in *1611 King James Bible Facsimile*.

[308] To Leonora, Romelio confesses to the murder of Contarino: "I have killed him" (3.3.213).

For some dramatic representations, the violence upon legal papers represents a dissatisfaction with the system of justice. "Theatre," notes Erika Lin, "aims for a facsimile of reality" (71). In this attempt to make real this physically dramatic scene, the violent action against this brief takes the audience back to an earlier play.[309] Desperate for justice, his destruction of the legal papers, here petitions, is profound in that this former advocate for the law now surrenders to revenge. While Leonora surrenders to revenge against Romelio for his acts of treachery, instead of forsaking the law, Leonora uses the law for her vengeance. Instead of abandoning the law, like Hieronimo. Ariosto abandon's Leonora's case. The "righting" of wrongs is the very essence of the tragedy, yet the comic nature of *The Devil's Law Case* prohibits a bloody result. This tragicomedy looks for a way to corre ct, modify, or reconcile the apparent wrongs committed. It possesses neither the hopeless tone nor the subplot of *The Spanish Tragedy*. Here, as in *Volpone*, the jurists attempt to correct the foregoing malfeasance by the characters by the end of the drama.

Revealing the Revilers

Continuing with our explorations of the inflections of treachery and violence as they shape the play's treatment of legal matters, specifically the brief, let us further explore some aspects of this scene. Finding the acts of Sanitonella as similarly treacherous, Ariosto calls the brief, a "libel," and tears up the brief, according to the stage direction (4.1.40-41). Ariosto's reaction to reading and studying the brief is to assume that this cause is dishonest. For this advocate, the brief's subject

[309] This moment in *The Devil's Law Case* hearkens to Hieronimo's act where he "tears up the brief" at 4.1.73 in *The Spanish Tragedy* by Thomas Kyd. In this early tragedy, the petitioners present legal papers themselves in the form of leases, bonds, and other documents before Hieronimo, who previously served as "Corregidor" (or advocate), and seek redress where they cannot find "any advocate in Spain" (3.13.52). Then, Senex, a petitioner, presents Don Bazulto's supplication for his murdered son. Similarly wounded, expressing uncontrollable grief for *his* son Horatio and abandoning the legal process, Hieronimo *tears up the papers* and offers a heart-wrenching speech about the inability to obtain justice and the desire to seek revenge. Recall John Kerrigan's analysis of the moment where Hieronimo tears the brief in *The Spanish Tragedy* in his *Revenge Tragedy* (198). See also McMahon's treatment of Kerrigan's analysis in *Family & State in Early Modern Drama: Economics of Vengeance* (59).

matter implicates the morality, the legal ethics, and the state, where this legal matter sits squarely within the jurisdiction of the church courts, in both states—Italy, the play's setting and England, the playwright's homeland.[310] Throughout the play, characters, like Capuchin, a friar of the Order of St. Francis (*OED*), continue to think "of Romelio's treachery," as he whispers this aside to Ercole (3.3.334). Even here, before Romelio is defamed at the trial, these men, Capuchin and Ercole, grapple with Romelio's morality:

Ercole: The guilt of this lies in Romelio.

And as I hear, to second this good contract,

He has got a nun with child.

Capuchin: There are crimes

That either must make work for speedy repentance,

Or for the devil.

Ercole: I have much compassion on him,

For sin and shame are ever tied together

With Gordian knots, of such a strong thread spun,

[310] John Webster was born in 1578 in London (*The Duchess of Malfi and Other Plays*, Oxford Edition). In *Political Culture and Cultural Politics in Early Modern Essays: Presented to David Underdown*: "The dean of Wells Cathedral occasionally heard quarter sessions *cases* there, as he did in 1607 when ... whom Hendborowe had identified as the paternal culprit in a *bastardy case* heard not in the ecclesiastical court but at the Chard assizes" (Underdown, Amussen, Kishlansky 143). Senex's petition is not fraudulent, but reveals the overwhelming corruption to which Hieronimo responds.This text also cites an older reference: *Bastardy and its Comparative History* by Laslett, Oosterveen, and Smith (1980), particularly an article by Keith Wrightson "The nadir of English illegitimacy in the seventeenth century." See footnote 29 on page 229. See also footnote 28, which mentions depositions for a bastardy case with allegations of adultery and rape.

They cannot without violence be undone. (2.4.38-45)

During this scene, the characters place blame upon Romelio. As early as Act 2, the audience is told that Romelio has had an illicit relationship with a young nun, Angiolella, and created an illegitimate child. Because this indiscretion is no small crime, Capuchin suggests a "speedy repentance," where Romelio has made no attempt at repentance. Only in an intimate dialogue with his sister Jolenta did Romelio admit: "I have so much disordered the holy Order, / I have got this nun with child" (.3.40-41). Even then, he is fearful of the revelation, not his immortal soul. Though Ercole acknowledges the sin and shame, which accompany this crime, as we know from earlier discussion, Romelio has flung his own sin and shame upon Jolenta. Is Ercole correct that Romelio cannot undo his treachery without violence? Ironically, when the violence does come at Romelio's hands, it arrives at the expense of both Ercole and Contarino themselves.[311]

Beyond serving as a site of violence, the brief's subsequent charge of libel is a serious one. While the brief appears on the stage at 4.1, in the remaining scenes the document, by reference and by implication, possesses a life beyond its material existence on the stage. Its libelous influence "taints" the rest of the narrative. The skepticism of the audience effects the reception of the remaining action. Here, Aristo as an advocate, and later a judge, is a character who understands the impact of such a charge of libel. Still, later Leonora is found to have brought an invidious charge against Romelio, where she alleges that he is a bastard, and she confesses to adultery.[312] In spite of earlier allegations against his fornication, attempted murder, and other crimes, Romelio

[311] See biblical verse on violence: "And from the days of John the Baptist until now the kingdom of heaven suffereth violence, and the violent take it by force" (Matthew 11:12).

[312] Bastardy cases, which were based upon some level of deceit, became problematic—most especially for the man as Keith Thomas observes in his book *The Ends of Life: Roads to Fulfillment in Early Modern England*. This deceit includes not only the libelous document in this play of Webster's, but also, according to Thomas, in the allegations during this era of sexual promiscuity by either the man or the woman (168).

exudes confidence—with all the signs, to the audience, of a deeply fractured human being. He later defends himself at court: "I am wholly ignorant of what the court / Will charge me with" (4.2.55-56). Webster highlights the significance of bringing false charges, in a libelous brief by parties who might possess "guilty knowledge," like Leonora and Winifred.[313] Though Leonora and Winifred actually know that the charges against Romelio are false, Ariosto, Sanitonella and Contilupo lack first-hand knowledge, but have reason to believe that the brief is indeed libelous. After having confessed to Leonora in the murder of Contarino, Romelio still seems undaunted by his mother's accusations:

> Romelio [to Contarino]: My lord, I am so strengthened in my innocence
>
> For any the least shadow of a crime
>
> Committed 'gainst my mother, or the world,
>
> That she can charge me with, here do I make it
>
> My humble suit, only this hour and place
>
> May give it as full hearing, and as free
>
> And unrestrainted a sentence. (4.2.78-84)

Through his characters and their response, Webster implicates a society that is perhaps apathetic to libelous, legal briefs. He continues the theme in the tradition of the unknowing cuckolds, like John in Chaucer's "The Miller's Tale" in his *Canterbury Tales*. Though falsely, Leonora confesses

[313] See Langbein's discussion of guilt, defendant's knowledge, weight of accusations and testimony in ordinary criminal cases and treason cases in *The Origins of Adversary Criminal Trial* (99).

at court that she had indeed cuckolded her husband, and her son Romelio stands as the fruit and the proof of the adultery.[314]

In a decidedly unexpected move for "licentious" lawyers, Ariosto removes himself from the perceived dishonest cause—literally and figuratively. Based on this behavior, I read an ethical obligation of this advocate, where he distances himself from the unethical behavior—the perceived libelous, fraudulent cause to which Sanitonella, Leonora and Winifred have introduced him. Beyond his apparent legal and ethical duty, Ariosto has reprimanded both Sanitonella and Leonora for their involvement in the legal action with words of rebuke. Yet, for Leonora's rebuke, Ariosto specifically admonishes:

> Cry ye mercy, do I so?
>
> And as I take it, you do very little remember
>
> Either womanhood, or Christianity.
>
> Why do ye meddle
>
> With that seducing knave, that's good for nought,
>
> Unless't to be fill the office full of fleas,
>
> Or a winder itch, wears that spacious ink-horn
>
> All a vacation only to cure tetters,
>
> And his penknife to weed corns from the splay toes

[314] See also *Houseservants in early modern England* by R.C. Richardson. In particular, he notes that sixteenth century Ludlow saw many maidservant bastardy cases (Richardson 204).

Of the right worshipful of the office? (4.1.45-54)

Though pious and patriarchal, Ariosto's reproach is filled with a searing ridicule, which aims directly at Leonora's gender and morality. His disapproval possesses an air of disdain that she would "taint" the law with this brief.[315] In language permeated by metaphors of disease, Ariosto accuses Sanitonella of having "fill[ed] the office full of fleas" and infected "the right worshipful of the office."[316] With this pronounced response to the brief, Ariosto reveals a belief that there exists a sanctity in the faith and in the law, which must be protected from dishonorable behavior.

Unable to contain himself, Ariosto the advocate does not save either Sanitonella the clerk nor Leonora from this remonstrance. Still, it is clear for which individual, Ariosto has more contempt:

Woman, you're mad, I'll swear't, and have more need

Of a physician than a lawyer.

The melancholy humour flows in your face;

Your painting cannot hide it. Such vile suits

Disgrace our courts, and these make honest lawyers

Stop their own ears whilst they plead; and that's the reason

Your younger men that have good conscience

[315] See Langbein's discussion of citizen accusers and untainted testimony in *The Origins of Adversary Criminal Trial* (99-100).

[316] Ariosto's reference to the phrase "spacious ink-horn" is interesting with its possible reference to the horn of a cuckold—Leonora's husband. Because the church courts adjudicated sexual matters, its is unsurprising that this libel case, which implicates Leonora's sexual reputation; what does surprise is the sexualized language, in which Ariosto berates her.

Wear such large nightcaps. Go, old woman, go pray

For lunacy, or else the devil himself

Has ta'en possession of thee. May like cause

Bad suits, and not the law, bred the law's shame. (4.1.56-67)

Although Ariosto dubs Sanitonella as a "seducing knave" a few lines earlier, it is this present admonishment that is directed more squarely at Leonora the plaintiff. Vehemently, Ariosto attacks her character as lacking morality and sanity, and advises that she seek medical rather than legal counsel. In an adept evaluation, Ariosto has uncovered not only the suspected libelous brief but Leonora's "melancholy humour," which she seeks to hide with the "painting" on her face. Yet, her "falsely" covered face ineffectively hides her machinations. Even Jolenta earlier observed that "yet kings many times / know merely but men's outsides" (1.2.14-15). One might say the same of Leonora. Beyond her personal failings, Ariosto blames Leonora for "such vile suits," which "disgrace our courts, and these make honest lawyers / Stop their own ears whilst they plead." She is the cause of perverted justice. In addition, Ariosto blames Leonora for Sanitonella, this young lawyer, who might still have "good conscience," if not for Leonora's corrupting ways. Ariosto's advice is not purely legal, but ecclesiastical. His reproof is clear—he demands: "Go, old woman, go pray." Ariosto fears the consequences of this vile suit, which implicates not only her mind and her soul, but also "the law's shame."[317]

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[317] In his book, *Courtship, Illegitimacy, and Marriage in Early Modern England* (St. Martin's Press, 1996), Richard Adair notes that "London was a law all unto itself" particularly because of population variation during this early modern period (27). Adair discusses the stigma of illegitimacy as well (40) and addresses a framework for bastardy during the period in chapter 2. See further discussion of bastardy and Elizabethan literature and culture in Michael Niell's *Putting History to the Question: Power, Politics, and Society in English Renaissance Drama* (2000).

Assessing Contilupo the Lawyer's "Conscience"

In startling fashion, this scene shifts from examining the brief, as discussed in the earlier part of this chapter, to destroying the brief. Because Aristo tears up the brief, Sanitonella introduces what he calls, "the foul copy" (4.1.73-74), as Sanitonella "must make shift" with it.[318] The editor René Weis call this foul copy "a draft of the brief" (4.1.73 note). Readily, to secure representation for Leonora, this clerk, who has read the law himself, shifts his persuasive efforts from Ariosto, an advocate who refuses to associate with this dishonest cause, to Contilupo, who immediately attaches himself to this foul matter. Even further, Sanitonella advises Contilupo: "'Tis a foul copy, sir, you'll hardly read it. / There's twenty double ducats, can you read, sir?" (4.1.75-76). The use of the phrase, "foul copy," should not be ignored where it sits perfectly within the language of the theatre; where "fair copies" were intended to be presented to others, but "foul papers" were either a dramatist's working copy or an inaccurately transcribed version (Zarnowiecki 10). Yet, the text uses the phrase in this legal matter. Its foulness lies not in its status as a copy, but in its fraudulent and libelous state. By its very language, it seems that the veracity of this legal brief has no value, yet Sanitonella immediately assigns not only the case, but the brief a value—"twenty double ducats." Still, consider the following exchange, which further complicates the brief's value:

> Contilupo: Is not this
>
> 'Vivere honeste'?
>
> Sanitonella: "No, that's struck out, sir;
>
> And wherever you find 'Vivere honeste' in these papers,

[318] Paul Werstine makes a similar analogy in his discussion of "foul copies" in a pejorative sense and Webster's play in *Early Modern Playhouse Manuscripts and the Editing of Shakespeare* (98).

Give it a dash, sir. (4.1.81-84)

Truth is devalued by these legal professionals, like Contilupo and Sanitonella. In essence, 'Vivere honeste' (or "honest living") is threatened with violence at the hand of the writing utensils by an advocate, with a "dash." Essentially, Sanitonella admits to Contilupo that this matter is not honest, as he purported to Ariosto at the outset of 4.1. Yet, this time the advocate, Contilupo, finds no objections. He does not find the suit "vile" as Ariosto did, but finds "I am struck with wonder, almost ecstasied, / with this "most goodly suit" (4.2.94-95). His assessment of the case after having reviewed the brief is captured in the following:

And you shall go unto a peaceful grave,

Discharged of such guilt as would have lain

Howling for ever at your wounded heart,

And rose with you to Judgment. (4.2.103-106)

Contilupo encourages Leonora's libel by asserting that there exists no consequences for lying papers, nor her future perjury. He finds no retribution in either legal or eternal "Judgment." The matter of the brief's honesty is given such short shrift, that the audience might wonder what cause lies at Ariosto's outraged sensibilities.

As the legal brief was a recorded summary of a solicitor's case, the ecclesiastical court compiled records of its cases, and the litigants took their notes as well.[319] The records of the ecclesiastical causes become relevant where, in this case, the papers on which such an action is based—are bastardy and adultery. The language that the advocates use within 4.1 is filled with

[319] See also *Three civilian notebooks, 1580-1640* / edited for the Selden Society by R.H. Helmholz. London: Selden Society, 2011. These notebooks are from three ecclesiastical lawyers.

religious overtones. Critiquing Contilupo's assessment of the case, Sanitonella reponds: "O give me such a lawyer, as will think / Of the Day of Judgement!" (4.1.107-108). Ironically, these words are spoken when both Sanitonella and Contilupo suspect that Leonora's case is probably a sham, and the brief is entirely libelous. In spite of this sham, Sanitonella speaks so fondly of the Day of Judgment, as if he cares not for the consequences in his own day of Reckoning. Yet, after Ariosto ousted the brief, the client Leonora, and the clerk Sanitonella from his presence, Sanitonella reserves his own measure of disdain for Ariosto and praise for Contilupo:

> That I could not think of this virtuous gentleman
>
> Before I went to th'tother hog-rubber!
>
> Why, this was wont to give young clerks half fees,
>
> To help him to clients. (4.1.90-93)

Sanitonella the law clerk decides that the "honorable" Contilupo is the better advocate, for this new advocate willingly accepts the brief, and pays him his *true* worth for his own diligence in securing Leonora the wealthy client.

Weighing the Reputation of Romelio's Improper Women

Notably, the irony in this drama is that although Romelio is accused of bastardy, he is spared the legal charges for having fathered his own illegitimate heir. However, his affair with Angiolella the nun is an "open secret" in this town. In spite of having created his own potential bastardy case, Romelio attempts to taint his sister's reputation by asking her to bear the consequences of his own immorality, according to religious tenets and moral demands of the time. At the outset of the play, Romelio lists all of the crooked and deceitful behavior in which untoward

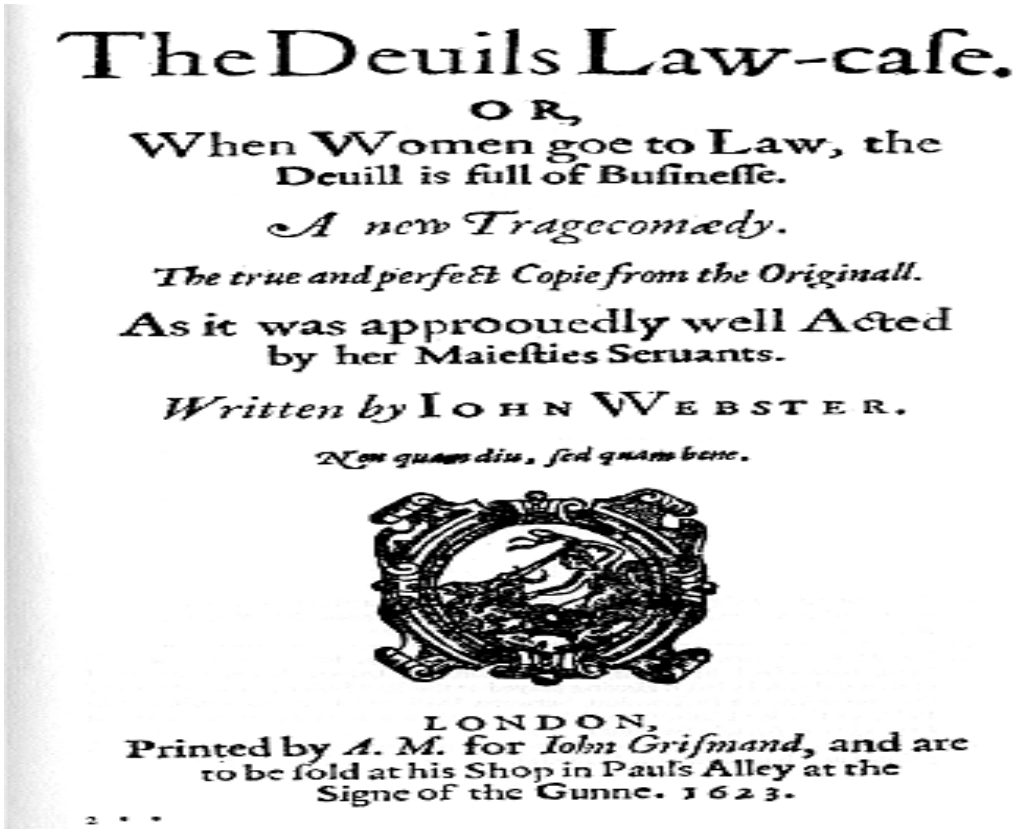
women participate so that he might embolden Winifred, the waiting woman, to disallow such behavior in Jolenta, which will impair her usefulness in an advantageous marriage:

> Look, as you love your life, you have an eye
>
> Upon your mistress. I do henceforth bar her
>
> All visitants. I do hear there are bawds abroad,
>
> That bring cut-works, and mantoons, and convey letters
>
> To such young gentlewomen, and there are others
>
> That deal in corn-cutting, and fortune-telling.
>
> Let none of these come at her, on your life. (1.2.158-164)

Romelio ascribes each of these behaviors to those illicit acts, which gentlewomen allow their charges to commit. Yet, his commitment to safeguard his sister Jolenta from such illicit behavior seems temporal, half-hearted and opportunistic at best. Emphasizing his point, Romelio inquires of Winifred:

> I have heard
>
> Strange juggling tricks have been conveyed to a woman
>
> In a pudding. You are apprehensive? (1.2.171-173).

He apprises Winifred that he is aware of all these "tricks." Even further, Romelio notes that Winifred "had a bastard" (1.2.174). From this observation, he surmises that Winifred will protect Jolenta from bastardy since Winifred had succumbed to its temptations in her youth. Yet, his logic is unclear. As much as the audience may disagree with Leonora's desperate attempt to seek vengeance at law against her son Romelio, the charge of bastardy has a poetic justice to it. This



The Deuils Law-case.

OR,

When Women goe to Law, the Deuill is full of Businesse.

A new Tragecomædy.

The true and perfect Copie from the Originall.

As it was approouedly well Acted by her Maiesties Seruants.

Written by IOHN WEBSTER.

Non quam diu, sed quam bene.

LONDON,
Printed by A. M. for Iohn Grismand, and are to be sold at his Shop in Pauls Alley at the Signe of the Gunne. 1623.

Figure 24 Frontispiece for The Devil's Law Case by Webster, 1623, Paper, The New York Public Library, EEBO STC / 944:17.

justice becomes difficult to resist in its delicious sense of satisfaction: Romelio may be punished as a bastard, though not guilty, and may be unpunished for fathering a bastard, though guilty.

While participating in a legal proceeding, which is arguably a challenge for all, the treatment of Leonora when she comes to court, consistent with Webster's subtitle, *When Women Go to Court, The Devil is Full of Business*, implies a difference. Has she been ill-treated because

of her gender? Or, do the allegations of adultery and bastardy serve as the bases for the problems, which Leonora's going to court create?[320] Notably, Leonora is considered the "devil-woman" in the full title of the play. In her position as "the devil-woman," Webster places a much more significant onus on her behavior in these scenes than he does Sanitonella the law clerk. By contriving her place of battle, Leonora embraces the unique role, which she must play at court:

> O thou canst conceive
>
> My unimitable plot. Let's to my ghostly father,
>
> Where I first will have thee make a promise
>
> To keep my counsel, and then I will employ thee
>
> In such a subtle combination,
>
> Which will require, to make the practice fit,
>
> Four devils, five advocates, to one woman's wit. (3.3.389-395)

Though Leonora may be considered the "devil-woman," in her mind, she is not the only devil going to law at 4.2. Some of the onus placed upon Leonora may be read as judgment in her desire

[320] In *Negotiating Power in Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland* edited by Michael J. Braddick, John Walter, the editors cite the book *Church Courts, Sex, and Marriage* (1987). See footnote 20 on page 256-257. The editors also discuss how the women were examined at the quarter sessions in Somerset, particularly on the question of paternity. The editors suggest that fatherhood was an economic and social construction, which was not tied to any physical proof (52). Yet, in many ways, this project exploits this lack of "physical proof" with the use of libelous brief. Though Webster does not emphasis notions of class within these particular scenes, this dramatist, like Shakespeare, offers a narrative of high drama for royals, merchants, and those among the peerage. Yet, the problem of bastardy extended across the classes. In *Adolescence and Youth in Early Modern England* (Yale UP 1994), Ben-Amos observes: "Servants and youths were prominent among sexual offenders involved in *bastardy cases* and were prosecuted by the ecclesiastical courts; liaisons between fellow servants were quite common in all sex *cases* brought before the court and involving single women" (200-201). Hence, the discussion of adultery, fornication, and bastardy, as noted in the introduction of this chapter, were relevant issues, particularly for single women—including widows like Leonora, who is a woman of wealth. Her status of wealth and privilege does not save her from the repercussions of her allegations against Romelio in this early modern church court.

for a young man, Contarino, who actually seeks her daughter Jolenta's hand in marriage. Webster publishes this play almost two decades after the death of Elizabeth I: The Virgin Queen. This maiden no longer sits on the throne—through nature, she has been dethroned. She has been succeeded by man. In this drama, women, like Leonora, who flout their maidenhoods will likewise be displaced. Women who went to court disparaging the names of "good men" would expect no less from the court.

In this final part of the chapter, I consider how Sanitonella's legal brief provides a type of precedent for this dramatic plot in the figure of Leonora and her efforts to taint her own sexual reputation as a form of non-bloody vengeance. In addition, I analyze the brief as a form of precedent in the case of *Leonora versus Romelio* as a way to investigate the role of precedent during this period.

THIRD SCENE: The Place of Precedent

"A most strange suit this" (Crispiano 4.2.232)

The final part of this chapter takes up the question of how the libelous brief, the fraudulent bastardy case, and the play might serve as a precedent in this early modern society.[321] By the seventeenth century, precedent books, which recorded previous cases, were growing and gaining

[321] "Common law," Mukherji observes, "was moving towards a precedent-based procedure, in which relatively abstract and technical concept of inherent credibility through specific methods of reasoning combined with ordinary notion of likelihood" (230). In *An Introduction to English History*, Baker observes that "during the early modern period, courts began to look at old precedents in a new way and to belittle the authority of those in which no considered decision was reached….At the same time, the courts took to a more methodical evaluation of precedents; cases could not be dismissed as out of date, or as aberrations, or as mere exchanges of opinions. The result of these changes was that the formal, deliberate judicial opinion was becoming a distinct source of law, to be distinguished from passing opinion or obiter dictum" (227). Baker also notes that "precedents were as binding in equity as at law, and now even the Chancery would sooner suffer hardship than a departure from known rules" (127). See also Christopher Hill's discussion of unsuccessful "search for precedent" in his monograph, *The Century of Revolution, 1603-1714* (60-64).

influence among jurists; "the reports of cases were written," as Baker observes in his *Collected Papers in English Legal History*. Courts used such precedent to decide future cases. The subject of precedent is notable on the stage as well. Across several dramas, Shakespeare comments on this issue of precedent. Responding to Cardinal Wolsey, Henry VIII advises the archbishop of the requirement for precedent to act as a sovereign for the benefit of his subjects in *Henry VIII*:

> Things done without example in their issue
>
> Are to be fear'd. Have you a precedent
>
> Of this commission? I believe not any.
>
> We must not rend our subjects from our laws
>
> And stick them in our will (1.2.90-94).

In addition, at court in *The Merchant of Venice*, Portia insists the precedent necessary to prevent later errors: 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. (4.1.215-218)

Shakespeare's plays suggests that precedents serve as a safeguard for society's benefit. While in *The White Devil*, Flamineo asks Bracciano, "be my precedent" (2.5.161), or witness, in *The Devil's Law Case*, Webster takes this concept much further. This case is unprecedented in that Leonora goes to court to impugn her own sexual reputation. She confesses to adultery, and claims that her

son a bastard. She is not called to court by others. Through her own agency, Leonora determines to go to court for vengeance against her son and for the love of Contarino. As a result of this litigation, the play calls into question the efficacy of distinguishing between the legitimate and the illegitimate child. Like the precedent books, Webster amasses a body of work, which speaks to adultery, bastardy, and legitimacy. For instance, at 4.2, there are several references to "precedent."[322] These references incorporate a more extensive discussion about how the legal brief functions in the early modern judicial and the dramatic process. Actually, Webster uses the word "precedent" three times in this play and its use suggests a need to consider how prior moments, plays, and cases might be instructive commentary. Specifically, I shall identify and explain each one of these moments, as I elaborate on the argument that this play makes for or against the notion of precedent in its early modern practices. This discussion will include how the notion of precedent changed, as the realm shifts from the reign of the Tudors like Henry VIII and Elizabeth I to the Stuarts, like James I, and maybe even Charles I.[323] At his peak during this Jacobean period, Webster creates a drama, which implicates not just precedent, but the rules of evidence in its introduction of the brief and those of the theatre in its presentation of the brief, particularly with allegations of libel in a bastardy case.

This bother with the brief in *The Devil's Law Case* does echo a similar battle of briefs—that is, papal briefs, during the reign of Henry VIII. With his Queen Catherine, there were different allegations, where the king insisted that Catherine had actually consummated her marriage with

[322] See Judith Richards's chapter entitled, "Precedent and Tradition" (Whitelock and Hunt 29-110). Corinna Streckfuss, who also contributes to Whitelock and Hunt's edition, notes that the sixteenth century culture placed "great emphasis on custom and tradition" (151).

[323] See Anne McLaren's chapter entitled, "Memorializing Mary and Elizabeth," in *Tudor Queenship: The Reigns of Mary and Elizabeth* (2010) edited by Anna Whitelock and Alice Hunt (24). See also O'Day's list of several manuscripts, which list precedents like that for drawing leases and cases of trespass, slander, promises, etc. (167-168).

his older brother Arthur, before his death. Yet, the papal briefs authorized the marriage between Henry and Catherine and legitimized any children that would come from this second marriage. In this divorce between Catherine of Aragon and Henry VIII, Henry VIII, through the Archbishop of Canterbury alleged that the papal briefs were libelous; on these grounds, the King of England was able to secure his divorce, though not sanctioned by the Roman Catholic Church. Even for Anne Boleyn, allegations abounded involving adultery, incest, and all manner of offenses, which "wounde[s] the conscience" for the ecclesiastical court and the secular English society (Gosson 32).[324] Not only did the papal briefs provide a problem for this society in the matter of divorces, briefs served an important role in other matters—civil and ecclesiastical concerns—for litigants and jurists alike.[325]

In addition to illustrating a law office client pre-trial interview between Leonora and her legal team, Webster presents at 4.2 what is considered for some scholars, like Coleman, the pièce de la résistance—the examination of Leonora before these jurists.[326] This moment contemplates

[324] See Ellen MacKay's *Persecution, Plague and Fire: Fugitive Histories of the Stage in Early Modern England* (2011), where she cites *The School of Abuse* (1579) by Stephen Gosson who argues that playhouses are special places of "assault" (Mackay 31) and plays as "gunshotte of affection that gaule the mind" where poets "wounde the conscience" in the theatre (Gosson 31-32).

[325] Consider *the government's brief for use against the Puritans in the Star Chamber* in 1653 and the *Brief for the Defendant* in 1657 provided by J.H. Baker.

[326] Because Webster's typical legal space is the courtroom trial, particularly in *The White Devil* and *The Devil's Law Case*, some scholars like David Coleman have focused on this reoccurring space in its use of similar dramatic techniques to his tragedies, and the development of his villain Romelio. I, however, see the moments of trial preparation in *The Devil's Law Case* as the focal point. Where Coleman reads Webster's second climax in Act 5 as a technical specimen, I read this moment where a duel occurs between Contarino (who stands in for Ercole) and Romelio, as significant in the evolution of the legal brief: in Act 3, Leonora swears her vengeance to destroy Romelio financially, legally and publicly; in Act 4, the brief is prepared; and in Act 5, the brief's consequences are revealed. While my discussion recognizes Coleman's dramatic and structural analysis, which does not emphasize legal evidence, I find that the significance of these scenes, like the climactic Act 5, may be found even more profound in their relation to the foregoing scenes like the preparation and delivery of the brief and the exposure of the libel in the subsequent trial scene. Namely, it is striking how this tragicomedy seems to struggle with attempts at violent and legal warfare against its comedic nature. The attempts at bloodletting are repeated and ineffectual—as is Leonora's legal attempt against Romelio in Act 4. They all seem quite impotent if we focus on the result of the battle in its simplest sense. The "righting" of wrongs is the very essence of the tragedy, yet its comic nature prohibits a bloody result. The case presented in Act 4 functions as precedent, much like legal cases in the

how these jurists will treat this "devil-woman" after having launched a brief filled with lies against her own son. In her cross-examination by Crispiano, a civil lawyer from Seville, Leonora attempts to justify her delayed confession:

> Crispiano: Bethink yourself, this cannot choose but savour
>
> Of a woman's malice deeply; and I fear
>
> You're practiced upon most devilishly. How happed,
>
> Gentlewoman, you revealed this no sooner?
>
> Leonora: While my husband lived, my lord, I durst not.
>
> Crispiano: I should rather ask you, why you reveal it now?
>
> Leonora: Because, my lord, I loathed that such a sin
>
> Should lie smothered with me in my grave; my penitence,
>
> Though to my shame, prefers the revealing of it
>
> 'Bove worldly reputation.
>
> Crispiano: Your penitence?

seventeenth century. Here in the play, the case serves as both a model and a warning to safeguard individuals against libelous legal documents, thereby elevating this play to a form of dramatic legal counsel that is deeply invested in the social welfare of its audience. Thus, I argue that by reading the play through the legal brief, a larger picture develops in understanding the dramatic, the political, and the legal work that *The Devil's Law Case* performs for this era. There is a very interesting resource, which has been mentioned in researching this project: In any *case*, single women and widows were more likely than married women to have connections with people in other parts of the metropolis, and ... 49 Hitchcock and Black, Settlement and *Bastardy* Examinations, *cases* 23, 42, 49, 52, 58.. See page 159 in *Imagining Early Modern London: Perceptions and Portrayals of the City from Stowe to Strype, 1598-1720* by JF Merritt (2001). See also page 375 for discussion of the trial examination and Leonora's perjury as the play's climax in Charles S. Forker's *Skull Beneath the Skin: The Achievement of John Webster* (1986).

Might not your penitence have been as hearty,

Though it had never summoned to the court

Such a conflux of people?

Leonora: Indeed I might have confessed it privately

To th'church, I grant; but you know repentance

Is nothing without satisfaction. (4.2.253-268)

In spite of the aggressive examination by Crispiano, Leonora responds to this inquiry adeptly—her answers admittedly seem quite "practiced."[327] The sincerity of her penitence also appears well-rehearsed. In this courtroom drama, her "woman's malice" is veiled, as she is in black. Again, she explains her desire for this "public" revenge, instead of the typical "private" revenge, as in Iago's murderous plots in Shakespeare's *Othello* (1603) or Vindice, a revenger, in Thomas Middleton's *The Revenger's Tragedy* (1606). As part of this revenge, Romelio, the antagonist of the play, is wrongfully accused, yet it is difficult to have wholehearted sympathies for either Leonora or Romelio in this moment. At most, in this scene, sympathy for Leonora vacillates between desiring retribution against Romelio and forging alliance with his true victims in the play, like his sister, Jolenta, the pregnant nun Angiolella, and the men in her love triangle—Ercole and Contarino.

[327] In *Order and Disorder in Early Modern England*, Anthony Fletcher and John Stevenson observe that "this tightening-up is reflected in the escalating number of *cases* of fornication, adultery, incontinence and, above all, illegitimacy, ... and early seventeenth centuries and to compare this *early modern* period with the late thirteenth and early fourteenth centuries, which ... has been given by Keith Wrightson, who shows that nearly one-third of the *cases* of *bastardy* presented between 1570-1699 for Terling in Essex were brought between 1613 and 1616 (41). See also the footnote #1 at page 41, which cites Laslett and Oosterveen's article "Long Term Trends in Bastardy in England" found in Laslett's *Family Life and Illicit Love in Earlier Generations* (1977) at page 102. Note further Dena Goldberg's *Between Worlds: A Study of the Plays of John Webster* where she discusses Webster's reconciliation with notions of social order as necessary to human life in *The Devil's Law Case* and *Appius and Virginia* (10).

Still, it becomes difficult to consider the predicament of Romelio without considering that of his mother Leonora. The consequences of taking Romelio to court cannot be ignored, for not only has Leonora taken this attempt at revenge, but she has engaged third-parties to suborn her malicious plot. In this way, her vengeance has peaked beyond Vittoria or the Duchess of Malfi. Though not as bloody as Tamora in *Titus Andronicus*, the plot has an unprecedented clever intrigue, which arguably complicates the character of Leonora in a way that is quite distinguished from these other femme fatales.

Precedent is Designed for the Stage

Much like trials in the courtroom, plays are meant to be displayed on the stage so that they might have the most impact for an audience, and achieve their most hopeful and beneficial end—"to teach or to delight," as Horace postulates in his *Ars Poetica*. In the first reference to "precedent" at 4.1.97, Webster comments upon the significance of "precedent" requiring boundless walls so that they are not confined to "a pent court for audience," but are allowed the scope of its breath in "a spacious public theatre" (4.1.99-100). This public sphere of the theatre to which Webster refers has the greatest impact on the society.[328] For instance, within the drama, the playwright allows Contilupo a voice to connect this case concerning bastardy and adultery to the actual legal annals for the courts by actually using the term, "precedent":

> 'Tis a case shall leave a precedent to all the world.
>
> In our succeeding annals, and deserves

[328] Consider Jurgen Habermas's comment about "the bourgeois intention in the projection of the nobleman that permitted the equation of theatrical performance with public representation" in *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (14).

Rather a spacious public theatre

Than a pent court for audience; it shall teach

All ladies the right path to rectify their issue. (4.1.97-101)

This case of *Leonora versus Romelio*, for Contilupo, leaves a legacy for this society. The "play as precedent" possesses global implications, legal posterity, and theatrical cache. This case becomes significant not merely for the Italian city that it portrays, but for the nation of England as well. At this time, England is a nation forging alliances with great nations and colonizing still others; the face of this sovereign state must yield a steady helm without haphazard management of its courts, churches, and prisons, or discontented, riotous members of this society. For these reasons, the legal and ethical concerns voiced by the jurists during this play should raise a concern not merely for those who practice libeling, but for those charged with the task of prohibiting libel and those who pay the cost when such prohibitions become unsuccessful. Webster could not have chosen a better venue than that of the early modern stage to act out the problems, which have been raised in its ecclesiastical courts.

Thus, it seems that the need for correction and edification has a gendered tone, particularly toward women and their offspring, yet the male species may also be forewarned by these "succeeding annals." They too become susceptible to dispossession and usurpation—especially their property.

Leonora's Case Provides Rare Precedent

The reference to "precedent" at 4.2 is particularly provocative as Contilupo suggests that the case, and possibly the legal brief as well, are:

so rare, so altogether void of precedent,

That I do challenge all the spacious volumes

Of the whole civil law to show the like. (4.2.95-97)

Still, how do the courts determine the case, where there is no "precedent"? In those cases, what shall the "legal brief" argue, rely upon, and persuade the court? Contilupo suggests that this case, or more aptly this play, provides a plot that has no precedent, even though Webster refers to "the whole civil law." While some elements of this tragicomedy are quite unprecedented, particularly Sanitonella's legal brief, this proclamation of ingenuity would be more resounding if Webster had provided the audience with an actual reading from the brief as he does with Bosola's letter in *The Duchess of Malfi* or as Shakespeare does with Aaron's letter in *Titus Andronicus*. On what proofs, laws, or judgments does the brief lie? A viable answer would be that Webster provides the audience with the substantive contents of the brief through several characters, including Ariosto and Contilupo, in 4.1 and an open court at 4.2, where the audience actually beholds Leonora and Winifred "witnessing," what has only been hinted in the previous scene. For example, Leonora testifies that she was married to Francisco Romelio, "but he was not [Romelio's] father" (4.2.162). Actually, she had a sexual liaison with "a Spanish gentleman" (4.2.178) while her husband was away. Leonora further testifies that "the greatest satisfaction in the world, my lord," which she seeks, is "to restore the land to th' right heir, and that's / My daughter" (4.2.271-273). While the ploy evolves as unsuccessful and she resigns to "[enter] into religion" (4.2.514). Based on her short testimony, the audience learns—in more detail—the apparent contents of the legal brief.

In the Oxford Edition of *The Devil's Law Case*, the editor René Weis describes Contilupo as "an unscrupulous lawyer" in his *dramatis personnae*. As we look at the legal document upon which this case rests, we are compelled to look at the figure who brings the document before the court, who looks for the court to sanction its contents, and to give the document legitimacy as it

would divest Romelio of his legitimacy.[329] What significance does Contilupo's figure have in the drama? In one reading, Contilupo becomes significant in so far as he assents to, or conspires with Sanitonella and Leonora to place this matter before the court while indifferent to its veracity. Arguably, Contilupo represents "a kind of lawyer." Or, does this character, this unscrupulous jurist, fall into the background as the legal brief is left to stand on its own "merit" without the help of the clerk, Sanitonella, who drafted it and the mouth-piece who attests to its accuracy? Again, Contilupo becomes significant for the main action of the play occurs in Act 4, and as the advocate, he is a part of that action. Indeed, he is a part of the reason that Leonora even makes it before the judges. Contilupo is also the reason that Romelio learns of the contents of the "foul" brief. Ultimately, he is the reason that Leonora's libelous brief is exposed.

"A Strange and Confused Practice"

To continue our examination of the play's treatment of precedent at 4.2.611, the dialogue between Ercole, Jolenta's unsuccessful suitor, and Sanitonella, Leonora's unsuccessful clerk, highlights what kind of precedent this case will actually serve. This reference allows the audience to imagine all manner of cases, laws, and statutes that we use to guide valid decision-making in the future:

[329] Recall—primogeniture and bastardy are at issue in *Titus*. Yet, Shakespeare revisits bastardy with a focus upon property rights in Shakespeare's *King Lear*. At 1.2, Edmund in soliloquy expounds upon his illegitimate status: "Thou, Nature, art my goddess; to thy law / My services are bound. Wherefore should I / Stand in the plague of custom, and permit / The curiosity of nations to deprive me, / For that I am some twelve or fourteen moonshines / Lag of a brother? Why bastard? wherefore base? / When my dimensions are as well compact, / My mind as generous, and my shape as true / As honest madam's issue? Why brand they us / With base? with baseness? bastardy? base, base?....Well then / Legitimate Edgar, I must have your land." Tormented by the circumstances of his birth, Edmund seeks to divest his legitimate brother Edgar of his property rights with a libelous paper, a letter. Like Leonora, Edmund attempts to take away legal entitlement in a vengeful subplot. Yet, unlike Lear or Titus, Webster provides in this tragicomedy a bastardy trial and Leonora's weapons become instruments of the law and an identifiable site of the law, a Christian court.

Ercole: You have judged today

A most confused practice that takes end

In as bloody a trial; and we may observe

By these great persons, and their indirect

Proceedings shadowed in a veil of state,

Mountains are deformed heaps, swelled up aloft,

Vales wholesomer, though lower, and trod on oft.

Sanitonella: Well, I will put up my papers,

And send them to France for a precedent,

That they may not say yet, but for one strange law-suit,

We come somewhat near them. (4.2.604-613)

Though the case may be strange on the isle of Britain, even more significantly is the language that Ercole uses to describe the proceeding as "indirect," the trial "as bloody," and "a most confused practice." Perhaps, the proceeding is indirect in its comic tone and bloody from the failed murder conspiracies. Yet, its "strange and confused practice" may lie in the trial's result and its legacy. While admiring the comic relief that the trial provides, it is important not to underestimate this bastardy case, its use of precedent, and the exposure of libel that moves this case out of the ordinary. Let us not forget Webster's proviso, "To The Judicious Reader." If we are wise, we read the play's extraordinary possibilities of legacy. Crispiano, the lawyer from Seville, offers an insightful observation to Leonora's predicament:

A most strange suit this. 'Tis beyond example,

Either time past, or present, for a woman

To publish her own dishonor voluntarily,

Without being called in question….

Here that law is broke,

For though our civil law makes difference

'Tween the base and the legitimate, compassionate nature

Makes them equal. (4.2.232-235, 243-246)

Crispiano suggests that the case's rarity lies in Leonora's uninstigated publication of her unchasteness. Mayhaps, she has broken an unspoken tradition about women and allegations of bastardy. Even further, Crispiano's monologue encourages a decrease in the schism between legitimacy and illegitimacy, and echoes Webster's earlier work.[330] In *The Duchess of Malfi*, Ferdinand expresses a similar sentiment toward the illegitimate children of the Duchess:

Call them your children;

For though our national law distinguish bastards

[330] In *Courtship, Illegitimacy, and Marriage in Early Modern England* (1996), Richard Adair discusses a study performed in the Essex chapel of Terling in the late sixteenth century and early seventeenth century where there began a surge in illegitimacy from 1598 to 1605 (11). He acknowledges that as difficult as it was for church courts to prosecute such cases with the requirement of "general fame," there were "some false or mistaken presentments were sometimes made, usually through malicious disinformation from individuals working off an old grudge" (153). See footnote 23. See also: *Bishop Still's visitation 1594; and, The "Smale booke" of the clerk of the peace for Somerset 1593-5* / edited by Derek Shorrocks. Taunton, Somerset: Somerset Record Society, 1998. See: *Lower ecclesiastical jurisdiction in late-medieval England: the courts of the Dean and Chapter of Lincoln, 1336-1349, and the Deanery of Wisbech, 1485-1484* / edited by L.R. Poos. Oxford and New York: Oxford UP, 2001

From true legitimate issue, compassionate nature

Makes them all equal. (4.1.35-37)

The practice becomes "confused" in this national law continuing to uplift the legitimate and reject the illegitimate. It is possible that Crispiano speaks for a contingent of individuals who believe that they should be indistinguishable—after all even their queens, Mary I and Elizabeth I, had at one time been deemed "illegitimate." Webster's drama even questions the evidence used in the bastardy proceeding—whether used in ecclesiastical courts, or other common law courts.[331]

Webster in his dedication asks his patron, Sir Thomas Finch, "find your allowance" for this tragicomedy, though his more well-known pieces, *The Duchess of Malfi* and *The White Devil*, receive much of the accolades. Here, Webster provides a drama though less bloody than *The Duchess of Malfi* and the outcome of the trial less troubling than in *The White Devil*, which clearly shines as a provocative drama that speaks to the legal and religious climate in early modern society. This drama brilliantly calls attention to not only theatrical but legal practices. Webster creates a drama in *The Devil's Law Case* that is austere and rare in its bold presentation of a dire domestic

[331] For instance, in *Equity in English Renaissance Literature: Thomas More and Edmund Spenser* (Taylor & Francis 2006), Andrew J. Majeske observes that precedent was more likely to be strictly followed in the common law courts, as far back as the twelfth century (32, 145). Mukherji also notes the common law shift toward precedent based procedure (220). In *Theaters of Intention: Drama and the Law in Early Modern England*, Luke Wilson also references precedent in his monograph (45). There are several references to different types of precedent in *Baker and Milsom Sources of English Legal History: Private Law to 1750*. In addition, there are a few bastardy cases (4, 79, 696). There are also a few references to "precedent" in *Shakespeare and the Law: A Conversation among Disciplines and Professions* edited by Bradin Cormack, Martha C. Nussbaum, Richard Strier (137, 161, 222, 246). In *Judges and Judging in the History of Common Law: From Antiquity to Modern Times* (Cambridge UP 2012), Ian Williams's chapter entitled, "early modern judges and the practice of precedent" dedicates significant discussion to the notion of precedent (51-66), Langbein's chapter entitled, "Bifurcation and the bench: the influence of the jury on English conceptions of the judiciary" and Paul Brand's chapter "Judges and Judging 1167-1307." This book by Cormack, *et al* is especially helpful as it discusses precedent and written evidence in early modern courts. Brand notes that "James expounded that the judges were to follow precedent but not follow "not every snatched precedent, carped now here, now there as it were running by the way; but such as has never been controverted, but by the contrary approved by common…" (67). See also *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* by David Lemmings and its discussion of precedent; consider the references to potential early modern legal treatises.

dilemma resolved in the once serene, but now salacious setting of the ecclesiastical courts of Naples.

Conclusion

Within these ecclesiastical jurisdictions, the courts faced a unique challenge as they adjudicate not secular laws, but laws, which prohibited sin. How would they judge sin? These early modern church courts developed detailed procedures to adjudicate sin. In the matter of adultery and bastardy cases, the litigants and the facts varied. Many of the cases were dismissed. Other cases were handled summarily because very few proceeded to where a judge who had to make a determination based upon the witnesses called for a hearing. If cases proceeded to judgment, and the defendant denied the charges, then "in a grave matter" of morality, like adultery or bastardy, then the court could proceed in different ways depending upon whether the defendant was found guilty. For instance, the court would make the person swear an oath, gather a number of witnesses that would testify on the defendant's behalf (this process was called compurgation), or suffer the most serious penalty—excommunication. Actually, there were several different types of excommunication included, like suspension, an admonition, and penance--most of which varied in degrees of harshness (Ingram 48-55). In Webster's drama, Leonora's final punishment would be considered a penance, where she decided to "[enter] religion."

Likewise, this critique of the legal process, ethics, and this litigious early modern society is instructive for the study of Webster's *The Devil's Law Case* where to read the play as simply literary or simply legal seems quite implausible. Though common for the period, the playwright expounds upon important concepts to reiterate legal ethics and moral rules to the betterment of this early modern society. Through several key moments in the play, I argue that the legal brief operates as a corruptible, vulnerable and precedential site in both theatrical and legal terms. With false

allegations of bastardy and adultery, Leonora, "the devil-woman," uses the practice of libel as a way of enacting her personal vengeance upon her son. Rampant in the play is this "practice" of dishonorable behavior. In this way, she leads several jurists, including Sanitonella the law clerk, Contilupo the lawyer, and Aristo the advocate and her waiting woman Winifred into this mad, and strangely self-incriminating method of maligning the legal process. Yet, along the way, her defamatory behavior and stratagems propel Ariosto the advocate to avoid the appearance of impropriety, destroy the libelous legal brief, chasten the conspirators, and reject the scurrilous case. Undaunted, Leonora takes the case to court with Contilupo and her ruse is ultimately discovered. Still, the case of *Leonora versus Romelio* provides what Sanitonella refers to as "precedent." Its precedential value is manifold. The case serves as precedent in the way Leonora, without having been accused, falsely claims to have dishonored her husband and birthed an illegitimate son, Romelio. She defames her own sexual reputation. The case is also precedential in that it was able to expose the libel and find truth. Even more significant, the courtroom oration by Crispiano the lawyer that this early modern society is left to women, in this case the "devil-woman" Leonora, to rest in the truth of determining legitimacy. In essence, such distinctions may be for naught.

By highlighting the effective way in which this libelous brief exposes treachery, including but not limited to bastardy, attempted murder, and fraud, this fraudulent document places not merely one singular case in jeopardy, but an entire society. If the play serves as precedent—both legally and dramatically, early modern life improves, for it benefits from the social experiment that Webster creates on the stage. Finding a unique way of representing both the church and the law on the dramatic stage, Webster instructs this Jacobean society on commonplace matters like adultery and bastardy for safeguarding evidence and preventing deception. Though the scholarship

on this particular play is not abundant, in recent years more scholars, like Subha Mukherji, have discussed the distinguishing appeal of this play.[332] Refreshingly, the play finds a way to discuss these socio-familial issues, which face this early modern society, and frames some of the concerns not only in societal terms, but in legal ones as well.

[332] Consider Elizabeth Williamson's "The Domestication of Religious Objects in *The White Devil*." *Studies in English Literature 1500-1900*, 47.2 (2007): 473-4A. See also Subha Mukherji's earlier article: "Women, Law, and Dramatic Realism in Early Modern England." *English Literary Renaissance*, 35.2 (2005) and Aspasia Velissariou's "Class and Gender Destabilization in *The Devil's Law Case*, *Cahiers Elisabéthains: Late Medieval and Renaissance Studies*, 63 (2003 Apr): 71-88.

EPILOGUE: TAINTED PROOFS

In "Tainted Proofs: Staging Written Evidence in Early Modern Drama," I explore how the evolution of written evidence on the stage provides a cultural commentary on early modern England. This book analyzes how the evolving early modern society—involving legal, cultural and religious institutions—shifts more prominently into the demand for proofs. Because this call exceeds the previous reliance upon oral proofs, this society seeks written proofs in many aspects of early modern life. Within the field of law, an identifiable requirement for written evidence emerged during the period, embodying itself in case law, treatises, and statutes. As this field of law grew reliant upon written evidence, a problematic tension arose, which illustrated that the supposed sanctity of written proofs was compromised. In a strikingly similar way, each of the plays in this dissertation present, demand, and critique different written proofs, which function as both legal instruments and as stage properties, as dramatized by the playwrights William Shakespeare, Ben Jonson, and John Webster. In each of my chapters, I emphasize a specific written piece of evidence—whether a letter in *Titus Andronicus*, warrant and indictment in *Richard III*, bond in *The Merchant of Venice*, wills in *Volpone*, or a legal brief in *The Devil's Law Case*. They corroborate how a demand for the authenticity and veracity of written proofs not only shift within this period, but how different types of proofs illustrate this evolution of the nature and use of written evidence out of the medieval and into the early modern. Even further, the staging of evidence within these dramas also progresses within the period, as they move from the 1594 to 1623. This progression of the drama reveals the dangers presented by written evidence unfold as both legal and moral commentary to highlight the peril and promote the need for further safeguards.

Arguably, there materializes a transition in legal practices and moral attitudes toward authentic evidence between the two periods. From the chronological progression of the plays, I identify a change in perspective as the Tudor plays—*Titus Andronicus* and *Richard III*—focus on the subject-sovereignty relationship and its complicated dynamics, but the Stuart plays—*The Merchant of Venice*, *Volpone*, and *The Devil's' Law Case*—emphasize the state of the individual, his or her rights, and property. Where the sovereign serves as the source of judgment in the Tudor plays, there unfolds a strong ecclesiastical tenor to the Stuart plays, which almost supplants the sovereign. The importance of morality also seems to parallel the concern with legality. Within these Tudor dramas, the plots impugn the nature of sovereignty, its ineffectual rule, and participation in unlawful acts with its disreputable agents as in *Titus Andronicus* and *Richard III*. However, during the Stuart dramas, illegality, including criminality, persists, and arguably runs amuck; yet, what arises in this latter era transforms into a higher ideal, like morality, which operates as the barometer to human behavior, as evidenced in discussions of mercy in *The Merchant of Venice*, punishment in *Volpone*, and judgment in *The Devil's Law Case*.

Overall, this dissertation demonstrates how these Tudor and Stuart realms change and evolve in terms of legal, social, cultural and religious attitudes and practices in using written evidence. Following the various uses of written evidence on the stage and in the courts, we can map these larger movements. For instance, from the anxieties about criminality and treason, the concerns of the sovereign move away from an investigation, which seems grounded in its distrusts of its subjects as the source of the realm's destruction. As we deviate from the concerns of the sovereignty and the state to the individual uses of contracts, will formation, and legitimacy of heirs, these chapters expose the problematic nature of written proofs, which the traditional subject-sovereign relationship cannot sufficiently address, but the exploration of individual rights begin to

answer with some remedies through legal safeguards. In the evolution of written evidence, this transfer from oral proofs to written materializes in a seminal moments with the passage of the Statute of Wills in 1540 and progresses well into the seventeenth century with the promulgation of the Statute of Frauds in 1677. As Henry VIII yields the power of probate to his subjects, a pivotal moment materializes, where individual rights establish a stronghold, which burgeons into other rights, other fields of law like contracts, and other institutions like the church.

Over the course of the dissertation, I focus on tainted proofs in their diverse manifestations across several dramas. As much as the era emphasized the necessity for the written legal document to prove a matter, like the criminal charges against the accused or the appropriate remedy in a civil case, it also exposed the need for further safeguards to protect written evidence from manipulation, illegality, and illicitness. This need for safeguards seems to gain urgency from the Tudor through Stuart periods. In each of the plays in "Tainted Proofs," the written document is initially accepted as authentic, truthful and legal. Nevertheless, there arises a moment in each play where the document's true state transforms and is exposed. In some moments, the court is asked to address the matter of the tainted document, as in Jonson*'s Volpone*. There are other moments, where the litigants and the court accept the written evidence as truthful, like in Shakespeare's *Titus Andronicus*. Still, further, the drama offer moments where the proof is exhibited in its corrupted form in soliloquy, and the audience is left to contemplate the defective device, like Hasting's indictment in *Richard III*.

These dramas provide an important aspect of the cultural commentary on this increasing desire to have more authentic evidence, in a written, material form. For example, the presentation of the legal brief's "foul copy" in Webster's *The Devil's Law Case* and "blank copies" of wills in *Volpone* raise this discussion of authentic evidence. Likewise, in *Richard III*, the Scrivener also

refers to its earlier draft, or "precedent," of Hasting's indictment. Authenticity appears displaced by the multiple versions, which possess the potential for manipulation. In addition, the courts offered a similar discourse in its discussion of when litigants must submit "original documents" to the courts and by what method. This legal conversation parallels the theatrical one. For instance, Sir Edward Coke articulated a requirement to have the original document produced to prove a general issue to a jury in *Doctor Leyfield's Case* (1611). He insisted that it was dangerous not to produce the original to the jury (Macnair 115-117).[333] A sense of danger emanates from these dramas as well. Both dramas and the cases convey this jeopardy.

As we examine the nature of written evidence, inevitably we learn about the stage and it props. The drama calls attention to these stage props, demonstrates their dynamic physicality, highlights their problematic condition, and illustrates their complicated relationship with their creators, handlers, and destroyers.[334] These handheld paper props function as not mere references during the drama, but they enter and exit the stage in a solitary condition at times, duplicated states at others, but in these dramas they occur in different forms from the legal brief in *The Devil's Law Case*, multiple wills in *Volpone*, letters and petitions in *Titus Andronicus*, indictments and warrants in *Richard III*, to various documentary props in *The Merchant of Venice*.

As the written evidence evolves, the court system and social mores change at this time as well. The courts no longer wanted to rely on witness testimony alone. Coke found witness testimony unreliable in the "uncertain testimony of slippery memory" (Helgerson 138). Hence, in the *Rutland Case* (1604), he stated that all contract agreements should be in writing, which served

[333] While the rule hails from Roman law, the early modern period embraced the law more than the medieval common law. This early modern era was concerned with how to prove the original document as well (Macnair 115-117)

[334] In some dramas, like Kyd's *The Spanish Tragedy* and *The Devil's Law Case*, characters destroy or "tear" the legal papers.

as a precursor to what would later be called the "parol evidence rule." While the courts looked at the defects in a person's memory, the courts also look at the deficits found in a person's character, like adultery and bastardy cases. These cases, tried in ecclesiastical courts, were not only rooted in social mores, but religious ones as well. The church courts were tasked with trying sin, like fornication, and Webster's *The Devil's Law Case* addressed this issue in a way, which supersedes Shakespeare's earlier attempts in *Titus Andronicus*. Where Aaron and Tamora are condemned at the end of the drama for their crimes against the Roman Empire, Shakespeare handles their illicit relationship, which produces an illegitimate child, as a mere side note. Yet, Webster's drama immerses this Jacobean play in tensions surrounding adultery and bastardy played out not merely with Romelio's own impending illegitimate heir, but Leonora's false allegations of bastardy and adultery against Romelio in court. The early modern courts were tasked with the adjudicating the law surrounding bastardy and adultery and all of the falsity and illicitness, which surrounds them. Even further, the community was tasked with caring for those children who many times were not claimed by their fathers—no matter what their station in life.

As the period shifts from Elizabethan to Stuart, an identifiable change of trajectory in the demand for legal safeguards and more reliable evidence evolves, as we consider each written piece of evidence. While the change does not develop in one single year, a cumulative shift arises over the course of several legal and dramatic events. For instance, in Shakespeare's *Titus Andronicus*, Aaron's letter wrongfully convicts Titus's sons, Quintus and Martius, of murder during their summary trial. Within the trial, Saturninus affords neither Quintus and Martius, nor Titus an opportunity to examine the evidence. Hence, one of the safeguards, which took place during this era, becomes the decreasing occurrence of summary trials. In addition, Richard's warrant and the Scrivener's indictment impugn the Duke of Clarence and Lord Hastings with the violent

executions. With a similarly violent reputation, the Court of the Star Chamber developed as the locale for such violent executions and torture. Eventually, the Star Chamber was dismantled as a place for the administration of law and justice. In *The Merchant of Venice*, Shylock's bond, though in writing, was found unenforceable because of its illegality. While Coke's common law case in *Rutland* demands written contracts, it is not until the Statute of Frauds (1677) that the Parliament passes a law, which places greater force behind Coke's demand and provides specific conditions where agreements become legally mandated for enforcement. Approximately sixty-five years after the passage of the Statute of Wills of 1540, the difficulties, which surround the will persist. Jonson's *Volpone* seems to respond to these persistent problems created by the statute. Yet, treatises, like Henry Swinburne's *A Briefe Treatise of Testaments and Last Willes* (1590), emerge to encourage more rules and more witnesses in the process of will formation, and decrease some of the problems posed in the probating of wills. Finally, Webster's discussion in *The Devil's Law Cases* advances as a safeguard an increased use of legal precedent from case law. During this era, we see a growing emphasis in the law courts on consistent use of precedent rather than its earlier, intermittent reliance.

"Tainted Proofs" forges an analysis of the evolving nature of written evidence as a way to demonstrate the shift not only from the medieval to the early modern period, but an identifiable one within the period—from the Tudor to the Stuart era. The written evidence, both legal and material, follow a path, which reveals the problematic nature of proofs, as it moves from the subject-sovereign dynamic with its investment in power, security of the realm, and disaffected subjects to a more individual dynamic with its engagement in the expanding nature of civil liberties, property rights and legitimacy. Within this dissertation, the analysis of the drama offers an intersecting study of the law, the courts, the church, and the people of this era. The shift occurs

across several boundaries, yet within the drama my examination suggests a revealing understanding of the nature of evidence and its emergence as an early modern phenomenon. Here, within the sixteenth and the seventeenth centuries, written evidence transforms how we read early modern culture.

APPENDIX

GLOSSARY OF LEGAL TERMS

Appeal: This appellate process, the proceeding in error, was eliminated for an appeal, in favor of a procedure, which gradually involved more considerations of equity, fairness, and the entire record of the trial court or tribunal (Baker 154-171).

Assumpsit: An assumpsit is "a promise or contract, oral or in writing not sealed, founded upon consideration; an action to recover damages for breach or non-performance of such contract" (*OED*).

Attorney General: The attorney-general, as a trustee of the public interest, brought such proceedings on the 'relation' of persons affected (Baker 493, note 65). Sir Francis Bacon was attorney general from 1613-1617. Sir Edward Coke held the office from 1594-1606, and Henry Hobert from 1606-1613.

Bond: A deed, by which A (known as the *obligor*) binds himself, his heirs, executors, or assigns to pay a certain sum of money to B (known as the *obligee*), or his heirs, etc. A may bind himself to this payment absolutely and unconditionally, in which case the deed is known as a single **or** simple bond (*simplex obligatio*) (*OED*).

Circumstantial Evidence: Circumstantial evidence included "fame, suspicion, and signs. Circumstances were thus the incidents of an event or particularities that accompanies an action and resulted in presumptions of varying levels of certainty' (Kahn & Hutson 68-69).

Colorable: The term, "colorable," means "capable of being presented as true or valid; having a prima facie appearance of justice or legality" (*OED*).

Common Law: Sir Francis Bacon defined common law as "no text law, but the substance of it consisteth in the series and succession of judicial acts form time to time which have been set down in the books we term as yearbooks or reports' (12.85)" (Helgerson 76).

Contract: In medieval times, the word, "contract," emphasized the obligation, but did not involve consensual agreements as the word grew to include by 1600. In its modern sense, the notion of contract encompasses two ideals: the right of the performance of the obligation and the wrong in the breach of the contract (Baker 360-361, 368-371).

Deed: A deed is an instrument in writing (which for this purpose includes printing or other legible representation of words on parchment or paper), purporting to effect some legal disposition, and sealed and delivered by the disposing party or parties. Signature to a deed is not generally required by English law, but is practically universal; and in most jurisdictions outside England where English law or legal forms prevail, signature has been substituted for or made equivalent to sealing. *Delivery* (q.v.) is now a moribund

formality. Contracts of most kinds, as well as dispositions of property *inter vivos*, may be made by deed, and in common practice are often so made (*OED*).

Deposition: As part of early court procedure, "evidence was taken by interrogation or written deposition" (Baker 119).

Duress: Duress is when a person has been found to have his or her want of ability or freedom of will restrained. Swinburne discussed the prohibitions in the law of England against duress (140). In addition, Baker discussed duress, incapacity (infancy), suspicion, or tampering after execution as several ways to invalidate a deed (369).

Equity: The quality of being equal or fair; fairness, impartiality; even-handed dealing. The Latin *æquitas* was somewhat influenced in meaning by being adopted as the ordinary rendering of Greek *ἐπιείκεια* (see epiky n.), which meant reasonableness and moderation in the exercise of one's rights, and the disposition to avoid insisting on them too rigorously. An approach to this sense is found in many of the earlier English examples. The recourse to general principles of justice (the *naturalis æquitas* of Roman jurists) to correct or supplement the provisions of the law. equity of a statute: the construction of a statute according to its reason and spirit, so as to make it apply to cases for which it does not expressly provide (*OED*).

Evidence: The word, "evidence," includes "[i]nformation, whether in the form of personal testimony, the language of documents, or the production of material objects, that is given in a legal investigation, to establish the fact or point in question" (*OED*).

Fraudulent Conveyance Act: Even the Fraudulent Conveyance statute required that "every thing which shall be law be forfeited to the King or subject," as noted in *Pauncefoot's Case* (1594) and *Twyne's Case* (Ross 106).

Henry VIII's Acts of Succession: The Act of Succession, enacted in March 1534, legitimized the marriage of Henry VIII and Anne Boleyn. The act required all citizens to swear the oath of succession. Violations of this act would trigger the Act of Treason, where one could be found guilty of high treason, which resulted in drawing, quartering or hanging or misprision, which involved life imprisonment (Kelly, Karlin & Wegemer 73-74).

Indictment: An indictment referred to the legal document containing the charge; 'a written accusation of one or more persons of a crime or misdemeanor, preferred to, and presented upon oath by, a grand jury' (Blackstone). The bill of indictment is the written accusation as preferred to the Grand Jury, before it has been by them either found a true bill, or ignored (*OED*).

Information: An information was in English law "originally a complaint or charge presented to a court or magistrate in order to institute (routine) criminal proceedings without formal indictment (now *hist.*). Later: a statement in which a magistrate is informed that a named person has committed a stated offence and a summons or warrant is requested." An information is "a complaint presented by the Crown in respect of a civil claim, in the

form of a statement of the facts by the Attorney General, either *ex officio* or on the report of a private individual" (*OED*).

Jurisdiction: The litigants in the Court of Common Pleas had a higher burden; they were required to show proof of a subsequent promise (Barret 61). Particularly for bonds, the King's Bench evolved as the standard bearer, modeling efficiency, innovation, and preeminence. The breadth of this court's jurisdiction included diverse cases and the broad reach of the court's legal power, identifiable authority, and unquestionable dominion were essentially incontrovertible. At times, this Court heard non-criminal matters, like contracts, where physical jeopardy was not at risk, yet there were other times, where the King's Bench heard quite serious criminal matters where one's life or liberty might be taken. In other jurisdictions like ecclesiastical, the courts handled sexual defamation cases, like bastardy, whoredom, cuckoldry, pimping, and adultery (Kahn & Hutson 126-142). The ecclesiastical court, "the bawdy court," also addressed drunkenness (Erickson 35).

Jurist: A jurist means one who practices law, like a lawyer, or a judge (*OED*).

Law-giver: A lawgiver is one who gives, i.e. promulgates or makes, the law or a code, like a legislator. Several references include figures biblical, Lord and Judah, legal, legislators, and historical, Greek figure Minos (*OED*).

Legal Brief: In general, a legal brief would contain instructions for conducting a case in court, summaries of witness statements and pleadings (i.e. legal statement of the case). While traditionally the brief could also request advice (i.e. an opinion) or provide a draft of a pleading, the legal document offers a way to frame the entire argument for a case; it effectively guides the advocate in his representation of a client. Opinions were usually written at the foot of the legal brief.

Legacies: Legacies are a sum of money, or articles, given to another by will (i.e. bequests) (*OED*). See also Swinburne's discussion of legacies (bequeath) (306-326).

Legatees: Heirs are also referred to as "legatees" by Swinburne (38, 1045).

Litigant: A person engaged in a lawsuit or dispute (*OED*).

Malum in se: means, "intrinsically evil or wicked" (*OED*). Some crimes were categorized as such.

Man of Straw: A "man of straw" was a dummy or man without means—hence, he was a legal fiction, as defined in an *Etymological Dictionary of Modern English* by Ernest Weekley (1427).

Masters: Masters, using the Chancery Court as an example, were a part of the large staff of clerks who were often "doctors of law" and "deputized for the chancellor in both administrative and judicial affairs." They heard petitions and complaints and issued writs. Others dispatched litigations. Some, like the master of the rolls, kept the records of documents authenticated in the Chancery (e.g. patent rolls, close rolls, and treaty rolls) (Baker 115).

Ordinary: The ordinary was a representative of the bishop. For instance, an ordinary was supposed to be in attendance at every gaol (or jail) delivery of clerks convicted in a criminal matter (Baker 586).

Parol Evidence Rule: The parol evidence rule prohibited the use of any oral agreements promised prior to the written contract, but not included in the document. For instance, in the *Countess of Rutland* v *Earl of Rutland* (1604), Lord Chief Justice Edward Coke emphasized that every contract or agreement should be controlled by writing to avoid "the uncertain testimony of slippery memory" from witness testimony, thereby establishing what is called "the parol evidence rule" (138). The rationale for this rule is the assumption that any important part of the agreement would have been included in the contract (A.W. Simpson 96, 599-601).

Pleading: A pleading is a formal written statement in a civil case, which sets forth the cause of action or the defense (*OED*).

Plus quam satis: This Latin phrase means "more than enough."

Precedent: A judicial decision, which constitutes an authoritative example or rule for subsequent analogous cases; a form of a document, which has been found valid or useful in the past and can be copied or adapted. In English law the system of precedent is comparatively rigid; the general principle is that a court is bound by its own previous decisions and by those of a court above it in the hierarchy of courts. In other legal systems, the validity of a previous decision may be reconsidered by a court (*OED*).

Prerogative Courts: Prerogative courts, like the Star Chamber, derived their authority directly from the crown. Royal prerogative was another way to refer to "sovereign power." Under the Tudors, the Star Chamber was used against subjects who had too much power to be adjudicated before the common law courts. Under the Stuarts, the Star Chamber was used to enforce economic regulations on property rights, which would not have been approved by either the common law courts or Parliament. In 1641, prerogative courts, like the Star Chamber and the High Commission, were abolished (Hill 28, 53, 66, 109).

Presentment: A presentment is "the action or an act of laying before a court or person in authority a formal statement of some matter to be legally dealt with." In ecclesiastical law, a presentment is "a formal complaint or report of some offence or fault, made by a churchwarden or other parish authority to the bishop or archdeacon at his visitation" (*OED*).

Primogeniture: The law of inheritance changed to primogeniture, which involved inheritance by the first born to the exclusion of his brothers (Baker 306).

Redress: Redress is reparation or compensation for a wrong or consequent loss (*OED*).

Remedy: A remedy is a means of legal redress (*OED*).

Solicitor: A solicitor is one properly qualified and formally admitted to practise as a law-agent in any court; formerly, one practising in a court of equity, as distinguished from an *attorney (OED).*

The Star Chamber: The Court of the Star Chamber, named for the gilded stars on the ceiling, built within the palace of Westminster in 1347, and used for judicial session of the king's council. It dealt with state affairs as well as petitions for justice. During the chancellorship of Thomas Wolsey (1515-1529), the court's handling of civil matters increased dramatically. However, the court did not keep separate records from the Privy Council until 1540. The meetings in the Star Chamber became secret on matters of government policy and administration. During the sixteenth century, the court of the Star Chamber handled civil matters, mainly real property, but upon the complaint of its litigants, the court heard issues riot, unlawful assembly, perjury, forgery, forcible entry, or some other form of oppression. The court was also an extraordinary or supplementary court of law, particularly for cases with criminal intent—no distinction was made between civil and criminal matters, as it pertained to procedure. In the seventeenth century, its jurisdiction was only appellate (Baker 136-137).

Statute of Frauds of 1670: The Statute of Frauds required that contracts must be in writing, which could not be performed in one year and contracts where one party served as a surety for another party's debt or obligation. Its main objective was to provide that transactions concerning land should be in writing, but it also provided that in actions upon parol contracts whereof there was no written memorandum no damagers were to be recovered beyond the stated amount. Ultimately, however, the statute required contracts in writing where: a promise by an executor to answer for damages out of his own estate, a promise to answer for the debt, default or miscarriage of another (a guarantee), an agreement in consideration of marriage, a contract for the sale of land or any interest therein, and any agreement, which was not to be performed within one year. It also provided that no contract for the sale of goods for more than 10 should be unless the buyer accepted part of the goods and actually received them, or gave something in earnest to bind the payment or in part payment, or there was a writing (Baker 396-397).

Statute of Uses of 1535: Predating the Statute of Wills: The Statute of Uses required written proofs for interests in land in 1535 (Moffat, Bean & Probert 39). However, there was such an outcry against this piece of legislation that the subsequent Statute of Wills was promulgated.

Statute of Wills of 1540: The Statute of Wills, 32 Henry 8 c 1 (1540), passed by Parliament and accepted by Henry VIII, allowed land to be bequeathed by will for the first time. The statute also aimed to eliminate "fraud, secrecy and confusion," which could result from these property issues (Gray 178-179).

Summary Trial: A summary trial was an abbreviated proceeding and became less typical in the late sixteenth century (Bellamy 158-159).

Surety: A surety is "a person who undertakes some specific responsibility on behalf of another who remains primarily liable; one who makes himself liable for the default or miscarriage of another, or for the performance of some act on his part (e.g. payment of a debt, appearance in court for trial, etc.); a bail" (*OED*).

Testament: The word, "testament," is also used interchangeably with "the last will" (Swinburne 3).

Testator: The testator was the person who made the will for his or her property.

Tudor doctrine of consideration: The Tudor doctrine of consideration involved circumstances where "a person could bring *assumpsit* for nonfeasance when he had paid for something and it had not been done" (Baker 384). Within the Tudor period, the notion of consideration had one single function: "it was the vital element which caused parol promises [i.e. oral promises] to be legally binding." Without consideration, a treatise upon contract insisted that "a man might be drawn into an obligation without any real intention by random words and ludicrous expressions, and from thence there would be a manifest inlet to perjury, because nothing were more easy than to turn the kindness of expressions into the obligation of a real promise" (Baker 399).

Warrant: A warrant is "a writing issued by the sovereign, an officer of state, or an administrative body, authorizing those to whom it is addressed to perform some act" (*OED*).

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