

**Changing attitudes towards the operations
of early modern law in Shakespeare**

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Abstract

This thesis examines a selection of Shakespeare's plays as critical representations of the multiple legal systems and jurisdictions that operated in early modern people's everyday lives. Through the relationships between law and literature, the thesis reveals the incongruity that existed between the actions of legislators and the ordinary lives of the people as depicted in the plays. Instead of focusing on a single play as a moment captured in history, the thesis tracks the representation of a crime from two Elizabethan plays, *2 Henry VI* and *The Merry Wives of Windsor*, to the Jacobean plays *Measure for Measure*, *Macbeth*, *Coriolanus* and *The Winter's Tale*. It focuses on the representation of three crimes: masterlessness, sexual transgression and witchcraft. When taken together, the change in dramatic representation of each particular crime reveals a narrative from which shifting societal attitudes are shown as the theatrical articulation of human anxieties.

This thesis compares the plays' representation of the law's efficacy, its use of adjudication and punishment, with the real-world outcomes dictated by parliamentary legislation. It investigates how the law is represented as dysfunctional, unfair or inequitable while acknowledging the broader societal contexts in which the law operated. Through the crime of masterlessness, the thesis examines the divergence between an increasingly punitive legislative process and its representation in the plays. The crime of sexual transgression explores the intersections of secular, spiritual, and community self-regulatory jurisdictions. Finally, the crime of witchcraft is analysed in relation to the evolution of legal narratives in law and on stage. The thesis's main argument reveals different patterns of divergence, intersection and evolution in the legal

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and theatrical treatments of the three different crimes. It thus demonstrates the need to investigate specific crimes and their temporal trajectories rather than assuming a treatment of 'the law' as monolithic and static.

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References

- Acts of Parliament: The format of the reference follows: the year of reign of the monarch at the time the Act was introduced; the abbreviated monarch's name; and the chapter number of the Act.
For example: 43 Eliz I c.4.
- The Bible: All biblical references are taken from a facsimile of *The Bible and Holy Scriptures Conteyned in the Olde and Newe Testament* (Geneva: Rouland Hall, 1560; United States of America: Lazarus Ministry Press, 1998).
- Oxford English Dictionary: All references to the Oxford English Dictionary are taken from the online version and follow the following format: Oxford English Dictionary; definition number and, where relevant, letter.
For example: *OED*: n.1b.
- Shakespeare's Plays: All references to Shakespeare's plays will be taken From: Stephen Greenblatt and others, *The Norton Shakespeare: Based on the Oxford Edition*, 2nd edn (London: Norton & Company, 2008). Unless otherwise stated.

Introduction

This thesis argues that changing attitudes towards the operations of early modern law can be identified through their shifting theatrical representations in Shakespeare's plays. Instead of focusing on a single text as a static moment, this thesis tracks representations of three particular crimes – masterlessness, sexual transgression and witchcraft – in an Elizabethan text through to a Jacobean text. The changes made between representations create a narrative from which shifts in societal attitudes can be detected. These evolving social and cultural representations of the law, captured in Shakespeare's plays (Elizabethan to Jacobean), are a valuable articulation of human concerns and anxieties associated with crime and the operations of the law. As Kezar attests, early modern drama is 'a theatrically and dramaturgically useful metaphor for human agency.... [that] also articulates rather abstract anxieties about human experience – anxieties that interest the stage'¹

This thesis works on the assumption that the state's representation of crime is an evolving and dynamic legal formation that consists of complex state narratives that drive changes in legislation, parliamentary debate and monarchical intervention. Such state narratives are based on legal truths established about a crime and its perpetrators, the criminal's intent, and their threat to the state. However, the thesis identifies separate evolving legal narratives by the state on one hand and the theatre on the other. Having done so, it

¹ Dennis Kezar, 'Introduction' in *Solon and Thespis: Law and Theatre in the English Renaissance*, ed. by Dennis Kezar (Notre Dame: University of Notre Dame Press, 2007), pp. 1-16 (p. 12).

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explores the dynamic and complex relationship between them and what they say about attitudes towards crime in early modern England.

The thesis adopts a deliberately broad interpretation of the operations of law in order to address the complex network of interrelationships between institutions and individuals through which jurisdiction operated. These include parliamentary legislation, the way the Church controlled or shaped people's everyday lives, and local customs and their legal truths that are either validated or refuted by the ruling elite. It includes the court structures, procedures, and systems of administration for common law, ecclesiastical law, and the different ways that legal jurisdictions interact. It also considers selectively examples of the use of equity, royal proclamations and the royal prerogative, community self-regulation, and the coercive operations associated with sentencing and punishment. When using the name 'Shakespeare', I 'mean not an individual, but a body of work,' that was 'shaped by many individuals – by the dramatist's education and his precursors, by the actors of his company, by the audiences without whom no play can be completed'.² To Bate's formulation of the many individuals shaping this body of work, I argue that Shakespeare's plays were also shaped by the legal framework within which they existed (including the censorship by which they were bound); and the historical and societal events, such as famine, religious intolerance and persecution, war, insurrection, inflation, poverty and plague that affected the lived experiences of communities across early modern England.

The thesis shows the contact points between individuals and the law in Shakespeare's plays, by which I mean interactions between characters and the law as manifested

² Jonathan Bate, *The Genius of Shakespeare* (Basingstoke: Macmillan, 2013), p.185.

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through temporal, geographical, allegorical or physical moments in which characters engage (either directly or indirectly) with the operations of early modern law outlined above. The thesis shows that by looking at the representation of three crimes across Shakespeare's Elizabethan and Jacobean plays, we can glimpse the shift in societal attitudes to the law by examining the representation of those crimes, the malefactors, the severity of punishment, and the response of other characters to state-defined criminal behaviour.

The thesis focuses on the changing representation of three specific and separate crimes: being masterless, sexual transgression and witchcraft. It divides the crime of being masterless into two separate sections. Firstly, the thesis interprets being masterless as the illegality of refusing to work or engage in an apprenticeship, begging, vagrancy and the hegemony associated with the law in relation to this crime and its operations. Secondly, the thesis focuses on the violence or threat of violence associated with being masterless or poor. With reference to the crime of sexual transgression, the thesis explores the representation of adultery, sexual incontinence (sex before marriage) and marriage juncture. It also examines how the operations of the law interact with accused felons amidst the conflict and pluralism between different early modern legal jurisdictions and their separate systems, structures and coercive operations. The crime of witchcraft is explored in two sections. Firstly, the chapter looks at the changing representation of the crimes of divination and conjuration and secondly, it explores the developing image of the witch within evolving witchcraft narratives.

To show the change in attitudes towards being masterless the thesis focuses on an Elizabethan text *2 King Henry VI* (1591) and the two Jacobean texts *Coriolanus* (1608)

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and *The Winter's Tale* (1611). Shifting attitudes towards sexual transgression are examined by comparing attitudes towards sexual transgression in the Elizabethan *The Merry Wives of Windsor* (c. 1599) and the Jacobean *Measure for Measure* (1604) under the new regime headed by King James. Changing attitudes to witchcraft, influenced partly by the interrelation of English and Scottish law, are traced by its dramatizations in *2 Henry VI* (1591) and *Macbeth* (1606). These contrasting texts from Elizabethan and Jacobean periods demonstrate my belief that the texts engage with a significant change in the operations of law in the two periods.

I argue that Shakespeare's plays enter into a wider debate about law, its purpose, dysfunctionality, and forensic language by showing how the authority of the law is ironically undermined by its own operations and that its proclivity to be dynamic provides individuals and factions with the opportunity to misuse it for their own benefit. It examines how the dramatized specificity of legal disputes within Shakespeare's texts encourages the playgoer or reader (both historical and contemporary) to engage in the morality of the characters' actions within an evidentiary process based upon linguistic and dramatic strategies. In addition, the thesis explores Shakespeare's representation of the effects and impact of different legal operations within society: how they are shaped by different monarchs, and their respective parliaments; how they are reactive to domestic and foreign events; and especially, how they work when a society either embraces or rejects them.

Principles of the Law: Truth, Justice and Equity

Law and morality have long been fused in English jurisprudence to ensure public compliance. We instinctively legitimise the impulse that to lead a good and moral life we

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must obey legal imperatives unquestioningly. For example, the ten commandments from the Bible seem to have been distilled into our basic urge to do what is right in precepts such as do not steal and do not commit murder. The morality that underpins the legal imperative is, like the law itself, subject to constantly shifting interpretations. Even the ten commandments, the central tenet of Mosaic law (written into stone for endurance), were re-evaluated for an early modern society and again for contemporary western ideals. In early modern England for example, adultery had communal, moral and legal consequences. Today, its consequences are largely personal as, for example, in cases of divorce. Therefore, in order to critically analyse the law and its relationship with morality, we must first, as Robin West suggests, disentangle that fusion:

It is hard, then, to resist the conclusion that because of the degree to which law effects, tutors, and influences, if not entirely determines, our sense of morality, any attempt to criticize law on moral grounds is at best highly problematic and compromised and at worst incoherent or impossible.³

This confusion is identifiable in all aspects of legislation. For example, it is represented blatantly through early modern (and, arguably, modern) parliamentary debate in which morally acceptable public behaviour (mainly dictated by the elite for the enforced benefit of the poor) is enshrined in law.⁴ Similarly, morality and law can be identified through the inferences that underpin legal truths, as in, for example, the moral narrative that both describes and functions behind retributive or restorative justice.

³ Robin West, *Narrative, Authority and Law* (Michigan: University of Michigan Press, 1993), p. 2.

⁴ Paul Slack, *Poverty and Policy in Tudor and Stuart England* (London: Longman, 1988), p. 105.

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Jacques Derrida stated that the law is, 'an authorised force', and that whoever authorises the discourse behind that exercise of force, wields immense social and political power – regardless of whether that force is justifiable or not.⁵ Similarly, Michel Foucault posits that justice exists within the moral precept of 'truth' which is itself a product of the ideological struggle between 'political debate and social confrontation'.⁶ These two ideological concepts suggest that legal authority is an artificial construction in which competing notions of truth impact on societal conceptions of justice and legal authority. Consequently, personal or political aspirations are interconnected with, and given credibility through, moral ideology. Judicial truths are separated from 'false' truths by the impact of legal and religious force (physical and spiritual coercion) until they become normalised into social custom. Hans Kelsen defines this process as a 'social technique which consists in bringing about the desired social conduct of men....'⁷

The coercive nature of legal practices can be traced backwards to the social, economic and/or cultural narrative that constructs the legal imperative. For example, I experienced a pre-trial murder case management meeting at the Old Bailey on 9th July 2021, where the defence lawyers presented medical evidence stipulating that the psychological disorders and low cognitive processes of two child suspects was so severe that they would not easily understand or be able to participate in the proceedings without specialist intervention. The judge ruled that the trial would last for ten weeks only, and that any professional or medical intervention would delay proceedings beyond that time.

⁵ Jacques Derrida, 'Force of Law: The Mystical Foundation of Authority' in *Acts of Religion*, ed. by Gil Anidjar (London: Routledge, 2002), pp. 228-298 (p. 233).

⁶ Michel Foucault, 'Truth and Power', in *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed. by Colin Gordon, trans. by Colin Gordon and others (New York: Pantheon Press, 1980), pp. 109-133 (p. 132).

⁷ John Finnis, *Natural Law and Natural Rights*, 2nd edn (Oxford: Oxford University Press, 2011), p. 5. Finnis cites Hans Kelsen, *Pure Theory of Law*, trans. by Max Knight, 2nd edn (Berkeley: University of California Press, 1967; repr. Clark: Lawbook Exchange, 2009), pp. 30-31.

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Consequently, she denied assistance within the courtroom. The defence team made no reply. Clearly, the legal imperative was followed but, in my opinion, the socio-economic and political narrative that lay behind this adjudication, and the inaction of the defence team, distorted the judicial process and denied justice. Consequently, any assumption that the law is moral or that legal and moral discourses are somehow conflated, leads to the potential danger (as in the case at the Old Bailey) that a legal authority is unconditionally accepted regardless of obvious injustice. Contemporary or early modern spectators who witness such carriages or miscarriages of justice are necessarily attuned to the complex representations of the administrations and operations of justice in Shakespeare's plays.

Shakespeare's plays *2 Henry VI*, *The Merry Wives of Windsor*, *Macbeth*, *Measure for Measure*, *Coriolanus*, and *The Winter's Tale* represent judicial sentencing as little more than an outcome or product. These plays reveal that the efficient adoption of judicial norms was of central importance to a state that was in continuous fear of social insurrection and that consequently, the interpretation of justice, like the courts' jurisdictions, was slowly placed under the control of the state through a policy of centralisation.⁸

The linguistic and performative similarities that I believe exist between theatre and the courts are far more explicit than Professor Richard Posner cared to consider when he wrote, 'I will argue that we cannot learn a great deal about the day-to-day operations of

⁸ For more detail appertaining to the centralisation of the judiciary, see: Jessica Apolloni, 'Local Communities and Central Power in Shakespeare's Transitional Law', *Studies in Philology*, 114 (2017), pp. 124-147 (pp. 135-36), doi: 10.1353/sjp.2017.0004. Apolloni also explains how the ecclesiastical courts were also subject to centralisation (p. 140).

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a legal system from works of imaginative literature'.⁹ In contrast, I align myself with Owen Fiss and Ronald Dworkin's view that the use of narrative, the dynamic nature of language, the socio-economic context and ideological pretexts, educative function, adversarial voices, along with the use of theatrical staging and the climactic adjudications are all areas that can be legitimately examined through the tools of literary critical analysis.¹⁰ Lorna Hutson, Julie Stone Peters, Robert Weisberg, Luke Wilson, Gary Watt and Paul Raffield have shown that the courtroom and the theatre have comparative performative functions.¹¹ In Wilson's words, 'legal practice, too... is intimately tied to the material conditions of its performance, which has its own array of signs thrown together in a performance that occurs under similar, though distinct, material conditions'.¹² Importantly, literary critical theory provides us with the tools to explore the words, language and grammar of playwrights, poets, authors, legislators, jurists and monarchs while recognising the different contexts in which they operate.

The central purpose of the law and its operations is to transform communities; 'to provide comprehensive and supreme direction for human behaviour in that community'.¹³ However, setting aside the multiple early modern hermeneutic and

⁹ Richard A. Posner, *Law and Literature: Revised and Enlarged Edition*, Second Printing (Cambridge: Harvard University Press, 2000), p. 5.

¹⁰ Robin West, *Narrative Authority and Law*, pp. 89-90. West cites: Owen Fiss, 'Objectivity and Interpretation', *Stanford Law Review*, 34 (1982), 739-63, doi: 10.2307/1228384; and Ronald Dworkin, *A Matter of Principle* (Cambridge: Harvard University Press, 1985), p. 146.

¹¹ See Lorna Hutson, 'Noises Off: Participatory Justice in *2 Henry VI*', in *The Law in Shakespeare*, ed. by Constance Jordan and Karen Cunningham (Basingstoke: Palgrave Macmillan, 2007), pp. 143-166; Julie Stone Peters, 'Law, Literature and the Vanishing Real: On the future of an Interdisciplinary Illusion', *PMLA*, 120.2 (2005), pp. 442-53, doi: 10.1632/003081205X52383; Robert Weiman, 'Towards a literary theory of ideology: mimesis, representation, authority', in Jean E. Howard and Marion F. O'Connor (eds), *Shakespeare Reproduced: The Text in History and Ideology* (New York: Methuen, 1987); Luke Wilson, *Theatres of Intention: Drama and the Law in Early Modern England* (Stanford: Stanford University Press, 2000); Gary Watt, *Equity Stirring: The Story of Justice Beyond the Law* (Oxford: Hart Publishing, 2009); Paul Raffield, *The Art of Law in Shakespeare* (Oxford: Hart Publishing, 2019).

¹² Luke Wilson, *Theatres of Intention*, p. 20. See also Robert Weiman, 'Towards a literary theory of ideology', p. 271.

¹³ John Finnis, *Natural Law*, p. 260. Finnis also refers to Joseph Raz's point that the law 'characteristically claims authority to regulate any form of behaviour, and to regulate all normative institutions to which the members of its

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epistemic theories surrounding the evolution of law,¹⁴ in early modern England, Shakespeare's plays functioned as an active register of cultural attitudes to law, often showing that the 'direction for human behaviour' had been misled by the legal processes and structures. In essence, Shakespeare's plays engage with how the law affects individuals differently based on class, status, gender etc. and therefore is unfair; that the principles of the law are shown to be flawed when applied to practical examples of legal process in individual cases. For example, texts like *2 Henry VI*, *Measure for Measure* and *Coriolanus* showed that the hierarchical stratification of Elizabethan/Jacobean society remained largely uncontested. Those in authority (the elite) were empowered to make and interpret legislation.

A legal 'truth' is the reason for which we accept any given law. The 'truth' is not in itself revelatory, but a principle chosen by those in authority to underpin and thereby justify the law. The principle is almost always chosen or awarded to promote the interests of the lawmaker: as in why I should be King; why one should not take the property of others; or why one should pay tithes. Throughout the late Elizabethan and early Jacobean period, legislation was created to ensure the wealth, authority and safety of an elite minority of the overall population within England. Shakespeare's plays reveal to spectators that those in whom authority resides decide upon and interpret the legal

subject-community belong' (p. 7.). Joseph Raz, *Practical Reason and Norms* (Oxford: Oxford University Press, 2002), p. 151.

¹⁴ Aristotle sees the law as emanating from a moralistic origin: a 'kind of state of character which makes people disposed to do what is just'. Aristotle, *The Nicomachean Ethics*, trans. by David Ross (Oxford: University Press, 1989), p. 80. Renaissance Christian theorists located law in reason and conscience, 'a form of knowledge that spurs us to follow virtue and shun vice'. R.S. White, *Natural Law in English Renaissance Literature* (Cambridge: Cambridge University Press, 1996), p. xi. Another theory expands on the ideology that law is used 'to correct the fallen nature of mankind'. Nancy E. Wright and A. R. Buck, 'Cast out of Eden: Property and Inheritance in Shakespearean Drama', in *The Law in Shakespeare*, ed. by Constance Jordan and Karen Cunningham (Basingstoke: Palgrave Macmillan, 2007), p. 76. In contrast, the Renaissance period's concern with 'poetic justice... bespeaks the natural law's influence upon shaping literary content'. Grant Williams, 'Law and the Production of Literature: An Introductory Perspective' in *Taking Exception to the Law: Materializing Injustice in Early Modern English Literature*, ed. by Donald Beecher and others (London: University of Toronto Press, 2015), pp. 3-43 (p. 4).

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'truths' that benefit the personal interests of a select number of individuals. Importantly, those who set the law in motion remain largely detached from the impact and effect of their influence on the law's operations; the law therefore becomes nothing more than power 'cloaked in procedure'.¹⁵ This thesis explores how Shakespeare's plays use narrative and characterisation to refuse any fixed interpretation of 'truth' required by the law. It argues that the plays demonstrate a subversive scepticism about the law's conventions and its efficacy; a position of 'scepticism versus fideism'.¹⁶ To be effective, law requires a community's arbitrary conformity. Arbitrary conformity, Shakespeare reveals, is both a strength and a weakness: it creates the normalisation of a legal truth and required coercive apparatus but at the same time it highlights the absolute need for conformity. If law is used to overly brutalise or disenfranchise one particular sector of the community, then its power to sustain social conformity is lost.¹⁷ Essentially, this leads to social disharmony, disengagement and, in extreme cases, war.¹⁸ The outcome is a loss of authority for one section of the community and the empowerment of another as the authority to decide upon and interpret legal 'truths' is either strengthened or replaced. Hans Kelsen identifies this process within literature as a form of moral poetic justice.¹⁹ For Shakespeare's audiences, the revelation that legal truth was not tied to equity but biased towards one party or another must have been either empowering or frightening, suggesting that they were always only one step away from the collapse of

¹⁵ Lorna Hutson, 'Noises Off: Participatory Justice in 2 Henry VI', pp. 159-160.

¹⁶ Dennis Kezar, 'Introduction', p. 5.

¹⁷ J. G. Bellamy, *Criminal Law and Society in Late Medieval and Tudor England* (Gloucester: Alan Sutton, 1984), explores how legislation regarding witnesses was used to disempower the poor / empower the wealthy p. 28.

¹⁸ For an example of how parliament debated the effects of how the poor law and taxation were, 'pushing the poor towards social unrest', see David Dean, *Law-Making and Society in Late Elizabethan England: The Parliament of England 1584-1601* (Cambridge: Cambridge University Press, 2002), p. 17.

¹⁹ 'The period's incessant concern with poetic justice towards which so many narratives pursue resolution, bespeaks the natural law's fundamental influence upon shaping literary content'. Grant Williams, 'Law and the Production of Literature: An Introductory Perspective' in *Taking Exception to the Law*, p. 4.

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societal norms.²⁰ Simultaneously, the revelation raises awareness that the threat of the law's coercive brutality is the only viable system capable of ensuring humanity's obedience and cohesion.²¹

According to the *Online Etymology Dictionary*, the abstract noun 'justice' originated from the Latin *justina* meaning 'righteous', 'equity', 'upright' and 'just'.²² However, by the time Shakespeare was writing, the term had also developed connotations of 'a vindictive sense "infliction of punishment, legal vengeance"'.²³ It is easy to see how this meaning evolved: not only was access to legal representation not universal but lawyers misused legal loopholes to inflict reputational damage or curtail actions or operations of the defendant.²⁴ They prosecuted legal fictions: false narratives whereby the defendant is arrested for a crime that they did not commit. For instance, according to L. W. Abbot, lawyers applied the provisions of an act of parliament to suit the affairs of their clients: 'The basis of interpretation, then as now, lay in adjusting the enacted law to particular factual situations as they arose'.²⁵ One of the more pernicious legal fictions was the bill of Middlesex in which the plaintiff alleged that the defendant had made a trespass in Middlesex (even if they had never set foot in that county). The imaginary trespass ensured that the defendant was arrested under the jurisdiction of the Queen's / King's Bench. If the defendant was not to be found in Middlesex, as was usually the case, then

²⁰ 'Law-mindedness' had risen during this period and therefore the level of engagement with and knowledge of law that play audiences might be expected to have. Not all would necessarily engage with the higher-level philosophical point, but many might have experienced the inequities of the law-in-action in their communities. See Christopher W. Brooks, *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2009), p. 243.

²¹ Laws cannot stop infractions; they can only punish the perpetrators. See Hans Kelsen, *Pure Theory of Law*, p. 55.

²² *Online Etymology Dictionary*, <<https://www.etymonline.com/word/Justice>> [accessed 20 May 2020].

²³ *Ibid.*

²⁴ See C. W. Brooks, *Pettyfoggers and Vipers of the Commonwealth: The 'Lower Branch' of the Legal Profession in Early Modern England* (Cambridge: Cambridge University Press, 1986).

²⁵ L. W. Abbott, *Law Reporting in England 1485-1585* (London: Athlone Press, 1973), p. 229. Abbott cites S. E. Thorne, 'Introduction' in *A Discourse Upon the Exposition of Understanding of the Statutes* (San Marino: Huntington Library, 1942), pp. 3-102 (p. 3).

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the court issued a writ (called a 'latitat') to the sheriff of the county in which they did live, stating 'that the defendant 'lurks and roams about' in their county – which in turn led to their arrest.²⁶ The real dispute could then be worked out at the plaintiff's leisure. Justice therefore became an abstract concept used to weaponize the law for financial, political or retributive purposes.

The mistrust of judicial impartiality is frequently represented in Shakespeare's texts, with a sense that the law's structure and operations were dysfunctional because every antagonist failed to or was not required to apply 'the 'moral virtue' of equity'.²⁷ By equity, I defer to Gary Watt's definition of this key term. '[Equity] is to correct formalistic errors in the way that law is read and, more aspirationally but no less important, to address the widespread error in reading life in terms of law; which we commit, for instance, when we unjustly and unreasonably insist on our strict legal rights and entitlements.'²⁸ Concerns surrounded the interpretation of early modern equity, legislation and sentencing to which the judiciary's attempts at rectification can be traced through numerous instruction manuals.²⁹ Sale, for example, explores Plowden's legal commentaries or reports to show how an evolving understanding of morality re-shaped and even changed equitable judgements about women and property (For example, *Hales v. Petit* and *Eyston v. Studd*).³⁰

²⁶ J. H. Baker, *An Introduction to English Legal History*, 3rd ed. (London: Butterworth, 1990), pp. 50-51.

²⁷ Carolyn Sale, 'The 'Amending Hand': *Hales v. Petit*, *Eyston v. Studd*, and Equitable Action in *Hamlet*', in *The Law in Shakespeare*, p. 198

²⁸ Gary Watt, *Equity Stirring*, p. 3.

²⁹ See: Edmund Plowden, *A facsimile of Commentaries or Reports of Edmund Plowden, Of the Middle Temple* (London: Catherine Lintot and Samuel Richardson, 1761; repr. London: Forgotten Books, 2018); William Lambard, *Eirenarchia: or of The Office of the Justices of the Peace* (London: Newbery and Bynnerman, 1581; repr. New York: Da Capo Press, 1970); Michael Dalton, *The Countrey Justice: Containing the Practise of the Justices of the Peace Out of their Sessions* (London: Societie of Stationers, 1619; repr. London: Professional Books, 1973).

³⁰ Carolyn Sale, 'The Amending Hand', p. 197.

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The early modern English legal system was unique in relying on precedence as a guiding principle whereby historical rulings are used as the basis for future cases. In such a system, justice is dependent upon the past to create its current meaning. Engaging with literary or dramatic texts via both archival records and literary criticism teaches us to evaluate the historical, ideological and moral pretexts extant in legal procedure as a context for understanding their dramatic representations in the theatre. Bradin Cormack views literature as a vehicle that captures the moment within law and its subsequent effects; and, because law continues to change, the relationship between both becomes politically and socially reactionary. It is, he says,

an ongoing, always shifting process of political and cultural reproduction: one according to which literary texts might, jurisdictionally, emerge as immediately political by reason of their relative autonomy as fiction; or, to take a differently modern example, one according to which a theocratic order might, jurisdictionally, be predicted to reorganize itself within the state as the dialectical response to the incomplete consolidation of state authority.³¹

Here, Cormack suggests that the relationship between literature and law is complex because both are constantly evolving; shifting separately yet sometimes in cognate patterns. This means that literature will inevitably create an incomplete or distorted picture of the law and its purpose(s) because literature is itself 'jurisdictional' (Bradin Cormack's term). Literature, he infers, is also influenced by political and social forces causing it to

³¹ Bradin Cormack, *A Power to do Justice: Jurisdiction, English Literature, and The Rise of the Common Law, 1509-1625* (Chicago: University of Chicago Press, 2008), p. 44.

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emerge, shift, and react. Therefore, the difficult task of interpreting law through literature can be helped by tracing the treatment of crime in early modern England over a period of time. The thesis is based on the premise that using a temporal trajectory (comparing texts from the late Elizabethan period and the early Jacobean period) allows for a better identification and understanding of the political and social forces operating on or against the law.

Analysing law from a jurist's historical perspective may provide one type of insight into the rhetorical, jurisdictional and ideological use of the legal imperative and/or forensic linguistics, but it will not show us how those on whom the law operated felt, reacted or responded. By examining conflicts between law and perceived injustice at their point of contact, this thesis aims to contribute a greater understanding of early modern knowledge of the law and the experiences of ordinary people who encountered it. Such conflicts also offer us a glimpse into the shifting attitudes towards the centralisation of the law and its various jurisdictions.

A selection of legal procedures and their dramatization by Shakespeare is necessary given the scope of the thesis. According to Bradin Cormack, Martha C. Nussbaum and Richard Strier, 'the law is everywhere in Shakespeare's plays. This is because, most simply, it was everywhere in his culture'.³² I agree with Kevin Curran's view that Shakespeare 'thought with law' rather than just 'about' law³³. Shakespeare, along with his contemporaries, emboldened their audiences and readers to act like a jury from which

³² Bradin Cormack, Martha C. Nussbaum and Richard Strier, 'Introduction: Shakespeare and the law' in *Shakespeare and the Law: A Conversation Among Disciplines and Professions*, ed. by Bradin Cormack, Martha C. Nussbaum and Richard Strier (London: Chicago University Press, 2016), pp. 1-18 (p. 3).

³³ Curran, Kevin, *Shakespeare's Legal Ecologies: Law and Distributed Selfhood* (Illinois: Northwestern University Press, 2017), pp. 5-6.

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to interpret and judge narratives that often existed behind legislation; to judge the very procedures of the law; and to empower them and us to question whether the legal imperative provides justice or injustice.

The recent development of Law as Literature, Literature as Law movement as an interdisciplinary critical movement can be traced to the initial work of scholars such as James Boyd White, Richard Weisberg, Robin West and Ian Ward.³⁴ In the 1970s and 1980s a three-way conversation between literature, history, and law emerged which focused on both the history and philosophy of legal doctrine as well as the impact that legal agency had on different communities.³⁵ Ian Ward examined the function of the legal author and the reader's interpretative role³⁶ while Robin West evaluated political expression and repression through law.³⁷ White's exploration of language and legal authority in *Acts of Hope: Creating Authority*, provides a fascinating argument as to why society places blind faith in a collective sense of justice that is defined 'in terms of procedures and arrangements'.³⁸ A few legal critics, like Jane B. Baron, adopted an opposing position. Baron advocates the study of law as an empirical science³⁹ and therefore critiques the Law and Literature movement for its caricature of judges and lawyers as existing without morality in a profession that is dry and rule centred.⁴⁰

³⁴ Laura Hutson, 'Introduction: Law, Literature and History', in *The Oxford Handbook of English Law and Literature, 1500-1700*, ed. by Lorna Hutson (Oxford: Oxford University Press, 2017), pp. 1-19 (pp. 2-3). Hutson cites James Boyd White, *The Legal Imagination* (Chicago: Chicago University Press, 1985); Richard Weisberg, *Poethics: And Other Strategies of Law and Literature* (New York: Columbia University Press, 1992); Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 1995).

³⁵ Ian Ward, *Law and Literature*, p. 4.

³⁶ *Ibid.*, see Chapters 2 and 3.

³⁷ Robin West, *Narrative, Authority, and Law*, pp. 3-4, 12.

³⁸ James Boyd White, *Acts of Hope: Creating Authority in Literature, Law, and Politics* (London: University of Chicago Press, 1994), p. 22.

³⁹ '...when Christopher Columbus Langdell became Dean of Harvard Law School, law began to be conceptualised as a science rather than an art.' Jane B. Baron, 'Law, Literature, and the Problems of Interdisciplinarity', *The Yale Law Journal*, 108 (1999), pp. 1059-1085 (p. 1074), doi: 10.2307/797370.

⁴⁰ *Ibid.*, pp. 1064-1066. See also Julie Stone Peters, 'Law, Literature and the Vanishing Real: On the future of an Interdisciplinary Illusion', pp. 442-53.

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This thesis develops many of the aspirations of the Law and Literature movement and the more recent Law as Literature evolution. It views literature as a cultural compendium that captures attitudes towards law; moments of social and political conflict; the coercive nature of law; interpretations of criminal intent; and the political manipulations of law. I am excited and fascinated by how the law captures moments of conflict between the state and an individual, an individual against another individual and whole communities at war with others – and themselves. This thesis therefore interprets law as continuously dynamic and contingent. It selectively identifies changes in the presentation of law and its operations within Shakespeare's drama under the jurisdiction of two monarchs, Elizabeth I and James I of Britain. The thesis focuses on character responses (as voices captured from within the early modern audiences and society) so that Shakespeare's changing heuristic commentary about the law, its operations and processes are brought to the foreground. I believe that Shakespeare's plays are not designed to preach at legal professionals on how to tutor aspiring lawyers, but rather to prompt a dialogue with their audiences and readership about how to address the problems of justice within the legal system.

Lorna Hutson's analysis of the intersection between legal culture and Elizabethan drama had a transformative impact on current theories of Law and Literature because it developed the connection between the playwrights' linguistic constructions of character to that of linguistic forensics within a courtroom examination. By identifying the subsequent changes from the ecclesiastical confessional into the investigative testimony of the common law process, Hutson entered into a wider debate about *intention* in early modern legal practices. This debate is best highlighted through

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Shakespeare's treatment of the Hales versus Petit case in *Hamlet* (*Hamlet*: V.1.1-22).

The Gravediggers' discussion captured Lady Margaret Hales unsuccessful lawsuit against Cyriack Petit: her husband had committed suicide (a felonious crime) which meant that he had 'forfeited his "Goods, Chattels and Demises" to the crown'.⁴¹ Hales' lawyers claimed that the act of felony took place at the moment her husband killed himself and therefore not when he was alive. Petit's lawyers successfully argued that the crime was committed during Sir James Hales' life by tying his suicide to three actions which defined his *intent*:

The first is the Imagination.... The second is the Resolution.... The third is the Perfection, which is the Execution of what the Mind has resolved to do.⁴²

Consequently, the concept of *intent* became a significant trope in interpreting the innocence or guilt of a defendant and a real life or fictional individual's actions.⁴³ My research explores how texts by Shakespeare engage with the state's attempt to control the impulses behind intention and the state's attempt to criminalise social misbehaviour through changes in ecclesiastical legislation and legal.

Hutson also posited that the rise in public litigation was a cultural phenomenon that directly led to changes in 'the strategies of representation in various kinds of theatre'.⁴⁴ She argues that Shakespeare's audiences had 'an awareness of forensic rhetoric; of understanding speeches as a set of dubious 'facts', or to test one's suspicions about

⁴¹ Luke Wilson, *Theatres of Intention*, p. 40.

⁴² Edmund Plowden, A facsimile of *Commentaries or Reports of Edmund Plowden*, p. 259.

⁴³ Lorna Hutson, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford: Oxford University Press, 2011), pp. 69-70. See also Luke Wilson, *Theatres of Intention*. Wilson similarly analyses 'intention' within the theatre and law.

⁴⁴ Lorna Hutson, *The Invention of Suspicion*, p. 5.

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the motives of others'.⁴⁵ Hutson explains that this cultural change provided dramatic characterisations with a thicker mimetic texture in which spectators invested by attributing 'probability' to action like a jury constructing conscious intent behind the characters' actions.⁴⁶

This thesis develops this concept of a jury-audience to identify whether Shakespeare's plays show societal attitudes towards the morality, equity and sense of justice within law changes across the two monarchs, Elizabeth I to James I (VI). For example, the thesis questions the relationship between changes in legislation and their subsequent representation in Shakespeare's plays; whether cultural values suggested in legislation are axiomatic in the attitudes assumed by characters; and how Shakespeare's plays respond to the movement of legal practices towards a system of state control that belies an increasing obsession with monitoring and controlling private lives.

Julie Stone Peters' recent intervention (law as performance) in the Law as Literature movement examines early modern perceptions of the law outside the legal sphere. This focus was recently emphasised in the *Law as Literature, Literature as Law* Conference 17-19 April 2023 at Lancaster Castle, which demonstrated the capacity of literature or drama to interrogate the boundaries of legal power, in principle and in practice, whilst emphatically capturing the necessarily dynamic nature of much early modern law.⁴⁷

⁴⁵ Ibid, p. 8.

⁴⁶ Ibid, p. 75.

⁴⁷ A new book that captures the *Law as Literature, Literature as Law* Conference 17-19 April 2023 at Lancaster Castle is due to be published in 2025.

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The representation of legal jurisdiction in early modern literature is brought to the fore in Bradin Cormack's book *A Power to do Justice*. Like Hutson, he rejects traditional vertical models of legal ideology that search for the origin of authority - such as Derrida ('violence that inaugurates law and the preserving violence that sustains it') and Foucault ('the domination exercised on the body' by the sovereign).⁴⁸ Instead, Cormack explores legal jurisdictions within a horizontal model in which the authoritative effects are engendered through and by legal jurisdictions. In this way, Cormack explores how 'literature supports or resists particular developments in Tudor and Stuart law and governance'⁴⁹:

Literary engagements with jurisdiction can fit themselves to both narratives, listening to where the law is going or what the law means to do, but also holding on, for longer than the law does, to the implications of what is being managed and so displaced.⁵⁰

Using a similar horizontal approach, this thesis explores how Shakespeare's plays represent changes in the violent and coercive nature of positive law. For example, it considers how far punishments outlined in the 1572 Vagrancy Act, that appear in Elizabethan texts, are represented as being more or less punitive in the Jacobean texts - after legislative changes made in 1597 (Rogues and Vagabonds) and 1601 (Poor Acts). My aim is to identify whether Shakespeare's plays present the law's jurisdictional operations as effective in producing early modern standards of normativity, justice and punishment.

⁴⁸ Bradin Cormack, *A Power to do Justice*, p. 6.

⁴⁹ *Ibid.*, p. 4.

⁵⁰ *Ibid.*, p. 30.

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Cormack also explores the importance of communal assent necessary for the production of a legal truth within a community. He explains how that truth empowers an individual(s) to express and/or project authority through their office which operates on the basis of particular jurisdictions. The thesis explores how Shakespeare presents the operations of different jurisdictions, how they are authorised and their value within a community. For example, in *Measure for Measure* it considers how Shakespeare presented the misuse of legal authority and power and question the efficacy of law when it is unsupported within its community. It goes on to analyse interrogations of the temporal, spatial and geographical jurisdictions of a sovereign in *Macbeth*,

Kevin Curran's influential second monograph, *Shakespeare's Legal Ecologies*, argues that the law is used as a kind of dramatic tableau from which collaborative and/or distributive notions of selfhood are projected.⁵¹ Curran suggests that Shakespeare's plays capture a human ecology (the relationship between a self and their community) in which 'law forms spaces of encounter and knits discrete persons into the social and material fabric of the world'.⁵² Curran's focus on self in relation to property law, hospitality, *mens rea* associated with treason and collective judgements, is a shift away from the illusion of dramatic characters to something emergent from social practice. Although there is some overlap in the representation of selfhood against legal tableaux, I develop the view that the law is not a fixed location (as the semantic interpretation of 'tableau' might suggest) but that Shakespeare's plays exist in a symbiotic relationship with increasingly legally intelligent audiences to present the operations of the law existing in a constant flux of social, political and jurisprudential manoeuvring.

⁵¹ Kevin Curran, *Shakespeare's Legal Ecologies*, p. 4.

⁵² *Ibid.*, p. 131.

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Consequently, Curran's concepts of selfhood must instead be viewed in relation to constantly changing legal positions. Each moment is a snapshot but law itself, like drama, is a dynamic process of accretion (that is, case law). This can be seen in Shakespeare's evolving treatment in his representation of equity.⁵³

⁵³ See Gary Watt, *Equity Stirring: The Story of Justice Beyond Law*.

Methodology: Cultural Materialism and New Historicism

This thesis adopts an interdisciplinary approach that views literature as an artifact of history to show how Shakespeare's plays are shaped by, respond to, precede, and comment upon the continuing evolution of English law in its structures, language, administration, operations, and workings. New Historicism's investigation of a text's relationship with power, society, and the ideology of its time establishes a useful 'semiotic exchange between literary and cultural history' with a particular focus on the oppressive operations of elitist power.⁵⁴ I examine a plurality of textual sources to identify the orthodox, dominant discourses that shape and are shaped by their cultures. I agree with Christopher Marlow's assertion that there is a symbiotic relationship between literature and the cultural era in which it emerged: 'literature does not just bear the marks of the culture that produced it but also makes an impact on that culture itself'.⁵⁵ Cultural Materialism provides a framework to read that culture as a site of constant struggle, fully recognizing the effects of alternative narratives to the dominant and orthodox historical accounts. Raymond Williams notes that culture was and is defined as a series of ideological conflicts that are 'subordinate to the dominant ideology'.⁵⁶ In contrast, Dollimore critiques new historicism for always reading subversion as ultimately produced in order to reinforce the dominant order. Instead, he

⁵⁴ Duncan Salkeld, 'New Historicism', in *The Cambridge History of Literary Criticism*, ed. by Christa Knellwolf and Christopher Norris, (Cambridge: Cambridge University Press, 2001), p. 59.

⁵⁵ Christopher Marlow, *Shakespeare and Cultural Materialist Theory*, p. 128.

⁵⁶ *Ibid.*, p. 55. See also, Raymond Williams, *Marxism and Literature* (Oxford: Oxford University Press, 1977); Jonathan Dollimore, 'Shakespeare, Cultural Materialism and the New Historicism' in *Political Shakespeare: Essays in Cultural Materialism*, ed. by Jonathan Dollimore and Alan Sinfield, 2nd edn. (Manchester: Manchester University Press, 1996), pp. 2-17 (p. 10); Christopher Marlow, *Shakespeare and Cultural Materialist Theory* (London: Arden Shakespeare, 2019), p. 45. Marlow cites Alan Sinfield, *Faultlines: Cultural Materialism and the Politics of Dissident Reading* (Oxford, Clarendon Press, 1992), p. 45.

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and cultural materialists ‘understand history and the human subject in terms of social and political process’.⁵⁷

My interdisciplinary approach, combining law and literature is driven by a belief that Shakespeare’s plays can be most clearly understood when they are investigated as a series of dependent, independent, interlocking and opposing discourses, or as Jonathan Dollimore states, a ‘violent dialectic between the dominant and the subordinate’ cultural hierarchies.⁵⁸ These dissident and orthodox discourses or ‘cultural hierarchies’ within Shakespeare’s plays provide us with a glimpse at the attitudes towards the production and operation of a continually evolving legal system.

Shakespeare, like other playwrights, was reflecting contemporary culture back upon itself, showing that dissidence could often be created by the ideological contradictions of the early modern state’s social and economic policy.⁵⁹ Consequently, I do not read Shakespeare’s texts as psychoanalytical entities that reveal repressed or hidden desires but as a form of unconscious history existing within history: ‘this is why it is possible to trace the path which leads from the haunted work to that which haunts it’; or

⁵⁷ Christopher Marlow, *Shakespeare and Cultural Materialist Theory*, p. 78.

⁵⁸ Jonathan Dollimore, *Radical Tragedy: Religion, Ideology and Power in the Drama of Shakespeare and his Contemporaries*, 3rd edn (Basingstoke: Palgrave Macmillan, 2004), p. xxii.

⁵⁹ See also, Thomas Lodge and Robert Greene, *A Looking Glasse for London and England* (London: Thomas Creede, 1594; repr. Oxford: Malone Society, 1932), performed in 1590 and in which reference is made to the corruption of the courts towards the poor; *The Lamentable Tragedy of Loqrine* (London: Thomas Creede, 1595; repr. Whitefish, Kessinger Rare Prints, [n.d.]), performed in 1591 and features impressment into the army and references to Bridewell; *Arden of Faversham* in *Five Elizabethan Tragedies* (London: Edward White, 1592; repr. Oxford: Oxford University Press, 1963 edition), in which returning soldiers are forced into crime to avert poverty; Thomas Nashe, *Pierce Penniless’s Supplication to the Devil* (London: Richard Jhones, 1592; repr. London: Shoberl, 1842), in which Penniless deems it better to sell his soul than exist in poverty; Anthony Munday and others, *Sir Thomas More*, ed. by Vittorio Gabrieli and Giorgio Melchiori (Manchester: Manchester University Press, 2007), performed in 1592 and in which poverty is given as the reason for rebellion; A facsimile of *A Knack to Know a Knave*, (London: Richard Jones, 1594; repr. Miami: Hard Press, [n.d.]), first performed in 1592 and in which the state’s violent punishments are represented; Christopher Marlow, *Shakespeare and Cultural Materialist Theory*, p. 102.

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from participating in the operations of law to the social concerns that surround its application of retributive or restorative justice.⁶⁰

The dramatization of contact points between people and the law examined in this thesis is an example of the clash between ideology and culture that was first inferred by Raymond Williams and later expanded upon by cultural materialists Jonathan Dollimore and Alan Sinfield. My thesis reads this clash as an asymmetrical contact between the state's elite and the masterless and labouring classes. Through law alone, the state is unable to control the reception, experience, and attitudes of society to its imposed ideology. The Elizabethan and Jacobean elite can legislate to protect their shared interests, but according to Sinfield, they 'could not then prevent such figures [from lower down the social scale] conceiving and enacting dissident practices'.⁶¹

The thesis adopts elements from new historicist and cultural materialist approaches to argue that each text under investigation captures the transitional spatial, temporal, linguistic, and geographical cultural ideologies that were in conflict at any given moment during its attendant processes of creation and reception. Williams' valuable term 'transitional' recognizes that all cultures include dominant, residual and emerging elements; that they are constantly evolving and dynamic.⁶² Foucault calls this process, 'genealogy': 'a form of history which can account for the constitution of knowledges, discourses, domains of objects, etc'. I therefore believe that through Shakespeare's plays, we can ascertain an evolving 'genealogy' of early modern law constructed

⁶⁰ Christopher Marlow, *Shakespeare and Cultural Materialist Theory*, p. 167. Marlow cites Pierre Macherey, *A Theory of Literary Production*, (London: Routledge, 1978), p. 103.

⁶¹ Christopher Marlow, *Shakespeare and Cultural Materialist Theory*, p. 93. Marlow cites Alan Sinfield, *Faultlines*, p. 42.

⁶² Raymond Williams, *Marxism and Literature* (Oxford: Oxford University Press, 1977), pp. 122-23.

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through multiple different perspectives which allow for a greater range of interpretations of events. We can identify how culture 'traverses and produces things, it induces pleasure, forms knowledge, produces discourse... a productive network which runs through the whole social body'.⁶³

This thesis reaches back to Shakespeare's representation of 'those meanings and values which were created in actual societies and actual situations in the past and which still seem to have significance because they represent areas of human experience, aspiration, and achievement'.⁶⁴ It therefore covers new ground in the study of literature as law, law as literature. Instead of focusing on the operations of the law in a single text. The movement between the different dramatizations of the three crimes - masterlessness, sexual transgression, and witchcraft - can be seen as a trajectory that shows changing representations across the two periods. When this trajectory is placed beside evolving parliamentary legislation, ecclesiastical law, and royal proclamations, a new narrative is revealed: we are shown changing attitudes towards the law. The relationship between Shakespeare's plays and his audiences and readership is symbiotic. Therefore, by placing the shifting dramatizations of three crimes alongside changes in punitive law, we are presented with a valuable articulation of human concerns and anxieties. We get a glimpse of the changing social and cultural attitudes of an early modern community towards the law and its operations.

Chapter outline

⁶³ Michel Foucault, 'Two Lectures', in *Power/Knowledge*, p. 119.

⁶⁴ Michel Foucault, 'Two Lectures', in *Power/Knowledge*, p. 124.

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Chapter 1 reads an evolving representation of legal and dramatic responses to the crime of being masterless in *2 Henry VI*, *Coriolanus* and *The Winter's Tale*. The chapter examines the representation of contact points between the poorest in society when they come into contact with the law and its operations and the social inequality of the law through the plays' representations of legal processes: petitioning, the muster, riot and the use of trial by combat. It argues that such contact points offer exciting insights into how legal operations and procedures may have impacted on the lives of the poorest Elizabethans: seasonal labourers, itinerant land workers, returning soldiers and the vagrant beggars that wandered the countryside and cities seeking alms. In addition, the chapter reveals how Shakespeare parodies litigation through the dramatizations of Peter Thump's petitioning and through Cade's parody of forensic linguistics alongside his followers' adoption of new legislation that suits their whims and prejudices. The chapter argues that in the context of Jacobean tightening of state legislation, particularly in relation to enclosure, *Coriolanus* represents violence and criminality associated with being poor more sympathetically. It considers the conflict between custom and the common law alongside the effectiveness of riot as a destabilising tool to communicate with the ruling class, thus raising questions about the republican political model presented in the play. The chapter traces a further positive shift in the dramatization of being masterless in the figure of Autolycus from *The Winter's Tale*. It concludes by focussing on how his marketing of ballads parodies the state's efforts at creating the rogue as a bugbear of the Jacobean body politic.

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The chapter shows how the state's laws about masterlessness have become even more punitive over the same period. The chapter also explores the continuing social bias inherent in early modern law.

Chapter 2 presents the evolving social and cultural portrayal of sexual transgression against the state's developing legal narrative in *The Merry Wives of Windsor* and *Measure for Measure*. It explores the plays' attitudes towards the commercial and social values associated with sex, marriage and marriage jointure through public and private loci, the legality of parental marriage aspirations, and the efficacy of social custom over the rights of the individual. The chapter identifies the changing attitudes towards the crime of sexual transgression through the stoic conventions of community justice. It argues that the Elizabethan play uses a form of self-regulation predicated on changing a malefactor's behaviour through 'participatory justice'. It contends that the community politics of custom and self-regulation are used to show how Church law and Common law are morally insufficient for judging crimes against private aspirations and perceptions about 'self'. It maintains that the Elizabethan law and its operations impacts on social class, gender equality and any sense of impartial justice.

The chapter traces the movement in jurisdiction away from community justice towards a more centralised representation of Jacobean legal operations and its reliance on positive law in the Jacobean play. It investigates the escalation in litigation through the rise in legal authority and the increasing conflict between the plural jurisdictions of the Church, the state, and the monarch. It investigates the impact of providing state institutions with increased legal authority, how absolute legal power corrupts when the law and its legal processes become more important than the justice it serves. It shows how legal truths

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are created and developed for communal consumption and how different interpretations of legal truths can corrupt justice.

Chapter 3 traces the development of the witchcraft narrative from the Elizabethan play *2 Henry VI* into the Jacobean *Macbeth*, alongside its symbiotic relationship with early modern English legislation. It identifies an evolving social and cultural portrayal of witchcraft alongside the state's developing legal narrative. The chapter reveals the ways in which Elizabethan laws may be weaponized in cases of witchcraft and sorcery through a misuse of macro-political power relations. It explores how the crimes of sorcery and divination represented in *2 Henry VI* show how evidential presentments can be perverted by creating emotional barriers between concepts of justice and the people that authorise, validate or justify their judgements. It reveals how the law can degenerate into a series of simple legalisms when it suits those in authority. In *Macbeth* the operations of law are investigated with reference to kingship. The chapter analyses the move from human activity to diabolical compact in which the legal argument of 'intent' is removed for the playgoer and the reader. Contrasting images of 'the witch' as either a justification or refutation of humanistic and spiritual perceptions of kingship are manifested in common law and canon law respectively.

Chapter 1:

The Crime of Being Masterless

Well, whiles I am a beggar, I will rail,
And say there is no sin but to be rich;
And being rich, my virtue then shall be
To say there is no vice but beggary.

The Life and Death of King John (2.1.594-97)

The quote above reveals the conflict between people in the early modern period who are characterized with a mentality associated with being wealthy or poor.

This chapter compares Shakespeare's Elizabethan text *2 Henry VI* with two of his Jacobean texts, *Coriolanus* and *The Winter's Tale* to identify the changing attitudes towards the crime of being masterless.¹ The representation of being masterless in the plays and in the legal narrative within state legislation undergo a divergence.

They are shown to take separate trajectories. This chapter therefore considers the critical dramatization of the position of masterless men under Elizabethan law in comparison to the tightening of law under the Jacobean government, that produced

¹ The appellations 'masterless man', 'vagabond' and 'rogue' are used interchangeably in parliamentary legislation and royal proclamations. 'Masterless': a person having no reputable means of living; vagrant, vagabond, unemployed (*OED*: n.3); Rogue: A dishonest, unprincipled person (*OED*: n.2.a); Vagabond: Roaming or wandering from place to place without settled habitation or home (*OED*: n.1.a). I reference the key writers of this topic as A. L. Beier, *Masterless Men: The Vagrancy Problem in England 1560-1640* (London: Methuen, 1985) and Patricia Fumerton, *Unsettled: The Culture of Mobility and the Working Poor in Early Modern England* (Chicago and London: University of Chicago Press, 2006).

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a more liberal representation of the masterless man in Shakespeare's later work *The Winter's Tale*.²

This chapter will also examine the experience of the poorest people in society when they come into contact with legislation and the operations of the law. These contact points emerge when a character is subject to legislation and the juridical frameworks in which they operate. For example, the chapter explores the communal protest in the representation of Cade's insurrection in *2 Henry VI* with the Plebians uprising in *Coriolanus* before comparing them with evolving parliamentary legislation, royal proclamations and Church law. I show how early modern social attitudes towards poverty and the needs of the poor have shifted out of alignment with those of the state. The poorest characters come into contact with the law through their attempts at petitioning, through forms of communal protest, and through their interaction with legislation. This chapter explores the representation of the masterless vagabond, forensic linguistics (including rhetoric), equity and the concept of legal equality. It recovers 'the voices and cultures of the repressed and marginalised in history' as well as responding to Marlow's call in 2019 to connect 'the material conditions of the historical past ...[with]... the political and institutional preoccupations of the present'.³

² Jonathan Bate and Eric Rasmussen, eds., cite: 'Autolykus literally: 'the wolf himself' or 'the lone wolf': in classical mythology, he was a crafty thief.' William Shakespeare, *The Winter's Tale*, ed. by Jonathan Bate and Eric Rasmussen (Basingstoke: MacMillan, 2009), p. 70 n4.3.

³ Jonathan Dollimore and Alan Sinfield 'History and ideology: the instance of Henry V' in *Alternative Shakespeares*, ed. by John Drakakis (London: Routledge, 1996), p. 214; Christopher Marlow, *Shakespeare and Cultural Materialist Theory* (London: Arden Shakespeare, 2019), p. 3.

Masterless Insurrection and Vagrancy in *The Second Part of Henry VI*

Although poverty and rebellion were closely interrelated in the legal responses to 'masterless' people, *2 Henry VI* dramatizes them separately: in scenes representing the dangerous threat of rebellion in the militarised masterless men led by Jack Cade and the social problem of 'masterless' poor people in scenes with the relatively harmless Simpcoxes. The Simpcoxes claim falsely that they are the recipients of a miracle, in order to cozen local people. The Elizabethan poor, at the time *2 Henry VI* was written, were suffering from particularly harsh economic conditions: raging inflation; war in the Netherlands; insurrection in Ireland; plague across the country. There were outbreaks of food rioting related to repeated crop and harvest failures.⁴ The poor rioted to ensure their survival - to purchase bread or other essential commodities at a sustainable price.⁵ The Westminster Riot of 1589 brought violence into the heart of London: 'some of the city's streets had to be closed off with iron railings' and peace and order failed to return for 'six months'.⁶ The cause of disorder in England was usually placed at the feet of the poorest.⁷ A state narrative that was repeated regularly from the pulpit and through royal proclamations, represented the

⁴ For a brief explanation about the crisis of the 1590s, see Peter Clark, 'Introduction', in *The European Crisis of the 1590s: Essays in Comparative History*, ed. by Peter Clark (London: George Allen & Unwin, 1985), pp. 3-17. See also, Ian Archer, *The Pursuit of Stability: Social Relations in Elizabethan Society*, pp. 9-14.

⁵ According to J.A. Sharpe's analysis of the Essex Assizes and Ian W. Archer's exploration of civic unrest, the most immediate threat to social peace and trade came from rioting: J. A. Sharpe, *Crime in Early Modern England 1550-1750* (Harlow: Longman Group, 1984), p. 22. Ian Archer, *The Pursuit of Stability*, pp. 1-9. See also the chronology of revolts and rebellions, riots and other disturbances in J. Thomas Kelly, *Thorns on the Tudor Rose: Monks, Rogues, Vagabonds and Sturdy Beggars* (Mississippi: University Press, 1977), pp. 139-40. See also 'Assembly, riotous' in the *Calendar of Assize Records: Surrey Indictments Elizabeth, ed. by J.S. Cockburn, 2 vols* (London, Her Majesty's Stationary Office, 1980), I.

⁶ Gamini Salgãdo, *The Elizabethan Underworld* (Stroud: Sutton Publishing, 1999), p. 111. Ian Archer also suggests that discontented returning soldiers collaborated with apprentices in other riots across London. Ian Archer, *The Pursuit of Stability*, p. 1.

⁷ A. L. Beier, *Masterless Men*, p. 4.

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itinerant poor as parasitic, disease ridden, and a threat to the stability of society.⁸

The ruling elite's concept of natural order was being threatened by an increasingly desperate dispossessed class.⁹ The state reacted by suggesting that the central cause of poverty was laziness and that the itinerant poor wallowed in immorality and vice.¹⁰ Consequently, their access to legal redress was extremely limited, and this is highlighted in the play as discussed below.

Early modern social legislation focused on relieving poverty through one of two routes: either providing sustenance for those unable to work or by providing employment for those fit enough to labour. The Poor Law (1572) punished rogues and vagabonds like the Simpcoxes because according to the state, they wilfully chose not to work and were therefore regarded as the undeserving poor. To be labelled 'masterless' meant that the individual had either left their apprenticeship with or without permission, had chosen not to engage in a lawful trade or profession, or had made themselves itinerate and engaged in unlawful activity like begging and petty crime. The 1576 Poor Law had an addendum included which demanded the

⁸ For example, between 1576-1616, there were ten specific Royal Proclamations issued regarding the growing problem of vagabonds. Robert Steele, *Tudor and Stuart Proclamations 1485-1714*, cal., 2 vols (Oxford: Clarendon Press, 1910), I. The *1563 Statute of Artificers*, the *1572 Vagrancy Act* and the *1597 Act for the Punishment of Rogues, Vagabonds and Sturdy Beggars*. All social unrest was usually attributed to masterless men. For example, after the Apprentice Riot in 1590, a royal proclamation made it clear that it was not only apprentices that were to blame: 'Certain apprentices and masterless men have assaulted Lincoln's Inn', *proclamation 826*. Sometimes, the state inferred that Masterless Men were the cause of crime. For example, Parliament legislated: 'To avoid and prevent diverse misdemeanours in lewd and idle persons' where idle people (masterless men) were accused of stealing corn, robbing orchards, breaking hedges and the spoiling of woods. James Sharpe, 'Law Enforcement and the Local Community' in Lorna Hutson (ed.), *The Oxford Handbook of English Law and Literature 1500-1700*, ed. by Lorna Hutson (Oxford: University Press, 2017), pp. 221-238 (pp. 228-9). Sharpe cites 43 Eliz I c.7. See also Patricia Fumerton, *Unsettled: The Culture of Mobility and the Working Poor in Early Modern England*, pp. 12-32.

⁹ For an examination into early modern conceptions about the construction of peace through structure and order, see John M. Adrian, 'Tudor Centralization and Gentry Visions of Local Order in Lambard's "Perambulation of Kent"', *English Literary Renaissance*, 36.3 (2006), pp. 307-334, doi: 10.1111/j.1475-6757.2006.00085.x.

¹⁰ Bradin Cormack, *A Power to do Justice: Jurisdiction, English Literature, and The Rise of the Common Law, 1509-1625* (Chicago: University of Chicago Press, 2008), p. 1.

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building of 'Houses of Correction... in every City and Town Corporate'.¹¹ Houses of Correction were designed to separate the 'undeserving' poor from the 'deserving'. Those that chose to work were given employment or placed into apprenticeships. Those that chose not to work were punished accordingly. Paul Slack explains that the numbers punished for vagrancy at London's House of Correction, Bridewell, rose from 69 a year between 1560-61 to 555 between 1600-01.¹²

Fearful of the effects of the masterless and vagrants on social cohesion, and their perceived role in civil disobedience, riot and insurrection, parliament had instituted harsh punishments for anyone identified within the parish as a vagabond. Those 'above the Age of fourteen Years shall be grievously whipped, and burned through the Gristle of the right Ear with a hot Iron of the Compass of an Inch, unless some credible Person will take him into Service for a Year'.¹³ The Royal Proclamation on the 24th September 1590 conflates rioting in London with the activities of 'masterless men and vagrant persons'.¹⁴ Sir Francis Bacon, when writing about Sedition and Troubles, made a similar correlation between insurrection and poverty. In his list of 'the Causes and Motives of seditions' he included, 'general oppression', 'dearth' and 'disbanding soldiers'.¹⁵ Plays such as Anthony Munday's *Thomas More* (1592), to which Shakespeare contributed a section, Heywood's *The First Part of King Edward IV* (1599), and the anonymous *The Life and Death of Jack Straw* (1593) presented poverty as the catalyst for rebellion. However, the rebels in these plays differ from the Simpcoxes (*2 Henry VI*) and Autolycus (*The Winter's Tale*) because they left

¹¹ 18 Eliz I c.3.

¹² Paul Slack, *Poverty and Policy in Tudor and Stuart England* (London: Longman, 1988), p. 93.

¹³ 14 Eliz I c.5.

¹⁴ King James, 'Enforcing Curfew for Apprentices', proclamation no, 725, 32 Elizabeth I, p. 60.

¹⁵ Francis Bacon, *Francis Bacon: The Major Works*, ed. by Brian Vickers (Oxford: Oxford University Press, 1996), p. 368.

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their homes to fight for a better life, ironically becoming the ‘vagrant persons not having the wherewith to maintain themselves’ and committing a ‘very great outrage’ as outlined in the September proclamation of 1590.¹⁶

The reality of masterlessness as dramatized through the *Simpcoxes*, is different. They represent poverty. At the most extreme level, the poverty afflicting the most vulnerable in society was so severe that people died from starvation rather than face the punishment meted out by the law. For example, according to the financial documents of Newcastle Upon Tyne’s council, funds had to be allocated every month to bury people that had died of starvation: ‘Oct. 1597. Paid for the charge of buringe 16 poore folkes who died for wante in the strettes 6s. 8d.’¹⁷ When *2 Henry VI* was performed in 1592, the Poor Law (1572) was still in operation.¹⁸

The Church endorsed the state’s narrative of the masterless as a threat to social cohesion. Richard L. Greaves explains that ‘The godly felt that vagabonds, sturdy beggars, and rogues had no respect for church, commonwealth, marriage, family, education, or vocation’, and as a result, many in the Church were reluctant to offer alms.¹⁹ This attitude appears to have been universally taught in the pulpit through reading homilies like *An Homily Against Idleness* – which is explicit in its explanation

¹⁶ King James, ‘Enforcing Curfew for Apprentices’, 725, 32 Elizabeth I, p. 60.

¹⁷ E. M. Leonard, *The Early History of English Poor Relief* (Cambridge: Cambridge University Press, 1900; repr. London: Frank Cass, 1965), p. 125. Leonard cites M. A. Richardson, *Reprints of rare tracts & imprints of antient manuscripts, chiefly illustrative of the history of the northern counties; and printed at the press of M. A. Richardson, Newcastle*, 3 vols (Newcastle: Richardson, 1849), III, p. 44
<<https://babel.hathitrust.org/cgi/pt?id=chi.088687721&seq=54>> [accessed 16 December 2024].

¹⁸ Philip Henslowe, *Henslowe’s Diary* (London: Bullen, 1904, repr. Milton Keynes: Lightning Source, [n.d.]), p. 13.

¹⁹ Richard L. Greaves, *Society and Religion in Elizabethan England* (Minneapolis: University of Minnesota Press, 1981), p. 563, 565.

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about the outcome of being masterless: 'evil', 'hell-fire' and 'the everlasting destruction of man's soul'.²⁰

Militarised masterless men presented an even greater danger to the state. For some time, Elizabethan legal operations had ensured coercive conformity for the poorest in society which could mean enforced military service into the lowest band of the army. The 'bands' were made up of three groups: trained bands or groups of trained volunteers; untrained men who were only used in times of national crisis; and pioneers who were made up of conscripted masterless men, criminals and wastrels.

The chronicler John Stow describes the muster of 4000 men in London:

In the month of April about the 14th day [1585] by commandment of her majesty, the citizens of London appointed out of their companies of the same city, to the number of 4000 men, to armour, ensigns, drums, fifes and other furniture for the wars, the greater part whereof were shot, the other were pikes and halberds, in fair corslets: all those to be trained up under expert captains, with sergeants of the bands, wifflers [armed attendants wearing chains *OED*: n.1] with and other necessary officers, mustered and skirmished daily... skirmished before the Queen's majesty, who gave to them great thanks for their activity and pains.²¹

²⁰ *Certain Sermons Appointed by the Queen's Majesty: To be Declared and Read by all Parsons, Vicars and Curates, Every Sunday and Holiday in their Churches* (Cambridge: [n.pub], 1574; repr. London: John Parker, 1850), p. 519.

²¹ John Stow, *The Annales, Or Generall Chronicle Of England* (London: Thomas Adams, 1615), <<https://babel.hathitrust.org/cgi/pt?id=osu.32435017648700&view=1up&seq=775>> [Accessed 13 May 2020]. 'Wiffler' is one of a body of attendants armed with a javelin, battle-axe, sword, or staff ... employed to keep the way clear for a procession or at some public spectacle' (*OED*: n.1).

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Behind the waving flags, military music, colourful costumes, the shouting of the sergeants and the parading of weapons, Stow unwittingly reveals that huge parts of the English army were at best, dysfunctional because they were poorly equipped and thus 'food for powder' to quote Falstaff (*1 Henry IV*, IV.2.58-9). Since vagrants had no legal rights of identity and self-determination, they were among the first to be conscripted to fight on behalf of the crown and they had no legal redress against their abduction.²²

Moreover, Deputy Lieutenants and those given the responsibility for the muster were often open to illegal bribes from the wealthier members of their administrative area. This meant that 'any man with substance would buy himself out'.²³ Conrad Russell cites the case of the Deputy Lieutenant from Merioneth who, 'was said to depend on the office for his living, though it was unpaid'.²⁴ This theme is picked up in *2 Henry IV* when Falstaff accepts bribes to dismiss soldiers from the muster roll. In *1 Henry IV*, Falstaff admits, 'I have misused the King's press damnably. I have got in exchange of one hundred and fifty soldiers three hundred and odd pounds' (*1 Henry IV*: IV.2.12-14) and in *2 Henry IV*, Bardolph tells him, 'I have three pound to free Mouldy and Bullcalf' (*2 Henry IV*: III.2.225-6).

²² An example the government policy of rounding up masterless men for military purposes is shown primarily through the *Acts of the Privy Council*. For example, on the 29th September 1588, a letter from the Mayor of London was discussed: '...that he wold geve order of the soldiours to be levied in the Cittie... that so manie of the idle and loose persons lurking there as maie be taken upp and delivered to the said Captain[s].' *Acts of the Privy Council*, ed. J. R. Dasent, 46 vols (London: HMSO, 1890-1961), xvi (1897) pp. 291-292. On the 17th and 21st December 1591 similar orders were given for London and Kent. By the 24th August 1592, prisoners in Oxford and Berkshire, that were 'in danger of capital sentences,' were offered the alternative judicial sentence of being sent abroad to enlist into the army. G. B. Harrison, *The Elizabethan Journals: Being a Record of those Things Most Talked About During the Years 1591-1603* (London: Routledge, 1938), pp. 86-87, 156. Harrison cites the *Acts of the Privy Council*, xxii (1901) pp. 129, 150-151 and xxiii (1901), p. 151.

²³ I.A.A. Thompson, 'The Impact of War', in *The Crisis of Parliaments: English History 1509-1660*, ed. by Conrad Russell, (Oxford: Oxford University Press, 1971), p. 276. The aristocracy could subvert the law, openly. On the 11th July 1588, the Privy Council issued a 'Letter Patent' to discharge any of the 'Erle of Hartfordes men' from the muster so that 'they maie attend his Lordship'. *Acts of the Privy Council*, (xvi), p. 157.

²⁴ Conrad Russell, *The Crisis of Parliaments*, p. 164.

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While Queen Elizabeth acknowledged the issues surrounding the financial irregularities of the muster, the law ignored how landowners misused social inequality for their own economic advantage. According to I.A.A. Thompson, the gentry were 'packing off their tenants to certain death in order to cash in on entry fines' (higher tenancy rates).²⁵ Some landlords whose tenants were killed in service perceived war as an economic opportunity; Sir John Smythe commented, for example, 'that this last summer's journey into Spain and Portugal would be worth unto one of them above a thousand marks'.²⁶

For the masterless, losing one's freedom or life because of an enforced economic and social status did not appear to be an act of 'intermediate' justice.²⁷ Inequality in the law inevitably bred disengagement with the social values that the law purported to defend. In *2 Henry VI* the returning soldier Cade is joined by other poor citizens dissatisfied with the state and its laws – seemingly detached from their struggled existence. According to A. L. Beier, vagrant and criminal soldiers from the pioneer bands were more prone to mutiny. He cites examples of pressed men returning from the war and having a 'greater potential for violence than most other vagrants'.²⁸ More importantly for the state, it was believed that the returning disbanded soldiers spread sedition and rebellion. Upon discharge, returning soldiers who had been poorly paid

²⁵ I.A.A. Thompson, 'The Impact of War', p. 276.

²⁶ Ibid. Thompson cites Sir John Smythe, *Certain discourses, written by Sir John Smythe, Knight: concerning the formes and effects of divers sorts of weapons, and other verie important matters militarie* (London: Richard Johnes, 1590), <<https://www.proquest.com/docview/2240885650/99852869?parentSessionId=eyi3RO4yCxfDzkgqAS8V1%2F43T5YfOkbhHrs9GehQh9c%3D&pq-origsite=primo&accountid=11979&sourcetype=Books>> [accessed 8 April 2021].

²⁷ Aristotle, *The Nicomachean Ethics*, p. 86.

²⁸ A. L. Beier, *Masterless Men*, p. 94.

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(if paid at all), were often left only with their weapons (and uniforms) and so the threat of rebellion was very real.

The crowd who attends on Cade's rebellion in *2 Henry VI* offer an oblique but striking commentary on the state's narrative regarding masterless men and their ability to participate in sedition and spread insurrection.²⁹ At the start of the rebellion (IV.2) in the *First Folio* the commoners in Cade's army are presented in terms that identify their trades with violence:

Nicke: I see them! I see them! There's Best's son, the
tanner of Wingham.

George: He shall have the skins of our enemies, to make
dog's leather of.

Nicke: And Dick the butcher.

George: Then is sin struck down like an ox, and iniquity's
throat cut like a calf. (IV.2.19-25)³⁰

The violence referenced within the verbal punning suggests that these artisans have, as was the fear of the elite, been infected by Cade's sedition. They pervert the skills associated with their trades into acts of violence in order to right the moral wrongs caused by the behaviour of 'the King's council' (IV.2.12).

²⁹ For a comparison between the politics of the returning military and being masterless, see Chris Fitter, 'Emergent Shakespeare and the Politics of Protest: *2 Henry VI* in Historical Contexts', *ELH*, vol 72.1 (2005), pp. 129-158, doi: 10.1353/elh.2005.0004.

³⁰ I use the characters' names as written in the 1594 Quarto. '[George] Bevis and John Holland are known actors of the day. Holland is named in the plot of *The Seven Deadly Sins*, played by Strange's or the Admiral's or Alleyn's company about 1590. From the gag about Bevis of Southampton in Q, in the armourer combat scene, it is usually accepted by editors that F's SP 'George' is the same actor who had been one of the Pembroke's Men according to the title-page of *3 Henry VI*.' William Shakespeare, *King Henry VI Part 2*, ed. by Ronald Knowles (London: Arden, 2001), p. 296.

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According to Gustave LeBon's research into the psychological impact on people participating in mob violence, the ruling elite were wise to be fearful because, as he states, 'Crowds are only powerful for destruction'.³¹ LeBon explains that 'the shopkeepers and artisans of every trade' within the mob are convinced that their violence is a justified consequence of their 'patriotic duty' because of the loss of the elite's moral authority.³² LeBon's account of the characteristics of a crowd's psychology suggests that the dramatization of insurrection in *2 Henry VI* (headed by Cade) is a lifelike representation:

Deeply conscious of the importance of their duty, they begin by forming a sort of tribunal, and in connection with this act the ingenuousness of crowds and their rudimentary conception of justice are seen immediately. In consideration of the large number of the accused, it is decided that ... all the individuals whose mere profession is proof of their guilt in the eyes of a good patriot – shall be slaughtered in a body, there being no need for a special decision in their case.³³

The threat of skinning bodies and/or slicing throats offered playgoers and readers a frightening glimpse of the blood lust associated with mob violence, as well as the crowd's propensity to appropriate and adapt forms of justice.³⁴ However, it is important

³¹ Gustave LeBon, *The Crowd: A Study of the Popular Mind* (Great Britain: First Rate Publishers, [n.d.]), p. 5.

³² *Ibid.*, p. 73.

³³ *Ibid.*, p. 73.

³⁴ A significant number of riots had occurred across the capital and the country as a whole, including 'the outbreak of food riots [in] 1586' in Gloucestershire and Hampshire. Buchanan Sharp, *In Contempt of All Authority: Rural Artisans and Riot in the West of England 1586 – 1660* (London: University of California, 1980), pp. 11-17; Riots at Southwark 12th June 1592; Riot expected in London 12th June. G. B. Harrison, 'An Elizabethan Journal 1595-8' *The Elizabethan Journals*, pp. 138 and 142; Court of Common Council ordered 'watches by day and night' 11th December 1591. M. J. Power, 'London and the Control of the 'Crisis' of the 1590s', *The Journal of the Historical Association*, 70.230 (1985), pp. 371-385 (p. 378), doi: 10.1111/j.1468-229X.1985.tb02416.x. p. 378; 'Five hundred protesting soldiers gathered near the royal palace in Westminster in 1589'; 'unlawful great assemblies' in June 1591. Chris Fitter, 'Emergent Shakespeare and the Politics of Protest: *2 Henry VI*', p. 137.

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to note that LeBon's account does not refer to any particular incident and that descriptions of riot and insurrections say 'more about the attitudes and anxieties of authority rather than the thoughts and actions of those engaged in protest'.³⁵

In *2 Henry VI*, after entering into the city, Cade and his followers set up a pseudo-court to try their captives. The tribunal is haphazard and, importantly, it denies equitable justice to anyone that is aristocratic or has worked to ensure the legitimacy of their authority. For example, Cade remarks of a court clerk: 'hang him with his pen and inkhorn about his neck' (IV.2.98-99); and of Lord Saye that 'he can speak French; and therefore, he is a traitor' (IV.2.153). The act of joining Cade's attack on the state has metaphorical significance: the crowd essentially disassociates itself from the state's principles surrounding the legal and moral social structures within the country, structures that underpin the authority and power of the elite. The crowd converts itself into the status of being masterless, and yet paradoxically, their leader claims to be a king, perhaps emphasising that the masterless viewed the societal class structures in a more fluid way than the elite.

However, in the three earlier Quarto editions (1594, 1600 and 1619) the mob takes on a distinctly less aggressive manner:

Nicke: But Sirra, who comes else beside Cade?

George: Why there's Dicke the butcher, and Robin the Sadler,
 and Will that came a wooing to our Nan last Sunday, and Harry
 and Tom, and Gregory that should have your Parnill, & a great

³⁵ John Walter, *Crowds and Popular Protest in Early Modern England* (Manchester: Manchester University Press, 2006), p. 114.

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sort more is come from Rochester, and from Maidstone &
Canterbury, and all the towns hereabouts

(*Quarto 1594, IV.2.12-17*)

The personable nature of the artisans as named individuals within a community at the start of the rebellion in the Quarto version is in stark contrast to the violent individuals which they latterly become. It makes their descent into rapists, mutilators and murderers all the more horrific. This shift from artisans to murderers makes the threat towards the elite more apparent.

In *2 Henry VI's* depiction of the crowd attendant upon Cade's rebellion, the law is inverted from benefitting the wealthy and aristocratic landowners to profit the poor and those dispossessed of legal justice. It is through this dramatic appropriation of the law and its operations that spectators are shown the inherent weakness of a dynamic legal system that requires interpretation to operate. For instance, in the play the law is used to justify or nullify crimes committed by the rebellious crowd (poor) by having them parody a similar forensic discourse to that used in the King's Bench utilizing vocabulary and phrases that echo those used within the operations of law.

This appropriation of legal discourse serves as the mechanism by which the rebels invert the law. After learning that one of his followers had 'ravisht' (IV.7.74) a Sergeant's wife, Cade and the culprit (Dicke) pervert the vocabulary of a court through satire: 'And I went and entered my Action in his wives paper house' (IV.7.76), and,

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'Dicke, follow thy sute in her common place' (IV.7.77).³⁶ The episode highlights the risk inherent in the fact that the law could be misappropriated by anyone for even the most questionable of ends. Cade deploys legal discourses both to justify his followers' immoral actions and to condemn the Sergeant. In doing so, he associates the actions of rebels with those in positions of judicial authority – a move that implies criticism of both parties and highlights the dangers of a legal system open to appropriation. Cade's violent judgement, 'cut out his toong' (IV.7.82), 'Hough him' (IV.7.83) and then 'Brave him with his own mace' (IV.7.84), therefore not only dooms the Sergeant, but also sends out a warning to all those in judicial authority (both on stage and off) about misusing the law for personal benefit – which, ironically, is what Cade is doing. The play warns of the risk of creating a two-tier legal system in case the legislator or judge find themselves the victims of injustice, violence or anarchy.

Richard Wilson suggests that the rioting cloth workers in London (1592) was the inspiration for the violence in *2 Henry VI*. However, according to Wilson the violence represented in the play was not an accurate portrayal of the violence in the cloth workers' revolt. Wilson quotes Webbe's evidence to the Star Chamber to emphasise that the people's protest was (similar to that in *Coriolanus*) initially peaceful and that riot was triggered by 'the Knight Marshal's men who incited the multitudes by their violent behaviour'.³⁷ Although Annabel Patterson suggests an alternative riot for the inspiration for Jack Cade's rebellion, she does agree that the Privy Council ordered that the theatres be closed on the 23rd June, an order which was only 'temporarily

³⁶ William Shakespeare, *The First Part of the Contention: The First Quarto, 1594, from the Unique Copy in the Bodleian Library, Oxford*, ed. by Frederick James Furnivall and Richard Grant White (facsimile repr. London: C. Praetorius, 1889).

³⁷ Richard Wilson, 'A Mingled Yarn: Shakespeare and the Cloth Workers', in *Shakespeare's History Plays*, ed. by R. J. C. Watt (London: Pearson Education, 2002), pp.42-61, (p. 55).

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rescinded' on 13th August. The theatres were closed, Patterson explains, after 'the relation between theatre and disorder was explicitly invoked in the records of the case'.³⁸ Wilson suggests that the closure of the theatre was enough of a stimulus for those writing *2 Henry VI* to represent the rioters as the cause of the trouble. He explains, 'London's commercial theatre sided with the wealthy masters' to present a politically biased and violent representation of the London riot within Cade's rebellion.³⁹

The punishment for riot represented in *2 Henry VI* largely followed the state's usual justice for ring leaders of riots: a hanging (*2 Henry VI*, IV.8.11-12). Those participants that went away peacefully had a greater chance of escaping punitive punishment (*2 Henry VI*, IV.8.15-21).⁴⁰ Absent from *2 Henry VI* however, is the subsequent declaration of martial law (1595) and a higher policing profile that was introduced to curb apprentices / youth from creating further disorder.⁴¹ The 1597 Act against 'lewd and licentious Persons' introduced a more liberal use of whipping, the execution (hanging) of rioters through martial law, and greater 'recourse to Bridewell'.⁴²

York's 'headstrong Kentishman, John Cade' (III.1.356-7) has been the focus of many critics' attention. Ronald Knowles views him as a Lord of Misrule; a conflation of a Vice-like character (Sedition) and a burlesque clown, whereas Roger Charter explores Cade as an inverted crusader against the proliferation of the written and printed

³⁸ Annabel Patterson, *Shakespeare and the Popular Voice* (Oxford: Basil Blackwell, 1989), p. 35.

³⁹ Richard Wilson, 'A Mingled Yarn: Shakespeare and the Cloth Workers', p. 55.

⁴⁰ Ian W. Archer, *The Pursuit of Stability: Social Relations in Elizabethan London*, p. 8.

⁴¹ Ibid.

⁴² Ibid., p. 258.

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word.⁴³ Maya Mathur proposes that Shakespeare's Cade stands for egalitarian resistance whereas Craig Bernthal views Cade's social message as 'continually subverted' and that his rebellion is a carnival of 'every repressed desire, including the need for bodily pleasure, social transgression and protest'.⁴⁴ Patterson describes Cade as 'an imposter aristocrat, a traitor to his class'.⁴⁵ I propose that Cade represents anyone that refuses to accept the rule of English law; a type of Lernean hydra.

According to Andreas Höfele, Edward Topsell's early seventeenth century account of the hydra represents the beast as 'the quintessential embodiment of the threat of pluralization' to a political 'unified body of epistemic certainties'.⁴⁶ It signifies, Höfele continues, 'the inner corrosion of a commonwealth, the threat of rebellion and civil war'.⁴⁷ For me, Jack Cade's rebellion can therefore be viewed as the failure of the Church and the state to apply the law both fairly and judiciously. For example, one of the hydra-like heads that Cade's rebellion represents is the ideologically dangerous itinerate vagrant and the antithesis of a law-abiding citizen:

Butcher: They are all in order and march toward us.

Cade: But then are we in order when we are most out of order.

Come, march forward. (IV.2.174-76)

⁴³ Ronald Knowles, 'The Farce of History: Miracle, Combat and Rebellion in *2 Henry VI*', *The Yearbook of English Studies*, 21 (1991), pp. 168-186, doi: 10.2307/3508486. Roger Charter, 'Jack Cade, the Skin of a Dead Lamb, and the Hatred for Writing', *Shakespeare Studies*, 34 (2006), pp. 77-89. Maya Mathur, 'An Attack of the Clowns: Comedy, Vagrancy and the Elizabethan History Play', *Journal for Early Modern Cultural Studies*, 7.1 (2007), pp. 33-54, doi: 10.2979/JEM.2007.7.1.33.

⁴⁴ Craig A. Bernthal, 'Jack Cade's Legal Carnival', *Studies in English Literature, 1500-1900*, 42.2 (2002), pp. 259-274, doi: 10.1353/sel.2002.0012.

⁴⁵ Annabel Patterson, *Shakespeare and the Popular Voice*, p. 49.

⁴⁶ Andreas Höfele, 'Of Hybrids and Hydras: Early Modern Political Zoology – and Shakespeare's *Coriolanus*', *Actes des Congrès de la Société Française Shakespeare*, 38 (2020), pp. 1-16 (p. 5), doi: 10.4000/shakespeare.5235. Höfele quotes Edward Topsell, *The History of Four-Footed Beasts: Volume 2, The History of Serpents*, (London: William Laggard, 1607).

⁴⁷ *Ibid.*, p. 7.

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The play's initial description of Cade as being 'headstrong' (III.1.356) and 'stubborn' (III.1.360) suggests that like a masterless man, he is both ungovernable and reckless – fundamentally anarchic.

Another dimension of the hydra-like head represented by Cade is the threat posed by the Catholic church. In York's soliloquy, Cade is the physical manifestation of the metaphorical 'black storm' (III.1.349) who will 'blow ten thousand [innocent] souls to heaven or hell' (III.1.350); someone who has been 'seduced' to undertake an evil 'intent' (III.1.355-6).⁴⁸ Such imagery plays into the fears about Catholic and Jesuit subversion felt by the officially Protestant political elite. York's threat of regicide (III.1.383) echoes the Pope's threat against Elizabeth's life and his ambiguous and surreptitious return from Ireland to Kent echoes fears of the Jesuits 'infiltrating the nation to seduce English Catholics from loyalty to the crown'.⁴⁹ Ironically, however, in a play in which few characters are what they purport to be, York's feudalist hold over Cade shows him to be an over-mastered masterless man (III.1.349-79).

The tradition of Kentish popular rebellion, going back to the Peasants' Revolt and its leaders Wat Tyler, Robert Kett and John Ball, also speaks through the metaphorical hydra head represented dramatically by Cade and his supporters. In Cade's retort to Stafford, 'And Adam was a gardener' (IV.2.123), we hear the echoes of John Ball's

⁴⁸ 'minister' has connotations of 'Christian priest' which when juxtaposed with 'of my intent' suggests apostasy. The etymology of 'seduced' dates back to the early sixteenth century and meant, 'to lead astray / desert allegiance'. However, by the mid-sixteenth century, it had developed a sexual connotation, 'to entice (a woman) to a surrender of her chastity', which metaphorically, suggests a more complete control of Cade's desires and ambitions. *Online Etymology Dictionary*. <<https://www.etymonline.com/word/seduce>> [accessed 20 May 2020]. Similarly, 'seduced' has many Biblical negative inferences (including Eve's seduction: Genesis 3: 1-6; Judas Iscariot's betrayal of Christ: S. Luke 22, 3; and the deception of believers: S. Matthewe 24, 24 and 1 Timotheus 4, 1).

⁴⁹ Chris Fitter, 'Emergent Shakespeare and the Politics of Protest: *2 Henry VI*', p. 145.

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sermon, 'When Adam delved and Eve span / Who was then a gentleman'.⁵⁰ The connection is made even more clearly after Nick's earlier assertion that 'it was never merry world with us, since these gentlemen came up' (IV.2.6-7). This association with other rebellions enhances the sense of threat to the elite via the appropriation of legal or biblical discourses that Cade's rebellion poses.

To emphasise the sense of Cade as a dangerous 'other', playgoers and readers are presented with a series of semiotic codes to suggest that, ontologically, he belongs to a sub-species of humanity, linked to York's attempt to suppress barbarous Irish rebels. Andrew Murphy draws attention to Cade as the Irish 'other' who enjoys the 'ability to shift into a different identity'.⁵¹ His unkempt physical appearance, 'wild' and 'like a shag-haired... kern' (III.1.365, 367) specifically identifies him with the rebellious Irish kerns. His unnatural strength, 'that his thighs with darts / Were almost like a sharp-quilled porpentine' (III.1.362-3) suggest a monstrous savagery while the demonic reference (III.1.371) when juxtaposed with his duplicitous nature, 'crafty', 'conversèd with the enemy' and 'undiscovered' (III.1.367, 368, 369) connotes a sense of malignant dissimulation. Christopher Highley argues that the grotesque representation of Cade was typical of the English mythology surrounding Gaelic characteristics. He suggests that an Irishness has been conferred on to Cade where "primitive" peoples were thought to have cruder physical sensations than the more delicate members of the English governing classes'.⁵²

⁵⁰ 'Reported by chroniclers as a rallying cry for the rebels.' *The Life and Death of Jack Straw: An Anonymous Play of the Sixteenth Century*, ed. by Christopher Hapka (London: Thomas Pavier, 1604; repr. Whitefish, Kessinger Rare Prints, 2013), pp. 4, 56.

⁵¹ Andrew Murphy, 'Shakespeare's Irish History', *Literature and History*, 5.1 (1996), 38-59 (pp. 40-43).

⁵² Christopher Highley, *Shakespeare, Spencer, and the Crisis in Ireland* (Cambridge: University Press, 1997), p. 53. For the same trope, Highley cites Cade in Holinshed's depiction of Gerald of Wales. Raphael Holinshed, *Holinshed's Chronicles of England, Scotland and Ireland Chronicles*, 1580 edn, 6 vols (London: Brooke, 1808; repr. London: Forgotten Books, 2018), III, p. 230.

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The play's representation of the masterless man therefore resonates with multiple types of subversive power. Cade brings a frightening message: he cannot be constrained by the state's law because he refuses to be constrained by it, that is until his death. Instead, Cade usurps the law's restrictive power relationships to bring about a whole new system of law with its own coercive operations. Essentially, he switches the codification of 'power networks' that authorise the state's actions to benefit himself as a usurping monarch: 'when I am king, as king I will be' (IV.2.58).⁵³

Cade's arrogation of the law is one of a number of instances in the play that demonstrates the instability of the law. Other examples include the petitioners to the Duke of Gloucester, who have their petition ripped up by Queen Margaret because she disagrees with their legal appeal (I.3.23-44) and York's misappropriation of constitutional law to provide him with a justification for treason (II.2). The text is implying that the law is unstable because it is 'an instrument of power' that is 'partial'; it makes possible the political and economic management that 'exploits the difference between legality and illegalities'.⁵⁴ It is therefore no coincidence that in *2 Henry VI* the law, its operations and interpretations are where both the ideological and physical battles are fought.

Subject specific discourse, the deployment of a forensic vocabulary, and a recognisable legal rhetoric is a crucial contact point between the characters within

⁵³ Michel Foucault, 'Truth and Power' in *The Foucault Reader*, ed. by Paul Rabinow (New York: Pantheon Books, 1984; repr. Hamondsworth: Penguin Books, 1991), pp. 51-75 (p. 64).

⁵⁴ Michel Foucault, 'Power and Strategies', in *Power/Knowledge Selected Interviews and Other Writings 1972-1977*, p. 141.

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the play and the law.⁵⁵ Cade speaks using a legal lexicon and forensic linguistic construction to provide him with a sense of authority. He is one of a number of factions in *2 Henry VI* that misappropriate forensic linguistics to add a sense of legal legitimacy to their claim of kingship or moral justice. Such discourses are shown to be important because they provide the speaker with a pseudo-authority to interpret or re-write legislation regardless of their intention(s).

When spectators first meet Cade, they are treated to a taste of his rhetorical eloquence. His introduction is part of an identifiable legal rhetoric based upon a neo-classical education: speaking in controversy (a debate). In order to achieve an effective debate, students tended to study the popular classical textbooks including *Ad Herennium* and Cicero's introductory works *De inventione* and *De partitione oratoria*. This type of rhetorical debate was used widely by students of law at the Inns of Court in London. Their debates were called 'moots' and were designed to hone their ability to present their side of an argument in the law courts: a 'forensic' rhetoric.⁵⁶ However, according to Paul Raffield, forensic rhetoric was not universally welcomed. He explains, for example, that Plato in *The Republic* was against the use of rhetoric because it could displace rational law: 'we can admit no poetry into our city save only hymns to the gods and the praises of good men. For if you grant admission to the honeyed muse in lyric or epic, pleasure and pain will be lords of your city instead of

⁵⁵ For a more detailed look at the use of legal terms and legal allusions within Shakespeare's plays, see O. Hood Phillips, *Shakespeare and the Lawyers* (London: Methuen, 1972), pp. 37-47.

⁵⁶ Quentin Skinner, *Forensic Shakespeare* (Oxford: University Press, 2018), pp. 27-30. See also: Lorna Hutson, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford: Oxford University Press, 2011), pp. 121-123; Kathy Eden, 'Forensic Rhetoric and Humanist Education', in *The Oxford Handbook of English Law and Literature 1500-1700*, pp. 23-40; James McBain, 'Attentive Mindes and Serious Wits: Legal Training and Early Drama', in *The Oxford Handbook of English Law and Literature 1500-1700*, pp. 80-96; Allen D. Boyer, 'Drama, Law and Rhetoric in the Age of Coke and Shakespeare' in *The Law in Shakespeare*, ed. by Constance Jordan and Karen Cunningham (Basingstoke: Palgrave Macmillan, 2007), pp. 20-37.

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law and that which shall from time to time have approved itself to the general reason as the best'.⁵⁷ Raffield also quotes George Puttenham, the Elizabethan critic, who complained that figures of speech were designed to deceive. Puttenham decries what he calls

abuses or rather trespasses in speach, because they passe the ordinary limits of common vtterance, and be occupied of purpose to deceiue the eare and also the minde, drawing it from plainnesse and simplicitie to a certaine doublenesse, whereby our talke is the more guilefull & abusing, for what els is your Metaphor but an inuersion of sence by transport; your allegorie by a duplicitie of meaning or dissimulation vnder couert and darke intendments....⁵⁸

Quintin Skinner and Lorna Hutson both argue that Shakespearean drama deployed this type of rhetoric to add complexity to its chief protagonists in order to create 'mimetic and characterological effects ... to prove dubious "facts"'.⁵⁹ I, however, posit that Shakespeare's use of forensic rhetoric goes beyond the technical exercise of creating a sense of mimesis within character: the play *2 Henry VI* presents language itself as equating to power: if a person can deploy the language of law then he can clothe himself in the robes of power associated with law.⁶⁰

⁵⁷ Plato, *The Republic*, trans. by D. Lee (London: Penguin, 1987) pp. 375-376, Bk X.III. 607a, cited in Paul Raffield, *The Art of Law in Shakespeare* (Oxford: Hart Publishing, 2019), p. 77.

⁵⁸ G. Puttenham, *The Arte of English Posie* (London: Richard Field, 1589), <https://archive.org/details/bim_early-english-books-1475-1640_the-arte-of-english-poes_puttenham-george_1589/mode/2up> [accessed 24 October 2024], p. 128 cited by Paul Raffield, *The Art of Law in Shakespeare*, p. 77.

⁵⁹ Lorna Hutson, *The Invention of Suspicion*, p. 8.

⁶⁰ I reference my earlier comments on Brudney's theory of the derivative authority of law (which derives from social and political realities) upon the aesthetic authority of literature, encoded by literary critics. Daniel Brudney, 'Two differences between Law and Literature' in *Shakespeare and the Law: A Conversation Among Disciplines and Professionals* (London: Chicago University Press, 2016).

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The ability to adopt forensic rhetoric clearly existed far beyond the experiences that the real Jack Cade would have encountered. Therefore, when Cade's speech is imbued with forensic rhetoric in the style of a judicial argument, as outlined in Thomas Wilson's *Arte of Rhetoric*, Cade is given the authority that derives from a sense of the law's omniscience. As readers or spectators, we automatically recognise Cade's language as a legal dialect. Wilson refers to seven stages in every successful oration.⁶¹ Cade's opening presentment imitates the first of these stages (The Entrance), 'whereby the will of the standers by ... is sought for and required to heare the matter'.⁶² Cade's rhetorical structure then follows Wilson's second stage (the 'Narration') in which Cade presents, 'a plaine and manifest pointing of the matter':

There shall be in England seven halfpenny loaves sold for a penny; the three-hooped pot shall have ten hoops, and I will make it felony to drink small beer; all the realm shall be in common; and in Cheapside shall my palfrey go to grass; and when I am king, as king I will be.

(IV.2.60-64)

Cade's speech thereby adopts rhetorical structures in order to appropriate legal authority.

On every level, Cade's judicial oratory inverts its conventional purpose. His speech incites sedition and rebellion (rather than communal peace) through the Utopian mirage of equality (IV.2.66-69). Such an image of equality is illusory because it has no

⁶¹Wilson, Thomas, *The Arte of Rhetorique*, (London: John Kyngston, 1560; repr. Great Britain: Amazon, 2012), p. 27.

⁶²Ibid.

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logical basis in late Tudor economic reality and in which he omits to mention any consequences attached to his actions. Cade alludes to the religious upheavals of recent decades in his 'vow' of a 'reformation' (IV.2.59-60) that infers the changes will be made for the commons rather than against them.⁶³ This point is made clear in Cade's use of 'vow' and the play's wider deployment of modal verbs ('shall be', 'shall have', 'will make', 'shall be' and 'shall my') because they mirror assumptive contracts (IV.2.59, 60, 61, 62, 62-63 and 63). As the explosion in civil litigation and the movement towards written contracts tells us, such verbal contracts are like the rhetoric within which they exist: empty.⁶⁴ The text therefore implies that because verbal contracts are losing their legal authority, the non-literate population are becoming even more disempowered. To the characters and some playgoers, the assertions made in Cade's monologue may seem possible because they sound possible – but they are also comically absurd and familiarly utopian. Through deploying this type of judicial rhetoric, the text is not only making the point that social inequality is a misappropriation of law and its operations, but it also shows us that anyone with the ability to simulate forensic rhetoric attains a derivative legal authority because their discourse infers that they are part of that profession, class or organisation.

As soon as Cade is given the authority to be king (IV.2.65) over the stage crowd, he attacks the same legal profession from which he derived his own authority. In his response to Butcher's suggestion 'The first thing we do let's kill all the lawyers' (IV.2.70), Cade employs the rhetorical tools of allegory, metaphor, simile and zeugma:

⁶³ Lambarde warns about Kent's rebellious past: 'a frank recognition of the fires of Kent's past will keep contemporaries from getting "burnt" in the present', John M. Adrian, *Tudor Centralization and Gentry Visions of Local Order in Lambarde's "Preambulation of Kent"*, *English Literary Renaissance*, 36.3 (2006), pp. 307-334 (p. 319), doi: 10.1111/j.1475-6757.2006.00085.x.

⁶⁴ For more on the theatre's relationship with early modern contracts, see: Luke Wilson, *Theatres of Intention: Drama and the Law in Early Modern England* (Stanford: Stanford University Press, 2000), pp. 68-113.

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Is not this a lamentable thing, that of
the skin of an innocent lamb should be made parchment, that
parchment, being scribbled o'er, should undo a man? Some say
the bee stings, but I say, 'tis the bee's wax; for I did but seal once
to a thing, and I was never mine own man since.

(IV.2.71-75)

Written law, here represented as parchment and seals, is presented as bad when compared to verbal promises: innocence abused, enslavement, lamentation, and the addition of pain. The representation of law being bad is emphasised through conditional clauses, which exaggerate the negative effect that the common law has on a 'man'.

We also see the adoption of opposing rhetorical styles that open the speech up to multiple, seemingly incompatible interpretations. The text's use of deontic modality within Cade's response should act as a request for his audiences to accept his proposition that written law will 'undo a man'. The modality increases the certainty of his message about law while simultaneously empowering it through the force of moral suggestion: for what reason? An implied informality, however, is created through the use of an informal register and the first-person singular pronoun. The synthetic personalisation has a pragmatic effect. It seems that Cade is speaking on an individual level to his listeners which is heightened further through the use of parenthesis and a rhetorical question. Ironically, his repeated use of the first-person pronoun 'I' emphasises the absence of royal nosism. This rhetorical absence indicates that he has not yet ascended to the official capacity of a monarch. Cade's second sentence

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uses a declarative structure to create the suggestion that he is speaking the truth; a truth that is the perversion of common law. Cade is therefore deploying both a highly stylised formal rhetoric and a more personal and individual style to draw together two usually distinct forms of influential authority.

The wider purpose of Cade's linguistic chicanery in the play is to justify new punitive laws in which society's rules are rewritten to benefit the poor instead of the wealthy. For example, anyone purporting to uphold the structure and mechanisms of the old common law quickly finds themselves in the position of a guilty defendant, such as the clerk of Chartham, hanged 'with his pen and inkhorn about his neck' (IV.2.98-99). Importantly, the use of forensic rhetoric parodies the state's political authority regarding discipline and punishment. In doing so, the play once again questions (both directly and indirectly) the asymmetrical power, social hegemony, validity and morality of common law - and shows it to be nothing more than an empty rhetoric designed to ensure inequality; designed to enforce, sustain or improve the authority of the ruling elite.

In addition to displaying the inequalities sustained by law, the play dramatizes the demise of a sense of justice through its treatment of Humphrey, Duke of Gloucester. Gloucester is closely associated with the operations and processes of law and equity. He is represented as an honest and just jurist and thereby an idealised personification of justice and equity – his demise can be seen to trigger the decline in the honesty and justice analogous with the law, within the play. The association of the Duke of Gloucester's death with Cade's uprising is particularly fascinating if we view that death as a further development in an apotheosis of a myth and as a significant contribution

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to England's slide into civil war.⁶⁵ The play presents Gloucester as an idealised administrator in the operations of a legal system designed to protect the victims of crime and those suffering from social injustice. Although given the office of Lord Protector within the play, it is quickly established that he has also the position of Lord Chancellor.⁶⁶ Outwardly, this is a contradiction of roles because the Lord Protector represents the juvenile monarch whilst the Lord Chancellor represents his conscience.⁶⁷

Emphasising Gloucester's popularity (through the voice of his enemies) encourages spectators to interpret him and his judicial probity as beyond reproach:

What though the common people favour him
Calling him, 'Humphrey, the good Duke of Gloucester',
Clapping their hands, and crying with loud voice,
'Jesu maintain your royal excellence!'
With 'God preserve the good Duke Humphrey!'

(I.1.155-59)

The text has encapsulated the concepts of justice and equity in law, as set out by both Aristotle and Christopher St. German, in all of Gloucester's involvement in judicial operations.⁶⁸ In his book *Equity Stirring*, Gary Watt explores the relationship between

⁶⁵ Samuel Pratt examines Humphrey's characterisation as part of the apotheosis of a myth. Samuel M. Pratt, 'Shakespeare and Humphrey Duke of Gloucester: A Study in Myth', *Shakespeare Quarterly*, 16.2 (1965), pp. 201-216, doi: 10.2307/2868270.

⁶⁶ As Lord Protector, he is criticised by the Lancastrian faction for ruining the commonwealth, extortion against the clergy, embezzlement, and financial mismanagement (I.3.132; 132-3; 134-5). As Lord Chancellor, he is likewise criticised for being so over-officious with judicial punishments that he has broken the law himself (136-8).

⁶⁷ J. H. Baker, *An Introduction to English Legal History*, p. 118.

⁶⁸ '...the law looks only to the distinctive character of the injury, and treats the parties equal, if one is wrong and the other is being wronged, and if one inflicted injury and the other has received it.' Aristotle, *The*

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equity and legality in late Elizabethan and early Jacobean English common law. Watt distinguishes between complete adherence to the law and the introduction of equity through the office of the Chancellor who represents 'the conscience of the king'.⁶⁹ Watt makes the critical distinction between legality and equity in that law 'is not a pure empirical science, and, by the same token, it is not a pure logical science'.⁷⁰ In other words, the application of equity is subjective.⁷¹ For example, the petitioners' reverence of Humphrey implicitly infers their belief that they will receive a more equitable outcome about their legal grievance from him:

1 Petitioner: My masters, let's stand close; my Lord Protector will
come this way by and by, and then we may deliver our
supplication in the quill.

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

However, in a typical developmental twist the play Gloucester's introduces a deferral of trial and punishment to a higher power. In the case Thomas Horner v. Peter Thump, Peter petitions against his master's treasonous words regarding the Duke of York's right to be king while Horner unequivocally denies them. Gloucester enacts the medieval remedy of trial by combat whereby the discernment of truth is left to God

Nicomachean Ethics, p. 86. 'And then the lorde Chaunceller must ordre his consyence after the rewles and groundes of the lawe of the realme...'. Christopher St. German, *St German's Doctor and Student* ed. by T. F. T. Plucknett and J. L. Barton (London: Selden Society, 1974), p. 105.

⁶⁹ Gary Watt, *Equity Stirring: The Story of Justice Beyond the Law* (Oxford: Hart Publishing, 2009), p. 52.

⁷⁰ *Ibid.* p. 13.

⁷¹ Similarly, Stephen Cohen, "'The Quality of Mercy': Law, Equity and Ideology in *The Merchant of Venice*", *Mosaic an Interdisciplinary Critical Journal*, 27.4 (1994), pp. 35-54, argues that Shakespeare's focus on demonstrating law through a perversion of equity is evident in the use of a 'contract' in *The Merchant of Venice*.

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(I.3.211-12).⁷² The action of combat, designed to discern the truth in *2 Henry VI*, is an inaccurate dramatization of a medieval appeal procedure that is used to imbue Humphrey's ruling with an engaging sense of wisdom. Any judgement is thereby dissociated from and unsullied by the competing narratives of who said what in the case. Unfortunately, this deferral of the legal decision to a higher power provides opportunities for the miscarriage of justice because it favours the physically strong (I.3.220-23) although the outcome of any combat was never a foregone conclusion as is emphasised in the biblical story of David and Goliath.⁷³ The holding up of Gloucester as a model of justice and his somewhat disappointing deferral remedy in this case provides an example of the play's suggestion that through legal procedures, law often deferred or misapplied justice.

Deferred justice has the potential to be catastrophic, as in King Henry VI's decision to defer his authority to members of his court. Unwilling or unable to stop the impending murder of Humphrey, the Duke of Gloucester, the King chooses to negate his judicial responsibility despite being convinced of Gloucester's innocence:

...but, shall I speak my conscience,
Our kinsman Gloucester is as innocent
From meaning treason to our royal person
As is the sucking lamb or harmless dove:
The duke is virtuous, mild, and too well given
To dream on evil or to work my downfall.

(III.1.68-73)

⁷² For details appertaining to trial by combat, see Theodore F. T. Plucknett, *A Concise History of the Common Law*, 4th edn (London: Butterworth, 1948), pp. 113-114.

⁷³ I Samuél 17.

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Henry abjures his royal prerogative to intercede when Suffolk charges Gloucester with 'high treason' (III.1.97) and York accuses him of illegally holding back and profiting from 'soldiers' pay' (III.1.105) and defaming the country 'by tyranny' (III.1.123). Instead, Henry passively states, 'My conscience tells me you are innocent', (III.1.141) before fully deferring his judicial responsibility: 'My lords, what to your wisdoms seemeth best / Do or undo, as if ourself were here' (III.1.195-6). In this sequence, we see the breakdown in judicial responsibility and how it predicated the breakdown of the law and the misuse of its operations: 'But yet we want a colour for his death: / Tis meet he be condemned by course of law' (III.1.236-37). The text makes it clear that the law has to be seen to be impartial, robust and responsible and that justice and equity must be seen to be upheld even when it is not.

Gloucester's role in the Simpcox 'miracle' scene creates contradictions between the operations of law and a separate concept of divine justice. Initially Gloucester's judicial probity is depicted as the insight of a sagacious protestant.⁷⁴ The masterless couple (Simpcox and his wife) had walked from 'Berwick' (II.1.85) to the shrine of St. Albans (II.1.93-4). Saunder Simpcox's arrival on stage is heralded with the cries of, 'A miracle! A miracle!' (II.1.64) after he suddenly receives 'sight' (II.1.66-7). Unlike the others in the hunting party, Gloucester sees through the inexplicable event by questioning the veracity of the impoverished charlatan with the early modern forensic rhetoric of

⁷⁴ 'The anecdote of the beggar and the duke does not derive from the chronicles but instead from...John Foxe's *Actes and Monuments* – a circumstance that seems to hint at an association between the sham miracle and the century's bitter religious quarrels.' E. Pearlman, 'The Duke and the Beggar in Shakespeare's *2 Henry VI*', *Criticism*, 41.3 (1999), pp. 309-321 (p. 311). 'Shakespeare, following Foxe, explicitly associates this "miracle" with Catholicism: the saint's shrine is a repository of relics and, like Joan de la Pucelle, the beggar Simpcox and his wife have heard voices that have drawn them to the shrine'. Robert Henke, 'Fraud and Audience Reception in the Performance of Early Modern Poverty', *Renaissance Drama*, New Series, vol. 36/37 (2010), pp. 159-178 (p. 174), doi: 10.1086/rd.36_37.41917457.

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interrogation: 'How long...?' (II.1.98) and 'What, and wouldst...?' (II.1.100; 110; 112; 119; 121; 127) before presenting an evidential discourse:

If thou hadst been born blind, thou mightst as well
have known all our names as thus to name the several colours we
do wear. Sight may distinguish of colours, but suddenly to
nominate them all - it is impossible.

(II.1.130-34)

Gloucester responds with a punishment that is taken from the 1572 Vagrancy Act and a reference to punishment within the legal framework of the common law: he has them 'whipped through every market town till they come to Berwick' (II.1.58-59).

I disagree with E. Pearlman, who focuses on a political interpretation of the whipping incident as a reassurance to 'earlier audiences that the duke was not given to that harmful lenity in magistrates that so alarmed Elizabethan orthodoxy'.⁷⁵ Instead, I see Gloucester's actions as epitomising the contradiction between the sense of morality that underpins natural law and its legal operations. Initially, Gloucester stands up for the victims of crime - in this case, the people of St. Albans. However, the insertion of Simpcox' wife's declarative sentence, 'we did it for pure need' (II.1.157), which is absent from all previous adaptations of the story, reminds us that law and justice are not only abstract and dynamic concepts, but that they rarely exist together successfully. Simpcox's wife's words are poignant because they present an alternative judicial narrative surrounding the level of their guilt. Poverty, hunger and destitution have an inevitable impact on our reaction and influence our interpretation of moral

⁷⁵ E. Pearlman, 'The Duke and the Beggar in Shakespeare's *2 Henry VI*', p. 313.

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justice. The text, it seems, juxtaposes the concept of moral justice with Gloucester's display of legal justice. And in doing so, the play may have left many playgoers feeling uncomfortable at the law's lack of equity.⁷⁶

The episode also indicates that derived authority is like a set of garments that can be put on and taken off at will. For example, the Simpcoxes adopt the authority derived from the spiritual and pious reverence of the Church. Simpcox employs the rhetoric of religious imagery lifted from, among others, John's Gospel (S. John 1.5; 5.1-7). His alleged healing is presented as a sign of God's work: 'Now God be praised, that to believing souls / Gives light in darkness, comfort in despair' (II.1.69-70) and 'God knows, of pure devotion: being called / A hundred times and oft'ner in my sleep / By good Saint Alban, who said, "Simon, come; / Come offer at my shrine, and I will help thee"' (II.1.91-94). In *2 Henry VI*, the adoption of these religious discourses with the people of St. Albans enables the Simpcoxes to break both a moral code and the common law by taking benefactions under a false narrative. However, Sinfield seems to suggest that we should pity people like the Simpcoxes when he makes the point that 'It was the Elizabethan social structure that produced unemployed laborers... but it could not then prevent such figures conceiving and enacting dissident practises'.⁷⁷ The dominant ideology, he argues, forces the poor to react in an undesirable manner. The social and legal structures were weighted against them: 'the institute of education, the family, the law, religion... and culture', worked to

⁷⁶ '...they that be thus destitute of service either starve for hunger or manfully play the thieves'. Thomas More, *More's Utopia: A Dialogue of Comfort* (London: Dent, 1970) p. 24.

⁷⁷ Alan Sinfield, *Faultlines*, p. 42.

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ensure that the ambitions of the ruling class and political elite were unattainable to the poor.⁷⁸

The Simpcox episode also echoes attempts by the authorities to combat the proliferation of masterlessness through increasingly punitive parliamentary legislation: the Statute of Artificers (1563); Vagrancy Act (1572); and the Vagrancy Act (1592). During the food crisis of 1586-7, 'the Crown issued orders for the London taverns and streets to be cleared of rogues, vagabonds and masterless men' and on the 11th December 1591, the Court of Common Council ordered that, 'watches by day and night to apprehend rogues and beggars and to have them sent to Bridewell'.⁷⁹ By 1593, while plague ravished London, food shortages caused social unrest and the death rate increased by 430% in the parish of St. Mary Overie, 'Night watches' by 'strong', 'able' and 'armed' men were ordered to capture anyone suspected of being masterless.⁸⁰ Within the shadow of such social strife, the theatrical representation of the masterless Simpcoxes and their assertion of poverty is juxtaposed with the Elizabethan state's criminal punishment: 'Let them be whipped through every / market-town till they come to Berwick, from whence they came' (2 *Henry VI*: II.1.158-59). Consequently, the play's use of pathos within this scene leaves one feeling uncomfortable at the sub-text: the poor are forced into a particular set of behaviours through the operations of a coercive and punitive legal system that is instigated at the behest of a dominant ideology. The text, therefore, suggests that

⁷⁸ *Ibid.*, p. 113.

⁷⁹ M. J. Power, 'London and the Control of the 'Crisis' of the 1590s', p. 378.

⁸⁰ See burial, christening and marriage records for the parish church of St. St. Mary Overie in Appendix A. The parish church of St. Mary Overie (today: Southwark Cathedral) provides data regarding citizens whose abode was immediate to the theatre's. The referencing of this source is pending further clarification from the London Metropolitan Archive; M. J. Power, 'London and the Control of the 'Crisis' of the 1590s', p. 379.

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the authority of law rests solely in political power. Without political power, law resists any single interpretation.

The play makes clear that whoever has the most political power, controls the moral authority and physical operations of the law and given enough time, they can write, alter, or interpret legislation. In *2 Henry VI* we see the struggle for political ascendancy through various factions vying against each other: the Lancastrians, the Yorkists and the Commons. Each faction's interpretation of law is considerably different to another's: ranging from who has the right to be King (II.2) to how much beer should be in a 'three-hooped pot' (4.2.61). The play presents the struggle for judicial interpretation on both a micro (human) and macro (state) level through the way that equity is applied to common law.

When the petitioners bring their argument of law to the court, Gloucester is their contact point with the law for re-establishing harmony within their community. The petitioners' case concerns the commercial activities of the newly appointed Duke of Suffolk, who has enclosed 'the commons at Melford' (I.3.24). Suffolk clearly believes that his commercial activities greatly outweigh the rights of the poor, who also use the commons for grazing.⁸¹

⁸¹ Paul Clarkson and Clyde Warren point out that the 'mere residence on the manor was not enough'. Local residents had to prove a right of common pasturage either 'appurtenant, appendant or in gross'. Paul S. Clarkson and Clyde T. Warren, *The Law of Property in Shakespeare and the Elizabethan Drama* (New York: Gordian Press, 1942; repr. 1968), p. 91.

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Enclosure of the commons was a controversial political issue and is explored by (among others) A. L. Rowse, Peter Laslett and Keith Wrightson.⁸² Numerous cases of enclosure are discussed in the *Acts of the Privy Council* because had the potential to cause significant social and political strife.⁸³ Unfortunately, the petitioners in 2 *Henry VI* are confronted by the Duke of Suffolk and the recently crowned Queen Margaret who quickly dismiss their petition. In the Folio edition of the play, Queen Margret rips up their petition whereas in the Quarto edition, it is Suffolk (the antagonist in the petition) who destroys their supplication: 'Dare these peasants write against me thus'.⁸⁴ Scott Oldenburg examines the differences between this scene in the Quarto and Folio versions and suggests that the law's operations are shown to not only work within a top-down system (Suffolk's misuse of the law), but also a bottom-up one (the petitioners' petition): commercial disagreement could be initiated by anyone and was therefore not the preserve of the rich. However, Oldenburg accedes that Suffolk's / Margret's destruction of the petition with impunity 'emphasizes the vulnerability of the commons to the political whims of the elite' and thereby supports Plucknett's conclusion that some local magnates were 'too powerful to be reached by the ordinary courts' or 'were too influential to be amenable to the ordinary process of the courts'.⁸⁵

⁸² A. L. Rowse, *The England of Elizabeth: The Structure of Society* (Madison: University of Wisconsin Press, 1978), pp. 83-86; Peter Laslett, *The World we have Lost Further Explored* (London: Methuen, 1983), p. 60; Keith Wrightson, *English Society 1580-1680* (London: Hutchinson, 1982; repr. 1986), pp. 174-177.

⁸³ For example, the bitter petitions from the *tenants v. Christopher Hoddesden*. J. R. Dasent, (ed.), *Acts of the Privy Council*, xv (1897), pp. 85-87; the *tenants v. Thomas Barsham*. *Ibid*, xxi (1900), pp. 331-2.

⁸⁴ *The First Part of the Contention: The First Quarto, 1594*, (l.3.44).

⁸⁵ Scott Oldenburg, 'The Petition on the Early English Stage', *Studies in English Literature*, 57.2 (2017), pp. 325-347 (pp. 333-334), doi: 10.1353/sel.2017.0014. See also F. W. Maitland, 'Lecture I: The Origin of Equity' in *Equity Also The Forms of Action at Common Law: Two Courses of Lectures*, ed. by A. H. Chaytor and W. J. Whittaker (Cambridge: Cambridge University Press, 1910), pp. 1-11 (p. 6). Theodore Plucknett, *The Concise History of the Common Law*, p. 171.

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The act of ripping up the petition dramatizes the disdain with which the elite of the play regard people of a lower social class or economic status:

Suffolk: Villaines get you gone and come not near the Court,
Dare these peasants write against me thus.

(Quarto I.3.43-4)

Margaret: Away, base cullions! – Suffolk let them go!

(Folio I.3.44)

The vocabulary and syntax of both dismissals are important because they emphasise the sense that a person who was low born should not be allowed to question their social superiors: ‘villaine’ has echoes of ‘villein’; the use of the imperative ‘Come not near’ presents a discursive inequality; and the veiled warning, ‘Dare these peasants...’ forewarns economic and physical harm. Similarly, ‘base’ denotes social inferiority while ‘cullions’ invokes the social criminality associated with the rogue.⁸⁶ Furthermore, Oldenburg points to Angel Day’s *The English Secretorie* (1586), which explores the strict etiquette in the creation of a petition to emphasise the prohibitive costs associated with its production and therefore a disincentive to access a legal remedy.⁸⁷ The event is therefore laced with symbolism: it suggests hegemony in that that the lower classes have little legal redress with regard to the actions of the ruling elite; that

⁸⁶ David Crystal and Ben Crystal, *Shakespeare’s Words: A Glossary and Language Companion* (London: Penguin, 2004), pp. 33, 110.

⁸⁷ ‘Because successful petitions generally followed a formula and carefully constructed rhetoric of deference, petitioners, especially commoners, tended to employ a scribe or local lawyer to draft the document...[which] could constitute a considerable expense and effort for a commoner.’ Scott Oldenburg, ‘The Petition on the Early English Stage’, p.329. Oldenburg cites, Angel Day, *The English Secretorie* (London: Robert Walde-Grave, 1586) <https://archive.org/details/bim_early-english-books-1475-1640_the-english-secretorie-_angel-daye_1586 > [accessed 7 November 2024], pp. 169-84 and Gwilym Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford: Oxford University Press, 2007).

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the law has asymmetrical power in that it is done to the poor rather than something for which they have equal access; and that the rule of law is valued differently by the ruling elite than it is by the commons in that they use the law as a tool to control the poor.

The injustice directed at a lower social rank within a stratified society, as depicted in this episode of the play, is contextually significant because it references a particularly controversial legal case debated in Plowden's *Commentaries or Reports: the Case of Mines or the Queen v. Northumberland*. The Case of Mines was a legal suit entered in 1568 about who had the rights to profit from the copper in the Earl of Northumberland's mine.⁸⁸ The land had previously been gifted to the earl by 'the late King and Queen Philip and Mary' for the enjoyment of their 'Heirs Males of his Body lawfully begotten and to be begotten'.⁸⁹ However, the Queen's attorney (Attorney General Gilbert Gerald) contested that the Queen's royal prerogative permitted her to seize 600,000 tons of copper ore from the earl's freehold property as an ancient and incontestable right. According to Carolyn Sale's analysis of the case, the Queen's counsel 'had to breach the most fundamental principle of legal interpretation, regularly reiterated in Plowden's *Commentaries*, that the "Effect of all Words" must be determined according to their "reasonable Sense and Construction"'.⁹⁰ In other words, in order to win the case, the Queen's counsel actively refuted the principles of equity so that they could interpret law in a way that was overtly biased in favour of the Queen.⁹¹ And, in a similar way to Queen Margret and the Duke of Suffolk's response

⁸⁸ Edmund Plowden, *Commentaries or Reports of Edmund*, pp. 310-340.

⁸⁹ *Ibid*, p. 314, 311.

⁹⁰ Carolyn Sale, "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*' in *Shakespeare and the Law*, ed. by Paul Raffield and Gary Watt (Oxford: Hart Publishing, 2008), pp. 137-157 (p. 140).

⁹¹ 'And therefore to folowe the wordes of the lawe / were in some cases both agaynst Justyce & the common welth....' Edmund Plowden, *Commentaries or Reports of Edmund Plowden*, p. 97.

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to the petitioners in *2 Henry VI*, their argument presented a social stratification and valuation in relation to things: 'the Common Law...appropriates every Thing to the Persons whom it best suits, as common and trivial Things to the common People, Things of more Worth to Persons in a higher and superior Class, and Things most excellent to those Persons who excel all other'.⁹² Sayle notes Plowden's frustration that the operations of the court were perverted: when the decision was made, the twelve justices and the Queen's counsel were present, but none from the Earl's party. Their only avenue of protest, it seems, was to abstain from the ruling. But from a legal perspective, the decision to ignore equity was contrary to the principles laid out by Christopher St. German: "And therefore to folowe the wordes of the lawe / were in some cases both agaynst Justyce & the common welth: wherfore in some cases it is *good and even* necessary to leve the wordis of the lawe / & to folowe that reason and Justyce requyreth'.⁹³ And, in a very slight rebuke, Plowden (probably fearful for his own safety) criticised the justices for not referring to the correct literature on the matter rather than criticising them for what they did - which was constructive misuse the law.⁹⁴

In *2 Henry VI*, the authority to provide equity and interpret the law was given to the Duke of Gloucester.⁹⁵ The Duke's critics recognised that the power provided by his judicial and protectorate positions seriously undermined their authority and ambitions: Queen Margret (I.3.50-53), Suffolk (I.3.127-31), Winchester (I.3.132-3); Somerset (I.3.134-35), Buckingham (I.3.136-38) and York (III.1.121-3) each accuse him of misusing his judicial authority to their or the country's disadvantage. However, it is the

⁹² Ibid. p. 141. Sayle cites Edmund Plowden, *Commentaries or Reports of Edmund Plowden*, p. 315.

⁹³ T. F. T. Plucknett and J. L. Barton eds., *St. German's Doctor and Student*, p. 97.

⁹⁴ Ibid. p. 142.

⁹⁵ For an explanation about how Plowden applied equity, see Lorna Hutson, 'Not the King's Two Bodies: Reading the "Body Politic" in Shakespeare's *Henry IV, Parts 1 and 2*', in *Rhetoric and Law in Early Europe*, ed. by Victoria Kahn and Lorna Hutson (London: Yale University Press, 2001), pp. 166-198.

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anger shown by the Duke of Suffolk and Queen Margaret when the petitioners seek redress against enclosure, that highlights their disgust at Gloucester's potential interference into their misdeeds. The text thereby makes Gloucester, who represents equity, the impediment that must be removed. Like the Queen's counsel in the *Case of Mines*, in order to be successful in their machinations, the Yorkist and Lancastrian factions must reconstruct the law to support their interpretation of events, so that they achieve their desired outcome, which means destroying equity. In destroying Gloucester, the factions remove any interpretation of law that does not agree with their own.

The connection between the *Case of the Mines* and *2 Henry VI* is further emphasised in the play after Gloucester's (and equity's) demise. The Earl of Northumberland, after suffering an overwhelming miscarriage of justice, took arms in open rebellion against the Queen in the Northern Rising. He failed and was executed for treason in 1572.⁹⁶ In the play, the commons rise against the aristocrats, 'like an angry hive of bees' who 'sting' for 'revenge' (III.2.125-7). They join with Jack Cade and York's Machiavellian machinations in similar open rebellion. Importantly, the dissemination of Gloucester's murder (as the spark that ignited open rebellion) is unclear. How did the commoners know he was murdered? Why did the commoners care so much? Possibly, the answer lies in Gloucester's 'emblematic role' in the play's development towards an apotheosis of a myth.⁹⁷ Alternatively, his demise can be understood as a prophetic warning about the dysfunctional nature of law: unless the common law and equity

⁹⁶ Carolyn Sale. "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*' in *Shakespeare and the Law*, ed. by Paul Raffield and Gary Watt, p. 144.

⁹⁷ Peter Lake, *How Shakespeare Put Politics on the Stage: Power and Succession in the History Plays* (London: Yale University Press, 2016), p. 74.

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stopped opposing each other, and justice is sought rather than the most convenient interpretation, then the realm would inevitably slide into open rebellion. The text, it seems, is reminding its audiences and readers that there should be no place for asymmetrical power and social hegemony in the law. There has to be a sense of equity where the law represents everyone, or it will cease to operate effectively.

Masterless Insurrection in Jacobean England: *Coriolanus*

This part of the chapter examines how the theatrical representation of poverty evolved in the early years of King James' reign. It investigates how parliamentary legislation, aimed at stifling popular protest (riot), is represented differently in the Jacobean play *Coriolanus* than in the earlier Elizabethan play *2 Henry VI*; how the state's narrative developed to assert that masterlessness and violence were conflated; and how the attitudes of the theatre, its audiences and the state had changed since the beginning of the Jacobean period.⁹⁸ I focus on the representation of riot and uprising in *Coriolanus*, envisaged through the backdrop of the Midland Uprising (1607).

Legislators were aware of the consequences that dearth and land management practices like enclosure had on the most vulnerable in society. By 1607, the plight of the midlands' poor was again accentuated by poor harvests and the people's ire was focused upon landowners who had enclosed their land for pasture. In 1608, the

⁹⁸ The legal definition of a riot was 'the committing of an unlawful act by three or more persons assembled for the purpose'. Keith Wrightson, *English Society 1580-1680*, p. 173; J. A. Sharpe, *Crime in Early Modern England 1550-1750*, p. 133.

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average price of wheat had again increased sharply to a 12 year high, threatening to reach the price increase of 1596.⁹⁹ According to Richard L. Greaves, the issues surrounding enclosure within the midland counties had been bubbling for some time: 'In the six midland counties, 70,000 acres were enclosed between 1578 and 1607, with at least 61% of this figure coming between 1593 and 1607'.¹⁰⁰ The diggers (the term applied to people who filled in ditches and ripped out enclosure hedges and fences) 'popular perception [was] that, by converting arable to pasture, enclosing landlords were responsible for driving up the price of grain' which would lead to starvation.¹⁰¹ John Stow's chronicle captures a protest event:

...these riotous persons bent all their strength to leavell and lay open Enclosures without exercising any manner of violence upon any man's person goods or cattell and wherever they came, they were generally relieved by the neer inhabitants, who sent them not only many cartes laden with victual, but also good store of spades and Shovels for speedy performance, of their present enterprize, who until then some of them were faine to use Bills, Pikes, and such like tooles in stead of Mattocke and Spades.¹⁰²

Most critics believe that Shakespeare modelled some of the events from the plebian uprising in *Coriolanus* on the events that unfolded in Northamptonshire, Leicestershire and Warwickshire (part of the Midland Uprising).¹⁰³ Steve Hindle

⁹⁹ See W. G. Hoskins, 'Harvest Fluctuations and English Economic History, 1480-1619', *The Agricultural History Review*, 12.1 (1964), pp. 37-39 (p. 32); C.J. Harrison, 'Grain Price Analysis and Harvest Qualities, 1465-1634', *The Agricultural History Review*, 19.2 (1971), p. 139.

¹⁰⁰ Richard L. Greaves, *Society and Religion in Elizabethan England*, p. 637.

¹⁰¹ Steve Hindle, 'Imagining Insurrection in Seventeenth-Century England: Representations of the Midland Rising of 1607', *History Workshop Journal*, 66.1 (2008), pp. 21-61 (p. 27), doi: 10.1093/hwj/dbn029.

¹⁰² John Stow, *The General Chronicle of England*, p. 889.

¹⁰³ For example, see E. C. Pettet, "'Coriolanus and the Midlands Insurrection of 1607'", *Shakespeare Survey*, 3 (1950), pp. 34-42, doi: 10.1017/CCOL0521064163.005; Steve Hindle, 'Imagining Insurrection in Seventeenth-Century England', pp. 21-61; Arthur Riss, 'The Belly Politic: *Coriolanus* and the Revolt Language', *ELH*, 59.1

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explains that the people's protests against enclosure 'can be easily read as a metaphor for engrossing and engrossers' as depicted in the play (I.1.8-9, 178-79, 196-97).¹⁰⁴ The events of the Midland Uprising along with the lived experiences of food scarcity must have resonated with those watching a performance of *Coriolanus*. When the fear of starving to death is proclaimed by the plebians as the main reason underpinning their decision to riot, it must have evoked or unlocked memories of uncertainty and fear associated with food scarcity. There is a sense that this play draws on a collective understanding of desperation when the First Citizen delivers the interrogative sentence, 'You are all resolved rather to die than to famish?' (I.1.3) and the crowd responds emphatically 'Resolved. Resolved' (I.1.4). This opening sequence strikes a much more desperate and mimetic tone of despair than that of Cade and his followers who demonstrate a grotesque sense of celebration.¹⁰⁵

In *Coriolanus*, Caius Martius is termed the 'chief enemy to the people' (I.1.5-6) because he is responsible for the inflated price of corn: 'Let us kill him, and we will have corn at our own price' (I.1.8-9). The plebians, like their Midland counterparts, turn up with '*staves, clubs and other weapons*' and '*pikes*' (I.1.1SD. and I.1.22). They blame the state for being complicit in their suffering by legalising the cause of their

(1992), pp. 53-75, doi: 10.2307/2873418; Annabel Patterson, *Fables of Power: Aesopian Writing and Political History* (London: Duke University Press, 1991), pp. 117-126; Oliver Arnold, *The Third Citizen: Shakespeare's Theatre and the Early Modern House of Commons* (Maryland: John Hopkins University Press, 2007), pp. 179-214.

¹⁰⁴ Steve Hindle, 'Imagining Insurrection in Seventeenth-Century England', p. 44.

¹⁰⁵ Craig A Bernthal calls Cade's rebellion a 'legal carnival' whereas Maya Mathur calls it 'an attack of the clowns': Craig A Bernthal, 'Jack Cade's Legal Carnival', pp. 259-274; Maya Mathur, 'An Attack of the Clowns', pp. 33-54. Elyssa Y. Cheng identifies the 'moral economy' in *Coriolanus*'s plebian's riot whereas Leonard Tennenhouse describes their situation as a 'crisis': Elyssa Y. Cheng, 'Moral Economy and the Politics of Food Riots in *Coriolanus*', *Concentric: Literary and Cultural Studies*, 36.2 (2010), pp. 17-31.; Leonard Tennenhouse, '*Coriolanus*: History and the Crisis of Semantic Order', *Comparative Drama*, 10.4 (1976-77), pp. 328-346, doi: 10.1353/cdr.1976.0037.

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suffering at the hands of 'the rich' by passing 'edicts' and 'piercing statutes daily to chain up and restrain the poor' (I.1.73, 74).

The plebians' illegal gathering (like that of the Midland Uprising) is the consequence of a failure of the patricians (or the judiciary) to listen to their legitimate concerns and grievances. Their first contact with the law seems to have taken place prior to the riot: 'Our business is not unknown to th'senate: they have had an inkling this fortnight what we intend to do, which now we'll show 'em in deeds' (I.1.49-51). The Second Citizen recognises that their suit has failed and infers that their poverty caused their voices to be ignored when they engaged with the operations of the law in Rome. It is therefore pertinent that the play starts with the citizens exclaiming their right to be heard:

First Citizen: Before we proceed any further, hear me speak.

All: Speak. Speak. (I.1.1-2)

Annabel Patterson interprets this 'doubled invitation and exhortation' as an example of political self-consciousness, whereas Oliver Arnold interprets it as an inference of a lack of political and democratic 'power'.¹⁰⁶ I believe that the voices are raised in opposition to a perceived disenfranchisement of the equitable regulation of the law within their community. The double meaning of 'proceed' (I.1.1) refers not only to a movement forward but also to a legal 'procedure' or 'proceeding' (*OED*: n.2.b). The citizens are trying to force a change or moderation to the current operation of the law to ensure equity and fairness is applied to both patricians and plebians alike. Similar to the peasants joining Jack Cade's rebellion, the rioters attack on the state has a

¹⁰⁶ Annabel Patterson, *Shakespeare and the Popular Voice*, p. 127; Oliver Arnold, *The Third Citizen*, p. 187.

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metaphorical significance. They too are disassociating themselves from the legal frameworks that underpin the authority and power of the patrician elite:

First Citizen: [the patricians] make edicts for usury, to support usurers; repeal daily any wholesome act established against the rich; and provide more piercing statutes daily, to chain up and restrain the poor.

(I.1.72-74)

However, there are very significant differences in the citizens' inversion of the law with that of the rebels from *2 Henry VI*. The leadership structure of the insurrection in *Coriolanus* is similar to that of the Midland Uprising: there were no aristocratic leaders. Unlike in *2 Henry VI*, there is no aristocrat pulling the strings behind the scenes like Richard, Duke of York, or the self-acclaimed pseudo-aristocrat Jack Cade whipping up the people's emotions. There are not even named or identifiable individuals like Nicke, George or the Tanner of Wingham (*2 Henry VI* IV.2). Instead, the text gives the plebian speakers anonymity by describing them simply as 'Citizen' from within the group of citizens. This is an important development from the depiction of insurrection from *2 Henry VI* because it suggests that the commoners 'speak for themselves as a political entity, with legitimate grievances, and with a considerable degree of self-consciousness'.¹⁰⁷ The mob in *Coriolanus* therefore contains a mimetic quality absent in *2 Henry VI*. David Underdown notes that, 'when riots did occur, the participants were naturally the poorest members of society with least to lose'.¹⁰⁸ Andy Wood explains that there was a clear rise in lower-class rural

¹⁰⁷ Annabel Patterson, *Shakespeare and the Popular Voice*, p. 127.

¹⁰⁸ David Underdown, *Revel, Riot and Rebellion and Popular Politics in England: 1603-1660* (Oxford: University Press, 1985; repr. 1989), p. 117.

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leadership and that 'in 1603-25, lower-class leadership had risen to some 53 per cent' of enclosure riot cases.¹⁰⁹

Leadership of the riot in *Coriolanus* is presented as a shared responsibility in the style of republicanism. Decisions are made using the discursive structure of a committee wherein the choice of the first-person pronoun is always a representative plural, 'we', 'us', 'our' (I.1.12, 13, 16) and when suggesting action, their language adopts an interrogative style, rather than the imperative or declarative style of a sole leader: 'Would you...?', 'Consider you...?' (I.1.21, 25). Similarly, any direct action is debated before a collective decision is made. For instance, when considering whether to kill Martius, the plebians struggle to come to a consensus:

Second Citizen: Consider you what services he has done for his country?

First Citizen: Very well, and could be content to give him good report for't, but that he pays himself with being proud.

All: Nay, but speak not maliciously. (I.1.25-29)

The shift in the leadership of mob insurrection creates a heightened sense of threat and danger for the elite because it suggests that the people have chosen to reject the societal structures and laws that they require to maintain their privileged status. The play warns and reminds spectators of the fear and panic that any attempt by the poor, initiating a fairer system for themselves, would have on society's elite members. For example, the introduction of the tribunate impacts directly on the patricians' decision-making and hold on power. Annabel Patterson reminds us that

¹⁰⁹ Andy Wood, *Riot, Rebellion and Popular Politics in Early Modern England* (Basingstoke: Palgrave Macmillan, 2002), p. 85. See also pp. 86-7.

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through the Midlands Rising, 'the country had experienced not a ritual protest but a major test of the government's ability to maintain [legal] order'.¹¹⁰ It is this legal order, and its maintenance of the elite's privileged position, that Menenius (representing the elite) tries to re-assert through his 'Belly' fable: a fable 'designed to mystify' aristocratic ideology.¹¹¹

The inequality expounded by the Second Citizen (I.1.72-74) highlights the perceived hegemony behind the drafting and operations of legislation: the law is used to address the concerns of the wealthy. The linguistic constructions used in Menenius' dialogue exemplify the inequality between him and the citizens, which acts to separate and lower the plebians' status. For example, Menenius' repeated appellations and hyperbolic vocabulary create a patronising tone that raises Menenius' status above that of the plebians: 'Why, masters, my good friends, mine honest neighbours....'; 'friends', 'Sir', 'good friend' (I.1.53, 56, 96, 116). He moves on to reveal his aristocratic contempt for the plebians' by calling the First Citizen a 'great toe' (I.1.144) before verbally admonishing him with sarcasm - explaining that he is 'o' th' lowest, basest poorest / Of this most wise rebellion' (I.1.146-47). Coriolanus describes this form of rhetoric as 'the insinuating nod', designed to 'counterfeit the bewitchment of some popular man' (II.3.91, 93-4). Even Menenius accepts that his style of discourse is 'flatter[y]' (III.1.256). The paternalistic rhetoric goes deeper in that it similarly implies at the level of the signifier that the poor are somehow too immature to comprehend fully the operations and procedures of the law:

...you slander

¹¹⁰ Annabel Patterson, *Shakespeare and the Popular Voice*, p. 138.

¹¹¹ Oliver Arnold, *The Third Citizen*, p. 193.

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The helms o' th' state, who care for you like fathers

When you curse them as enemies. (I.1.77-79)

When Menenius uses the metaphor 'helms o' th' state', he is directly referencing the leaders of Rome: the patricians and senators. He is referring to the 'competing civic institutions' that hold the state's authority.¹¹² When he refers to the futility of the plebians lifting their staves against the Roman state, it is the state's institutions that he invokes:

For your wants,

Your suffering in the dearth, you may as well

Strike at the heaven with your staves as lift them

Against the Roman state

(I.1.57-60)

One such institution is the law. Menenius therefore references Rome's legislature when he accuses the citizens of slandering the individuals that guide the state; those who interpret or manipulate the law. The verbal 'slander' to which Menenius refers is the plebians' belief that the law lacks equitable rigour in both its application and operation. Menenius' metaphor is a direct response to the First Citizen's threat that the rich 'say poor suitors have strong breath: they will know we have strong arms too' (I.1.51-52). By implication, the words of the poor as suitors have more power than the rich would like. The point is that the rich can manipulate the law meaning the poor must resort to arms. The law has 'undone' (I.1.55) them or acted unfairly against them despite being written to safeguard them from 'suffering' (I.1.58). The

¹¹² Simon Palfrey, *Late Shakespeare: A New World of Words* (Oxford: Clarendon Press, 1999), p. 48.

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Second Citizen complains that the lack of rigour and equity in the law's operations (I.1.71-74) highlights its dysfunctional nature and bias within its application.

The First Citizen's discursive structure emulates a forensic discourse, as outlined by Thomas Wilson in his advice book on rhetoric.¹¹³ The First Citizen's opening presentment imitates the first of these stages (The Entrance), 'Before we proceed any further, hear me speak'. And then he adopts the rhetorical structure of the second stage (the 'Narration') in which the First Citizen presents, 'a plaine and manifest pointing of the matter':

We are accounted poor citizens, the patricians
good. What authority surfeits on would relieve us. If they
would yield us but the superfluity while it were wholesome
we might guess they relieved us humanely, but they think we
are too dear. The leanness that afflicts us, the object of our
misery, is an inventory to particularize their abundance; our
sufferance is a gain to them.

(I.1.12-18)

This has the effect of mocking and undermining the judicial authority of Rome's law and thereby justifying the pseudo-judgement upon Caius Martius, 'Let us kill him' (I.1.8). The linguistic constructions use and pervert contemporary early modern legal operations in the same way that Jack Cade used them in *2 Henry VI* to justify his insurrection: through its derivative authority. It seems that the mob required and

¹¹³ Wilson, Thomas, *The Arte of Rhetorique*, p. 27. I reference my earlier comments about the ability to adopt forensic rhetoric in the style of a judicial argument.

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needed to show that they had a moral justification for their violence; they could instigate their own punitive measures to right a wrong. Again, we are shown that whoever controls the legal rhetoric has the authority to interpret what is legal and what is illegal. However, in *Coriolanus*, there is a difference that is both exciting and chilling: the patricians are openly aware that their hold on the law and its operations is only possible with the consensual acquiescence of the plebians. Coriolanus verbalises this fear when he argues against submitting himself before the population in order to receive the consulship:

We nourish gainst our senate
The cockle of rebellion, insolence, sedition,
Which we ourselves have ploughed for, sowed and scattered
By mingling them with us....

(III.1.73-76)

The language used within the insurrection is softer in *Coriolanus* than it is in *2 Henry VI*. It seems the plebians echo a more passive approach reportedly used in the Midland Uprising. There is an uncertain and indecisiveness about the violence. For example, the First Citizen calls for the death of Caius Martius, he is quickly contradicted with, 'Would you proceed especially against Caius Martius?' and then, 'Consider what services he has done for his country' (I.1.5-8, 21-22, 25-26). The First Citizen's call for violence is thereby quickly reduced. This vacillation of intent or equivocation creates a sense of reluctance in their approach to breaking the law. It also suggests that the way the crowd organises itself is one way democratic, but in another, it is haphazard and disorganised.

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The depiction of the people as a 'mob' in *Coriolanus* is different from that in *Julius Caesar* where the mob's reaction is shaped by the rhetoric of two members of the elite (*Julius Caesar*: III.2.20-22). Here, the crowd acts as a jury to decide upon the morality of Caesar's murder: with their violent judgement hanging above the malefactor like a sword of Damocles. Brutus's deposition uses a rhetoric of antithesis: 'less' and 'more'; 'loved' and 'loved'; 'living' and 'live'; 'die' and 'dead'; 'slaves' and 'free' to emphasise that murder was for the greater good. In this way, clever rhetoric sways the jury's opinion about Brutus's guilt:

- All: Live, Brutus! Live! Live!
- 1st Pleb: Bring him with triumph home unto his house.
- 2nd Pleb: Give him a statue with his ancestors.
- 3rd Pleb: Let him be Caesar.

(*Julius Caesar*: III.2.44-47)

The exultant third Plebian is moved by Brutus's suggested love for the people, that he promotes a feudalist government over a republican one. However, the plebians' opinions about the murder are quickly altered by Mark Antony's rhetoric which relies upon affect rather than reason. It produces a tirade of exclamations espousing violence: 'Revenge! About! Seek! Burn! Fire! Kill! Slay!' (*Julius Caesar*: III.2.196).

Julius Caesar suggests that if rhetorical skill can sway the people into mob violence, then the clever rhetoric of a lawyer can sway the jury into a judgement of their choosing, regardless of innocence or guilt. This is not the case in *Coriolanus* where the rioters seem to have the ability to self-determine. When Menenius proposes a rhetorical metaphor, the Second Citizen responds with an informed scepticism: 'I'll

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hear it, sir: yet you must not think to fob off our disgrace with a tale' (I.1.83-84).

Secondly, in *Julius Caesar* the people are presented as fickle: they change their minds and thereby interpret and understand events depending on an elite's explanation. In *Coriolanus*, the plebians seem to have developed a greater sense of self-awareness: they are less convinced by aristocratic explanations. When Menenius presents the belly fable, the First Citizen is able to unpick his metaphor and reverse its meaning by placing the belly as reliant on the members:

First Citizen: The kingly crownéd head, the vigilant eye,
 The counsellor heart, the arm our soldier,
 Our steed the leg, the tongue our trumpeter,
 With other muniments and petty helps
 In this our fabric, if that they –

First Citizen: did complain,
 What could the belly answer?

(I.1.104-8, 112-13)

This sequence demonstrates that in *Coriolanus*, the plebians have developed a greater understanding of the effects and impact of forensic rhetoric. It also shows a greater sense of confidence that is underlined by the power attributed to them through their numbers. But it is also a power that seems to be based upon and desirous of 'republican political ideas and values'.¹¹⁴

¹¹⁴ Andrew Hadfield, *Shakespeare and Republicanism* (Cambridge: Cambridge University Press, 2008), p. 100.

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The plebians seem unsure or confused about what they will do with their perceived power generated by the uprising. They exhort the First Citizen to 'Speak. Speak' before quickly exclaiming, 'No more talking...' only to subsequently continue talking as they debate whether it is appropriate to kill Caius Martius (I.1.2, 10, 21-38).

Similarly, the First Citizen's call for 'revenge' is quickly contradicted by himself in stating, 'not in thirst for revenge' (I.1.18, 20). This could be interpreted as fear; fear of the state's potential response to their gathering and actions - a fear of reciprocal violence. It may also mean that they are being represented as decent and peace-loving people with a legitimate grievance. This is similar to Shakespeare's source material for the *Coriolanus* story, in which Plutarch presents the 'common people' as harmless:

The poor common people seeing no redress, gathered themselves one day together, and one encouraging another, they all forsook the city, and encamped themselves upon a hill, called at that day the holy hill, amongst the river of Tiber, offering no creature any hurt or violence, or making any shew of actual rebellion....¹¹⁵

In *Coriolanus* the riot is made up of opposing, accepting and dissenting voices. The text suggests that these are ordinary people who have no experience of violence: they are sympathetic figures. Keith Wrightson explains that during rioting, 'violence against people was very rare' and some of the enclosure riots even had a holiday atmosphere.¹¹⁶ When the mob on the other side of Rome rise up in commotion,

¹¹⁵ Plutarch, *Plutarch's Lives Englished by Sir Thomas North in Ten Volumes*, trans. by Sir Thomas North, 10 vols (London: J. M. Dent, 1818), III, pp. 7-8, <https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/1805/0988-03_Bk.pdf> [accessed 17 October 2024].

¹¹⁶ Keith Wrightson, *English Society 1580-1680*, pp. 177-8.

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those on stage seem surprised: 'What shouts are these? The other side o' th' city is risen: why stay we prating here?' (I.1.39-40), suggesting an escalation of rebellion in a common cause.

The representation of an insurrection in *Coriolanus* is different to the violence and blood lust instigated by Jack Cade in *2 Henry VI* (IV.3.3-4, 53; IV.7.93; IV.2.63, 89-90; *The Contention: The First Quarto* IV.7.74-77). When the state reported on rioting, there was a tendency for rioting masterless men to be described in a similar violent way. For example, on 17 February 1606 the Middlesex Quarter Sessions attended to a riot of 'two hundred persons' assembled in a 'warlike array and armed with stones and clubbes'. They are alleged to have 'broke "the glasse windows"' of a house in Turmil Street.¹¹⁷ There is no reference as to the reason or purpose of the riot.

The Crown initially responded to the Midlands Uprising by issuing three royal proclamations. The first was a warning. It stated 'that lenitie hath bred in them, rather encouragement than obedience,' echoing Caius Martius' warning (III.1.73-76) before ordering them to go home or be suppressed 'by whatever means they may, be it by force of arms, if admonitions and other lawful meanes doe not serve'.¹¹⁸ When the people refused to return home, the local gentry gathered a makeshift militia from their households and, after 'summarily executing two of the diggers' leaders under

¹¹⁷ John Cordy Jeaffreson (ed.), *Middlesex County Records (Old Series)*, 2 vols (London: [n.pub], 1887; repr. London: Greater London Council, 1974), II, p. 26.

¹¹⁸ King James, 'A Proclamation for Supressing of persons riotously Assembled for the laying open of Inclosures, 30th May 1607', in *A Booke of Proclamations: Published Since the Beginning of His Majestyes Most Happy Reigne Over England* (London: Robert Barker, 1609), pp. 139-40. <<https://www.proquest.com/books/booke-proclamations-published-since-beginning-his/docview/2240946166/se-2>> [accessed 23 September 2024].

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martial law' charged into them on both horseback and on foot. After the second charge, 'some 40 or 50 of them were slain and a very great number hurt'.¹¹⁹

A second proclamation was issued that employed language to describe the rioters as 'seditious', 'treasonous', and 'rebellious' and gave permission to the King's judicial representatives to destroy or execute any that 'shall make resistance'.¹²⁰ This provided the local gentry with the perceived authority to create a greater spectacle for the punishment of rioters. Not only were many of the rioters executed but their carcasses were quartered and exhibited 'at Northampton, Oundle, Thrapston and other places' as part of the elite's strategy to enforce subjection.¹²¹

The outcome of the riot in *Coriolanus* is different in that it does not depict the kind of elite violence against the people that was part of the Midlands Rising outlined above, though it does resemble. The outcome of the Midland Rising in that both began with legitimate legal action that led to peaceful protest and the government policy in response to the Midland Rising did later shift when it was forced to. The play's deviation from a bloody outcome suggests that the play is alluding to an alternative political resolution: a resolution through which insurrection could be avoided if the state sought to swiftly redress justified grievances. It was 'a policy subsequently endorsed by Francis Bacon and conspicuous by its absence from the counsels of James I in 1607, at least until the crown's hand was forced by civil commotion'.¹²²

¹¹⁹ Steve Hindle, 'Imagining Insurrection in Seventeenth-Century England', pp. 21, 23.

¹²⁰ King James, 'A Proclamation Signifying his Majesties pleasure as well for Suppressing of riotous Assemblies about Inclosure, as for reformation of Depopulation, 28 June 1607', in *A Booke of Proclamations*, pp. 140-44.

¹²¹ Steve Hindle, 'Imagining Insurrection in Seventeenth-Century England', p. 23.

¹²² *Ibid.*, p. 49.

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In the Midlands Uprising, the way that the people engaged with the enclosure protests initially, was through litigation. They wanted to force a local landowner (Thomas Tresham) to stop enclosing and re-open the land which historically, had common access. The rioters and petitioners that are represented as the Citizens in *Coriolanus* show a similar sense of legalism because of their gathered presence. They, like the rioters in the Midlands Uprising, purport the 'values of a vaguely sensed moral economy' based on the moral legal assumptions of Natural Law. These moral assumptions are in contrast to the values of a market economy.¹²³ They are fighting for the rights established through local customs. When their attempts at litigation fail, they revert to the use of protest which exists, as Underdown suggests, also in custom. Ian Archer makes the point that 'riot was a negotiating strategy'.¹²⁴ In this sense, rioting was not a mindless violent event, like on the streets of London in *2 Henry VI*, but (usually) a peaceful affair – as outlined in numerous cases brought before the Star Chamber. For example, on 18th April 1605, members of a local community were charged with 'route & riote' for gathering together to pull 'awaye ye quickesettes, & Caste downe the diche' that had surrounded 'a poole or moore wherein the tenautes Cattelle were woonte to be myred'.¹²⁵ Absent from the accusations are any suggestion that the tenants used violence against the landowner. They are only accused with damage to his property. This lack of violence, on the part of the poor, is replicated in the riot sequence in *Coriolanus*.

¹²³ David Underdown, *Revel, Riot and Rebellion*, p. 118.

¹²⁴ Ian Archer, *The Pursuit of Stability*, p. 7.

¹²⁵ John Hawarde, *Les reports del cases in Camera Stella, 1593 to 1609*, ed. by William Paley Baildon (London: Spottiswoode, 1894; repr. Milton Keynes: Lightning Source, [n.d.]), pp. 192-3.

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In *Coriolanus*, the plebians' legal truth that they have been unfairly and illegally treated is authorised because it is seen as more authoritative than that of the patricians despite opposition from Menenius and Coriolanus.¹²⁶ The plebians' legal truth is authorised through the operations of the common law and not through established customs; which, as Menenius intimates, will threaten the patricians' hold on power: 'Pray you, go fit you to the custom and / Take to you, as your predecessors have, / Your honour with your form.' (II.2.139-41). The threat of violence from the protesting plebians seems enough to instigate a shift in attitude towards a more Aristotelian philosophic interpretation of law in which the elite accept the voices of the people through their tribunes: 'to defend their vulgar wisdoms, / Of their own choice.' (I.1.204-5). The plebians, through the tribunes, are therefore able to use the law's operations to benefit them - in the same way that Coriolanus had misused it to deny and refute the people and they waste little time in asserting their new authority:

Sicinius:

He hath resisted law,

And therefore law shall scorn him further trial

And the severity of the public power

Which he so sets at naught.

First Citizen:

He shall well know

The noble tribunes are the people's mouths,

And we their hands.

(III.1.267-72)

¹²⁶ For a brief discussion about how Coriolanus' response to the riot is similar to that of the Earl of Huntingdon, see Steve Hindle, 'Imagining Insurrection in Seventeenth-Century England', pp. 46-7.

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The establishment of the tribunate did not lead to civil war in Rome. Instead, it created stability; 'it ushered in four and a half centuries of republican government'.¹²⁷ According to Andrew Hadfield, *Coriolanus* attempted to 'define civic virtue and create a sustainable balanced state'.¹²⁸ The text therefore uses the historical pretext as 'an object lesson' to suggest that protest (riot) could work to create a more egalitarian legal and political system.¹²⁹ This was a system, according to Oliver Arnold, that had already been recently replicated in the new civic council in Warwick and in the parliamentary elections in Gloucestershire.¹³⁰

As a text therefore, *Coriolanus*, still highlights the law as being dysfunctional. However, it presents a significant development in the representation of a dysfunctional legal system under the shadow of the Midlands Uprising. Instead of pointing at the hegemonic nature of the law as in *2 Henry VI*, *Coriolanus* dares to enter into a debate about the law and pose the question, 'what would the law look like if everyone had equal access to it and its operations?' The alternative world, drawn on Roman history, suggests a shift in power relations – it alludes to the potential of four and a half centuries of peaceful coexistence, stable social relations, and economic prosperity.

Other contemporary writers were also convinced that the political structure of the tribunate could be emulated to England's advantage. Andrew S. Brown cites how 'for Barnabe Barnes in his *Four Books of Offices* (1606), the tribunate was an essential

¹²⁷ Annabel Patterson, *Shakespeare and the Popular Voice*, p. 126.

¹²⁸ Andrew Hadfield, *Shakespeare and Republicanism*, p. 205. Hadfield cites Simon Palfrey, *Late Shakespeare*, p. 48.

¹²⁹ Glenda Frank, 'The Tragedy of *Coriolanus* 1.1: Setting the Stage', *Shakespeare Bulletin*, 8.2 (1990), pp. 27-29 (p. 29).

¹³⁰ Oliver Arnold, *The Third Citizen*, pp. 179-192.

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element of Rome's "mixed constitution" because it ensured that everyone had an interest in developing government policy and running the state.¹³¹ It created harmony. Barnes argues that 'out of the Sovereigne rule of a kingdome, being revived in the Consuls; out of the government Aristocraticall, represented by the Senators; and out of the Democracie, manifested in the Plebeian Tribunes, a firme and absolute Commonwealth was fashioned.'¹³² However, Barnes goes on to make the point that the people would only ever be indirectly involved in government through their tribunes.¹³³

On a macro level, the play presents a fascinating legal dichotomy. By pointing towards the Midlands Uprising, the text seems to imply that the elite landowners employ the common law to uphold their interpretation of a legal truth: a series of rules that are authorised and enforced through the state's (other landowners and elites) legal and coercive rhetoric: 'all Lieutenants, Deputy Lieutenants, Sheriffes, Justices of Peace, Maiors, Bailiffes, Headboroughs, Constables, and all other our Officers and ministers to whom it may appertaine'.¹³⁴ In opposition to their position, exists the legal truth of the poorest people: a series of vaguely moral concepts that coalesce around a more equitable existence. In the Midlands Uprising, initially the coercive force of common law was more powerful than the rioters, but that as the

¹³¹ Andrew S. Brown, 'Ridiculous Subjects: Coriolanus, Popular Representation and the Roman Tribunes in Early Modern Drama', *English Literary Renaissance*, 52.2 (2022), pp. 229-259 (p. 237), doi: 10.1086/719058.

¹³² Ibid. Brown cites Barnabe Barnes, *Four Bookes of Offices: Enabling Privat persons for the Speciall Service of all good Princes and Policies* (London: George Bishop and others, 1606), pp. 65, 131.

¹³³ To explore this argument further, see Ann Kaegi, "'How apply you this?' Conflict and consensus in *Coriolanus*", *Shakespeare*, 4.4 (2009), 362-378, doi: 10.1080/17450910802501089. Ceri Sullivan places the tribunes within the concept of nudge theory to explore how they influence the people: Ceri Sullivan, 'Choice Architecture in Shakespeare's Public Meetings: Nudge Theory and *Richard III*, *Coriolanus*, and *Julius Caesar*', *English*, 70.268 (2021), pp. 9-22, doi: 10.1093/english/efaa026.

¹³⁴ King James, 'A Proclamation for Supressing of persons riotously Assembled for the laying open of Inclosures', in *A Booke of Proclamations*, p. 140. The use of an asyndetic list adds to the weight of threat contained within the proclamation.

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situation developed, the government had to adjust their response. The legal truth established and instigated by the local gentry was authorised – regardless of whether it was equitably lawful (in the Aristotelian sense of law).¹³⁵ By representing the Midlands Uprising context in the manner that it does, the play suggests that Jacobean law is brittle because it shifts from its perceived fixed position in order to remain a coercive force. In the play, we see this as the elite sharing power with the plebians through the tribunate. In Jacobean England, we see this in James's and parliament's response to the Midlands Uprising and the issues surrounding enclosure: it upholds the position of either the people or the landowners depending on who is most at risk of destabilising the crown and the crown's activities.

Masterless Vagrancy in Jacobean England:***The Winter's Tale***

In this section of the chapter, the theatrical portrayal of the masterless man is considered alongside state legislation and royal proclamations about masterlessness. The evolution of both the state legal narrative and the theatrical representation is shown operating through separate trajectories. I demonstrate how, in *The Winter's Tale* the character of Autolycus moves the theatrical perception of the masterless man further away from the state's representation of masterlessness in Jacobean Britain. The section ends with an examination of how the character Autolycus satirises the state's image of the itinerate vagrant's rhetorical tactics to cozen his potential customers.

¹³⁵ Aristotle, *The Nicomachean Ethics*, p. 86.

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The English ruling elite had carefully developed a state narrative in which masterlessness was portrayed as a 'much-feared menace' that 'seemed to strike at the very foundations of order'.¹³⁶ The vilification of the masterless vagrant had continued to take on a sense of urgency throughout the final years of the Elizabethan era. The Privy Council, for example, had cultivated this image through legislation and royal proclamations so that anyone deemed to be masterless was viewed as both violent and dangerous:

Who arming themselves with shot and other forbidden weapons, have not only committed robberies and murders upon her majesty's people in their travel from place to place, but also... murdered diverse constables and others that have come to the rescue'.¹³⁷

The spread of masterlessness was perceived by the social elite as potentially damaging to their ability of controlling society.¹³⁸ Consequently, on the seventeenth of September 1603, King James issued a royal proclamation in which he described masterlessness as a sort of pestilence.¹³⁹ The proclamation's choice of language was clearly designed to alienate the rising itinerate numbers from the law-abiding population through the use of emotive vocabulary like 'infested' and 'swarmed' and

¹³⁶ David Underdown, *Revel, Riot and Rebellion and Popular Politics in England: 1603-1660*, pp. 36, 37.

¹³⁷ King James, 'Placing London Vagabonds Under Martial Law, in *Tudor Royal Proclamations*, ed. by Paul L. Hughes and James F. Larkin, 3 vols (London: Yale University Press, 1969), III, pp. 196-197.

<<https://archive.org/details/tudorroyalprocla0003paul/page/196/mode/2up?view=theater>> [accessed 4th October 2024]

¹³⁸ According to A. L. Beier, in the two decades prior to James' coronation, the number of annual vagrant arrests had risen by almost 300%. See 'Table IX', in A. L. Beier, *Masterless Men*, p. 222.

¹³⁹ King James, 'A Proclamation for the due and speedy execution of the Statute against Rogues, Vagabonds, Idle, and dissolute persons', in *British Royal Proclamations Relating to America: 1603-1783*, ed. by Clarence S. Brigham (New York: Burt Franklin, 1911), <<https://www.gutenberg.org/files/46167/46167-h/46167-h.htm#:~:text=A%20Proclamation%20for%20the%20due%20and%20speedy%20execution%20of%20the>> [accessed 8th October 2024].

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by categorising them as both ‘incorrigible’ and ‘dangerous’.¹⁴⁰ J. A. Sharpe asserts that by the time James became King of England, ‘the vagrant emerged as *the* criminal stereotype’.¹⁴¹

In 1609, King James’s parliament issued new legislation to deal with rogues, vagabonds and sturdy beggars. The new law changed the jurisdictional threshold of the crime of masterlessness so that a Justice of the Peace at the Quarter Sessions, or a ‘master’ from one of the newly built Houses of Correction, could sentence a vagabond to be ‘whipped’ and placed in ‘feters or gyves’ instead of waiting for an Assize court to sit.¹⁴² The state also started to shift its ideological approach to punishing masterlessness from a position of violent coercion to include incarceration. Parliament ordered a huge building programme of more Houses of Correction that had connected buildings provided for ‘Mills, Turns, Cards and such like necessary implements, to set the said rogues or such other idle persons on work’.¹⁴³ It seems that extreme poverty had made differentiating a roguish vagabond from the itinerate poor, difficult. Therefore, the state imprisoned them both until they were separated through rehabilitation to accept societal norms. Repeated failure to be rehabilitated could result in the masterless being either deported to a colony or put to death.

However, during the early years of James’s reign, the state’s legal narrative surrounding the masterless man seems to have started to lose traction with many people. For example, a dichotomy emerges between the theatrical representation of

¹⁴⁰ Ibid. Incorrigible: Bad or depraved beyond correction or reform (*OED*: n.1).

¹⁴¹ J. A. Sharpe, *Crime in Early Modern England: 1550-1750*, p. 100.

¹⁴² 7 James C.4. Gyves: a shackle, especially for the leg; a fetter. (*OED*: n. 1a).

¹⁴³ 7 James C.4.

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the masterless man and the state's negative portrayal. Lorna Hutson's work on 'intent' and 'motivation' is a useful framework from which to understand why this dichotomy took place in the competing narratives. Hutson suggests that 'intent' and 'motivation' can be adequately inferred through a character's actions. She explains that we, 'as readers or audience... participate in the process by which characters rhetorically invent the intentions, motivations, occasions, and histories which enable them - and us - to construe the 'facts' of their own and one another's 'cases', or causes'.¹⁴⁴ The prospect of real starvation and homelessness that lay behind cases of petty theft or larceny are easily inferred as motivating factors of the perpetrator. Because Jacobean theatrical portrayals of the masterless are dramatized within similar economic realities, similar motivations are construed by the readers or audiences. These narratives stand in direct opposition to the state's legal narrative which offers no reason other than sedition for the malicious actions of the masterless. The state's legal narrative therefore fails in its attempt to turn vagrancy into an exemplary offence that convinces people that the crime committed has no mitigating circumstances.¹⁴⁵

The representations of violent and dangerous vagabonds, like those featured in Thomas Nashe's short story *The Terrors in the Night* or Black Will from the play *Arden of Faversham*, therefore began to disappear from literary and theatrical representations. Instead, Jacobean images of a beggar struggling to survive against harsh economic realities start to emerge. Characters like Momford from John Day

¹⁴⁴ Lorna Hutson, *The Invention of Suspicion*, p. 220.

¹⁴⁵ The state's difficulty in convincing the population of seditious intent is alluded in a letter to Lord Burleigh, in which Justice of the Peace Hext bemoans the difficulty in prosecuting the masterless because their victims 'wold not procure a man's death for all the goods yn the world'. William Lambarde, 'Charge at the Commission for Almshouses, etc. Uttered at Maidstone, 17 January 1593 [1594]', in William Lambarde and Local Government, p. 169.

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and Henry Chettle's *The Blind Beggar of Bednal-Green* or Edgar from Shakespeare's *King Lear* emerge, with details associated with real poverty.¹⁴⁶ Each of the noblemen-turned-beggar characters impersonate an impoverished person as a way of concealing themselves. William C. Carroll suggests that before Edgar / Poor Tom from *King Lear*, there was a 'signal lack of suffering.... Poverty is often merely a thematic, not a painfully felt deprivation'.¹⁴⁷ He cites Michael Goldman's opinion that 'Edgar is the kind of beggar "that you pay . . . to go away . . . and certainly not the decent young man down on his luck that actors frequently portray him to be. He is the kind that sticks his stump in your face".¹⁴⁸ However, Carroll and Goldman's observation have missed an important difference: they are not just theatrical representations of rogue literature, they are also a response to the legislation, homilies, proclamations, and punishments attributed to being masterless; to being destitute. In the introduction to his anthology of rogue literature, Gāmini Salgādo suggests that even in rogue literature a subtle change was taking place in the reader's relationship with the social miscreant. He explains that a 'defiance for the established society and sympathy for those outside it' had started to emerge.¹⁴⁹

Autolycus is an elaboration on the stereotypical rogue featured in the earlier Elizabethan popular rogue pamphlet literature written by Gilbert Walker, John

¹⁴⁶ Thomas Nashe's short story *The Terrors in the Night*, presents disbanded soldiers as immoral: they 'live basely, swaggering in every ale-house, having no other exhibition but from harlots and strumpets... whoring and quarrelling, lest besides the nightly bankrout consciences, Bridewell or Newgate prove the end of your cavaliering'. Thomas Nashe, *The Terrors of the Night or a Discourse of Apparitions* (London: John Danter, 1594; repr. Milton Keynes: Penguin Books, 2015), p. 51; *Arden of Faversham* in *Five Elizabethan Tragedies*, ed. by A. K. McIlwraith (London: Edward White, 1592; repr. Oxford: Oxford University Press, 1963 edition); John Day, *The Blind Beggar of Bednal-Green, with the merry humour of Tom Strowd the Norfolk Yeoman*, ed. by W. Bang (London: R. Pollard and Thomas Dring, 1659; repr. Lovain: Uystpruyt, 1902).

¹⁴⁷ Ibid.

¹⁴⁸ William C. Carroll, "'The Base Shall Top Th' Legitimate': The Bedlam Beggar and the Role of Edgar in 'King Lear'", *Shakespeare Quarterly*, 38.4 (1987), pp. 426-441 (p. 431), doi: 10.2307/2870423. Carroll cites Michael Goldman, *Shakespeare and the Energies of Drama* (Princeton: Princeton University Press, 1972), pp. 97-98.

¹⁴⁹ *Cony-catchers and bawdy baskets*, ed. by Gāmini Salgādo, p. 24.

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Awdley, Thomas Harman, G. B. Harrison, Robert Greene, Thomas Dekker and others.¹⁵⁰ Initially, we see the difference in his characterization through perspective: his roguery is not referenced by another character but presented directly to audiences in a self-aware and self-confessed celebration. His entry on to the stage singing about his life on the road and his filching exploits (IV.3.1-22) is a boast about his own criminality.¹⁵¹ He also rejoices in the perceived freedoms that vagrancy provides:

When daffodils begin to peer,
With hey, the doxy over the dale,
Why then comes in the sweet o' the year,
For the red blood reigns in the winter's pale.

(IV.3.1-4)

The lark, that tirra-lirra chants
With hey, the thrush and the jay
Are summer songs for me and my aunts
While we lie tumbling in the hay.

(IV.3.9-12)

¹⁵⁰ For example: Gilbert Walker, *A Manifest Detection of Dice-Play*, in *Cony-catchers and bawdy baskets: an anthology of Elizabethan low life*, ed. by Gāmini Salgādo (London: [n.pub]. 1552; facsimile repr. Harmondsworth: Penguin, 1972), pp. 27-58; John Awdley, *The Fraternity of Vacabonds*, in *Cony-catchers and bawdy baskets* (London: Awdley, 1575; facsimile repr. London: Penguin, 1971), pp. 59-78; *A Caveat Or Warning For Common Cursetors, Vulgarly Called Vagabonds* (London: Henry Middleton, 1573; facsimile repr. London: Kessinger Legacy, [n.d.]); G. B. Harrison, *A Notable Discovery of Coosnage Now daily practised by sundry lewd persons, called Connie-catchers, and Crosse-biters*, in *Cony-catchers and bawdy baskets* (London: John Wolfe, 1591; facsimile repr. Harmondsworth: Penguin, 1972), pp. 155-192; Robert Greene, *The third and last part of Cony-catching: an anthology of Elizabethan low life*, ed. by Gāmini Salgādo (London: Thomas Scarlet, 1592; repr. Harmondsworth: Penguin, 1972), pp.193-230; and Thomas Dekker, *The Belman of London: Bringing to light the most notorious villanies that are now practised in the kingdom*, in *The Guls Handbook and The Belman of London: In Two Parts* (London: Nathaniel Butter, 1608; repr. London: J. M. Dent & Sons, 1941), pp. 65-158.

¹⁵¹ Steven R. Mentz links Autolycus to both Greene's 'cony-catching' literature and the 'cultural merchant who functions as the dashing and disreputable figure that Greene cut in Elizabethan London'. Steven R. Mentz, 'Wearing Greene: Autolycus, Robert Greene, and the structure of Romance in *The Winter's Tale*', *Renaissance Drama*, 30 (1999-2001), pp. 73-92 (p. 77), doi: 10.1086/rd.30.41917356.

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Freed from societal rules and regulations, Autolycus is able to ignore the Church's teaching on marriage by boasting about his exciting 'red blood' sexual encounters with his 'doxy' and his 'aunts' (IV. 3. 4, 2, 11). His lustful appetite for unrestrained love is liberated in tune with bird song. The image is tripartite: firstly, it suggests an idyllic pastoral in which man and nature (flowers and birds and love) exist in harmony. Secondly, it presents his life of vagabondage as highly desirable; and thirdly, it draws a justification from a thinly veiled parody of Jesus's teaching about living outside of apprehension: 'Beholde the foules of the heaven: for they sowe not, neither reape, nor carie into the barnes: yet your heavenlie Father feedeth them. Are you not much better than they?'¹⁵² The imagery suggested in the character's opening lines are a complete distortion of the reality of poverty. Spectators were doubtless well aware of the misery of starvation and that the decision to adopt an itinerate lifestyle lay not in a yearning for freedom but the cause of a forced expulsion, usually the result of a personal tragedy or failure.¹⁵³ The satire is therefore not designed to create empathy about poverty or present a sense of theatrical realism. Instead, it is a jibe at the state's legal narrative that the masterless are a violent threat to society.

The use of comedy in the representation of Autolycus's crimes suggests that his criminality is less about the law's materiality (its operational response to a crime) and more about its ethics (the legal equity that underpins the law). His actions help reveal the slipperiness of legal interpretation and the space in which lawful and criminal

¹⁵² S. Matthewe 6:26.

¹⁵³ For example, Peter Laslett cites the parish register in Brewood in Staffordshire in which 'a poor wandering boy.... Wench.... Child.... Man' among many others, were found dead. Peter Laslett, *The World We Have Lost*, p. 148. J. A. Sharpe's examination of local court records found that most vagrants were looking for work while others presented various 'hard luck stories'. J. A. Sharpe, *Crime in Early Modern England: 1550-1750*, p. 101.

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acts coexist. As an audience member, we participate in his criminality by desiring more entertaining unlawful behaviour. The comedy therefore undermines the sense of illegality because it produces a narrative suggesting that none of Autolycus's victims are hurt or particularly disadvantaged: 'In law, what plea so tainted and corrupt, / But, being seasoned with a gracious voice, / Obscures the show of evil?' (*Merchant of Venice*: III.2.75-77). It is a narrative that reveals 'a legal system whose ongoing effect was to change the order of the real by offering a set of textual and technical substitutions for the real'.¹⁵⁴ The state's legal narrative works in parallel, in almost exactly the same way. The only difference is that an alternative 'set of textual and technical substitutions' (lack of humour and sedition, etc.) result in the masterless man being viewed negatively.

The play presents the hypocrisy of the legal narrative by comparing Autolycus's vagabond behaviour with that of the elite. For example, Autolycus regularly changes his clothes and disguises himself thereby suggesting that his identity is both changeable and slippery. He lists a series of prior occupations to the Clown before concluding that having, 'flown over many knavish professions, he settled only in rogue' (IV.3.90-91). In the play, his first persona is the vagabond, in which he boasts of stealing a 'sheet bleaching on the hedge' for a 'quart of ale' (IV.3.5, 8), while his second persona is the victim of a violent crime: 'I am robbed, sir, and beaten' (IV.3.57). His third is the 'pedlar at the door' who 'sold all my trumpery' who at the same time 'picked and cut most of their festival purses' (IV.4.182, 585, 600). His fourth persona is a 'courtier' (IV.4.709) before providing audiences with a glimpse of

¹⁵⁴ Bradin Cormack, 'Paper Justice, Parchment Justice: Shakespeare, *Hamlet*, and the Life of Legal Documents' in *Taking Exception to the Law, Materialising Injustice in Early Modern English Literature*, ed. by Donald Beecher et al, p. 47.

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a penitent man (V.2.133-34). Each persona is designed to deceive those around him in a series of flamboyant caricatures (but not audiences, who are given the privileged position of being complicit through direct address). Autolycus' different personas echo rogue literature and the vagrant stereotype of deceit: 'an unusually free agent, in many ways attractive'; a 'caricature... [of] the guilt-ridden fascination of misrule'.¹⁵⁵ Autolycus is not the satirical image of an inhabitant of a rogue society of counter-culture, but the state's efforts to create one; a bogeyman to blame for the difficult economic and social hardships experienced by the majority of England's people.

The use of multiple deceptive personas is also used by the play's elite. For example, the 'unusual weeds' (IV.4.1) worn by Prince Florizel, creates a 'swain's' persona (IV.4.9) opposite a similarly disguised King Polixenes and Camilo. His second persona is a tinker, 'exchange[d]' with Autolycus (IV.4.618-25) before settling on the persona of a Prince. Whereas the deception deployed by Autolycus is deemed illegal, that undertaken by the play's elite is not. There is no hint of punishment for anyone other than Autolycus (because of his itinerate status): who, like the elite is masterless, but unlike them would suffer the 'Gallows' and be 'certainly whipped' (IV.3.27, 82). The disparity highlights what Paul Slack intimates as the double standard applied to legislation:

Parliament had ceased to legislate against covetousness and come to tolerate usury by 1572; its opposition to enclosure was no more than half-hearted, at any rate after the 1590s; and it repealed sumptuary laws regulating the fashions of the elite in 1604. By contrast, measures intended to reform the manners and behaviours of the lower orders enjoyed an increasingly warm

¹⁵⁵ Paul Slack, *Poverty and Policy in Tudor and Stuart England*, p. 105.

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parliamentary welcome. Between 1576 and 1610, there were 35 bills on drunkenness, inns and alehouses, 9 against prophanation of the sabbath, 9 dealing with bastardy and 6 against swearing.¹⁵⁶

The similarity in the deployment of visual deception emphasises the disparity of the law's application when it came to the poorest and most vulnerable in society.

The performative power of Autolycus' privileged position locates his audiences / readers within his carnivalesque celebration as he directly cajoles us to participate vicariously in his petty crime through the use of humour, 'A prize, a prize!' (IV.3.29) and thereby laugh along with him at his conceited success: 'Ha ha! What a fool honesty is! And trust, his sworn brother, a very simple gentleman' (IV.4.584-85). We admire 'the elegance of Autolycus's theft', as he 'sings, sells, and picks pockets at the same time... and does not get caught' while simultaneously being discouraged 'to judge and condemn'.¹⁵⁷ However, the reality of the vagrant's persona was anything but elegant. Paul Slack explains how the vagrant's appearance 'was enough to make him [seem] threatening'. He describes soldiers with facial deformities caused by war injuries or pock-marked through disease and malnutrition.¹⁵⁸

Although the play does not present Autolycus as an inhabitant of a rogue society and its counterculture, his marketing of ballads parodies the Jacobean state's efforts at

¹⁵⁶ Ibid., p. 130.

¹⁵⁷ Steven R. Mentz, 'Autolycus, Robert Greene, and the Structure of Romance in *The Winter's Tale*', p. 80; William Collins Watterson, 'Shakespeare's Confidence Man', *The Sewanee Review*, 101.4 (1993), pp. 536-548 (p. 536), <<https://www-jstor-org.ezproxy.lancs.ac.uk/stable/27546776?sid=primo>> [accessed 25 September 2024].

¹⁵⁸ Paul Slack, *Poverty and Policy in Tudor and Stuart England*, p. 98.

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creating one. His hyperbolic and rhetorical linguistic techniques parody the state's image of the duplicitous and deceitful itinerate vagrant operating against particularly dim-witted customers. Autolycus' performative approach creates a comedic effect through the use of similes, hyperbole, emotional inference, the use of lists, repetition, rhetorical questions, and anecdotes, as seen in his selling of ballads:

Mopsa: Is it true, think you?

Autolycus: Very true, and but a month old

Dorcas: Bless me from marrying a usurer!

Autolycus Here's the midwife's name to't, one

Mistress Tale-porter, and five or six honest wives

that were present. Why should I carry lies abroad?

(IV.4.256-61)

According to Frances E. Dolan and Nicholas Moon, there are a number of strategies and techniques employed by the ballad writers to establish a sense of truth surrounding their texts, many of which are deployed by Autolycus.¹⁵⁹ For example, the tone struck by the seller has to be appropriate to the environment. In *The Winter's Tale*, the scene is festive and frivolous and yet Autolycus cuts across this tone by suggesting that the ballad is 'very doleful'; that its content is serious and apotropaic in nature (IV.4.253). His repetition of the intensifier 'very' (IV.4.253, 257) adds performative exaggeration to the sense of validity in ballad content. His use of a temporal framework around the ballads functions to contemporise and to suggest that

¹⁵⁹ Frances E. Dolan, 'Mopsa's Method: Truth Claims, Ballads, and Print Authors', *Huntington Library Quarterly*, 79.2 (2016), pp. 173-185 (p. 177), doi: 10.1353/hlq.2016.0014; "'This is Attested Truth": The Rhetoric of Truthfulness in Early Modern Broadside Ballads', in *News in Early Modern Europe, Currents and Connections*, ed. by Simon F. Davies and Puck Fletcher (Boston: Brill, 2014), pp. 230-250 (p. 246).

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the narrative is verifiable through investigation: 'and but a month old' (IV.4.257). However, through the use of dramatic irony, audiences are constantly aware that Autolycus is cozening his customers. And, to emphasise this point, Autolycus uses a nonsensical date to satirize the selling: 'that appeared upon the coast on Wednesday the fourscore of April' (IV.4.265-66).

The list of witnesses to establish the verisimilitude of the ballad is also exaggerated: "Mistress tale-porter", 'five or six honest wives', 'Five justices', 'and witnesses more than my pack will hold' (IV.4.259-60, 272-273). By alleging that 'five judges' placed their signatures beneath to verify the story of a singing giant fish (IV.4.265-73), Autolycus draws on more than the reputation of the judiciary (with its connotations of authority and power), but of the printed materials that underpin the law's veracity. His ballad's association with the judicature metaphorically places it alongside other printed forms of law, like legislation or law reports (even though they wouldn't be authorised by a signature in the same way). He is lampooning the same systems and structures that would, if they caught him, sentence him to a 'hanging' (IV.4.612).

Autolycus's ridicule of the legislation on masterless highlights the culmination of changes outlined through this chapter, where masterlessness is shown to have evolved in theatrical portrayals separately and differently to its evolution in state legislation. Whereas masterlessness is represented in a similar way in the Elizabethan play *2 Henry VI*, its representation in the Jacobean plays *Coriolanus* and *The Winter's Tale* is antithetical. Public attitudes, as referenced and alluded to in the popular culture of the plays suggests that the separation in their narrative

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representation has come about because of a number of reasons. For example, the plays reveal how the hegemony built into the legal system seems to become less tolerable in the Jacobean plays. In *2 Henry VI*, the play discloses how the law is not fixed but is dynamic because laws are written and interpreted by the ruling classes. Cade's rebellion highlights how the appropriation of the law is possible by anyone with a position of authority and power. York's appropriation of the law shows how legislation can be constructed to justify any action regardless of its level of illegality. However, in the Jacobean play *Coriolanus*, hegemony is acknowledged as inherent in the legal process by the plebians and is shown as an impediment to social harmony. While the play does not consider removing law as a means for governing people, it does suggest that more equitable rigour is needed. It also presents an understanding that state legislation designed to eradicate masterlessness is ideological in design rather than the policing of societal misdeeds. *Coriolanus* also offers an alternative political resolution that draws on Roman legal and political structures which require democratic change. Therefore, the Jacobean plays demonstrate a greater awareness of the application of hegemony in law which advertises its lack of equity.

The plays reveal how there is a lack of equity when the law is applied to characters of a different class. Not only is the inequality shown in the law's implementation but also in the way that it functions. In *2 Henry VI*, the ruling elite have the ability to usurp the role of justice when the petitioners are confronted by Suffolk and Queen Mary. However, in *Coriolanus* the plebians are able to enforce change to the way aristocrats can interfere with the law through the use of the tribunes. This process reveals to the play's audiences that the law can only operate when there is social

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acquiescence. The difference between the state's representation of the masterless and the plays' dramatization of them show that acquiescence in being governed by law has already started to be disintegrate.

The representation of masterlessness in *2 Henry VI* is less realistic than in the dramatization of the Jacobean plays. This may be caused by greater government scrutiny of the theatre during Elizabethan civil unrest. However, in the Jacobean plays, portraying the poverty mimetically or satirising the state's representation of masterlessness, particularly in *The Winter's Tale*, suggests that the legal narrative espoused by the state is seen as less realistic than the fiction presented on the stage. Essentially, playgoers are choosing to believe that poverty is the cause of masterlessness and not sedition.

Chapter 2

Sexual Crime

'Bless me, what a fry of fornication is at the door' (*Henry VIII*, V.4.36)

The quotation above from the last play which Shakespeare wrote, with John Fletcher, reveals the sense of oppression from sexual transgression throughout the early modern period. In this chapter, I interrogate Shakespeare's Elizabethan text *The Merry Wives of Windsor* and his Jacobean text, *Measure for Measure* to identify the changing attitudes towards the crime of sexual transgression. This chapter considers the plays' evolving representations of the social and cultural portrayal of sexual transgression while comparing them to the state's developing legal narrative of the crime. I use the umbrella term 'Sexual transgression' to refer to pre-marital sex (incontinence), adultery (including male cuckoldry), illicit aspects of marriage jointure and marriage law, and the social anxieties associated with the slander of being accused of or associated with illicit sexual behaviour.

I investigate late Elizabethan societal attitudes towards sexual transgression and how attitudes begin to change in the early Jacobean period. Both *The Merry Wives of Windsor* and *Measure for Measure* present sexual activity as the outcome of human instinct or desire. The law, however, categorises it as behaviour that is devoid of emotion and attempts to regulate it through the operations, systems and structures of different jurisdictions: the Church, the state, the monarch and communal self-regulation. I examine the increase in contradiction and conflict between these

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dramatized jurisdictions to show the plays' representation of the state's conscious centralisation of the law, the diminishing legal jurisdiction of the Church, and the decline in the voracity of custom and community self-regulation. I show how the two Shakespeare plays present the impact of providing state institutions with increased legal authority on people's contact with the law.

The Jurisdictional Demise of Community Self-Regulation in Controlling Sexual Transgression: *The Merry Wives of Windsor*

In *The Merry Wives of Windsor*, Sir John Falstaff's attempted adultery not only offers us an insight into late sixteenth century attitudes towards cuckoldry and illicit sexual activity; it also provides us with a tantalising glimpse into the shifting legal jurisdictions surrounding civic communities and the way that they were permitted to regulate sexual misbehaviour among their number. It is therefore my contention that *The Merry Wives of Windsor* captures, 'English law [as it] shifted from a medieval focus on doctrinal principles to a new model of jurisprudence, judge-made law reflected in decisions'.¹

Through the early modern period, the prosecution of adultery moved from the ecclesiastic courts to include the common law courts too. This shift was driven by a desire for harsher penalties against sexual offenders but still meant that adultery

¹ Allen D. Boyer, 'Drama, Law, and Rhetoric in the Age of Coke' in *The Law in Shakespeare*, ed. by Constance Jordan and Karen Cunningham (Basingstoke: Palgrave Macmillan, 2007), p. 31. See also Peter Holland, "'The Merry Wives of Windsor": The Performance of Community', *Shakespeare Bulletin*, 23.2 (2005), pp 5-18 (p. 13), <<http://www.jstor.org/stable/26349423>> [accessed 7 November 2024].

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could be, and was, tried under different legal jurisdictions (or legal pluralisms).² The change in legal jurisdictions over crimes of illicit sexual activity was played out, to some extent, in the public arena. For example, David Dean points out that changes in the law appertaining to adultery (the 1584-5 bill and the 1601 bill) were abandoned 'because of the powers it gave to ecclesiastical courts'.³ The common law, by contrast with the ecclesiastical law, was concerned with temporal matters only. Subha Mukherji points out that when adultery was prosecuted through the common law courts, infidelity was viewed as a 'violation of ownership and usurpation of property'.⁴ J. H. Baker positions the crime of adultery somewhere between the legislations of defamation and the enticement of a servant. To prosecute adultery in common law, there had to be a financial loss: a loss in property or questions arising over the authenticity of inheritance rights.⁵ The common law thus reflected the unequal partnership in marriage in that it acted disproportionately against female adultery.⁶

The type of punishment a guilty defendant could expect was dependent on the jurisdiction chosen by the plaintiff. The plaintiff in an adultery prosecution could choose an ecclesiastical court if they wanted to restore their damaged reputation

² Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge University Press, 1987), p. 150. See also Phillip Stubbes, *Anatomy of Abuses in England in Shakspeare's Youth, A.D. 1583: Part II: The display of corruptions requiring reformation* (London: N. Trubner, 1882), p. 282. *Internet Archive* <<https://archive.org/details/phillipstubbessa00stubuoft/page/n7/mode/2up?q=adultery>> [accessed 6th June 2023].

³ David Dean, *Law-Making and Society in Late Elizabethan England: The Parliament of England 1584-1601* (Cambridge University Press, 2002), p. 184.

⁴ Subha Mukherji, *Law and Representation in Early Modern Drama* (Cambridge: Cambridge University Press, 2009), p. 76.

⁵ J. H. Baker, *An Introduction to English Legal History*, 3rd edition (Butterworths, 1990), p. 500. Michael Dalton, *Countray Justice* (London: Societie of Stationers, 1619; repr. Professional Books, 1973), p. 292.

⁶ Anthony Fletcher and John Stevenson, 'Introduction' in *Order and Disorder in Early Modern England*, ed. by Anthony Fletcher and John Stevenson (Cambridge University Press, 1987), p. 33. See also Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Clarendon Press, 1998), p. 188.

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locally. If the prosecution was successful, the defendant would either face excommunication or a penance that included standing disgraced in front of the congregation (local community), dressed in a white sheet, holding a taper while confessing their crime and asking for forgiveness. The punishment of a guilty defendant would therefore be both public and humiliating. However, if a plaintiff wanted the guilty defendant to undergo physical punishment and/or punitive financial damages, then they would probably choose the common law courts.⁷ Both of these jurisdictions relied upon the assiduity of the churchwardens and parish constables and required legal structures within a community to punish the guilty defendant.

In addition to the recognised legal routes for the regulation of sexual behaviour, there existed an informal, communal form of self-regulation. A community's self-regulation was different to intervention by the law because it used social pressure to instigate a change in behaviour of the person who had chosen to deviate from social norms.⁸

Keith Wrightson defines 'Community' as 'a quality in social relations which is, in some respects, occasional and temporary, and which needs periodic stimulation and reaffirmation if it is to survive the centrifugal forces of the inevitable tensions which arise in local society'.⁹ Social tensions, were, Wrightson asserts, 'subjected to the sanctions of neighbourhood opinion' in which 'gossip existed to subject domestic conduct to constant scrutiny and evaluation'.¹⁰ J. A. Sharpe describes the shift in jurisdiction from community and Church authority into state governance as

⁷ The King's Bench judges would action spiritual defamation (adultery) 'provided it caused temporal loss'. J. H. Baker, *An Introduction to English Legal History*, p. 499.

⁸ For a discussion on community arbitration as an alternative to pursuing grievances at law, see: M. J. Ingram, 'Communities and Courts: Law and Disorder in Early-Seventeenth-Century Wiltshire', in *Crime in England, 1550-1800*, ed. by J. S. Cockburn (London: Methuen, 1977), pp. 110-134.

⁹ Keith Wrightson, *English Society 1580-1680* (London: Hutchinson, 1982; repr. 1986), p. 62.

¹⁰ *Ibid.*, pp. 99-100.

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'insidious', 'inefficient', and 'forced'.¹¹ The shift to legal pluralism also often placed the different jurisdictions into opposition with each other.

The existence of both communal self-regulation and the competing legal jurisdictions placed minor officials in particularly difficult positions as their roles often sat between the formal and informal mechanisms of control. Individuals who undertook surveillance or coercive roles within their community were sorely aware of the internal politics that surrounded their occupation. Any legal interference within a community enacted by a parish constable or churchwarden ran the risk of disrupting local harmonies which could result in retribution. For example, Sharpe cites an instance where 'the churchwarden refused to cooperate in presenting' the 'disorderly Robert Sule' because he was the town miller the local community were 'loathe to offend' him.¹² Sharpe also gives the example of 'the parish constable, who would often find the laws he was expected to enforce and the administrative instruction he had received from quarter sessions at odds with local ideas and the best interests of his fellow villagers'.¹³

In Shakespeare's Elizabethan play *The Merry Wives of Windsor* the crime of illicit sexual activity and the operations of the law are dramatized. Falstaff's crime of attempted adultery is compounded by his attempt to embezzle money from the two wives' husbands. This meant that his crime could be tried in the Court of Common Pleas because the crime of embezzlement was viewed as a temporal crime. It could also be tried in the ecclesiastical court because adultery was seen as a spiritual

¹¹ J.A. Sharpe, *Crime in Early Modern England 1550-1750* (Harlow: Longman Group, 1984), pp. 76-77.

¹² *Ibid.*, p. 76.

¹³ *Ibid.*, p. 77.

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crime. In the fictional Windsor, both of these jurisdictions are represented in the characters of Sir Hugh (the parish priest) and Justice Shallow (Justice of the Peace). Both are parodied within the play to show their ineffective judicial authority. Justice Shallow is a parody of temporal law because he is shown as full of bluster: he threatens to prosecute Sir John Falstaff for theft and disturbance of the peace but never takes any real action. Sir Hugh parodies the spiritual law of the ecclesiastical courts in that he provides moral instruction to which he does not himself conform. He also distances his parish from ecclesiastical law by choosing not to formally prosecute Sir John for his attempts at adultery. Instead, both characters seem to cultivate a sense of self-importance associated with their respective legal positions, which suggests that the status that accompanies the law is more important to them than the law itself.

In the play, local custom is represented as being superior to the increasingly intrusive common law - especially in the field of women's rights. *The Merry Wives of Windsor* shows that before the rise in prominence of common law, women had an 'equivalent ... share in the custody and interpretation of law'; a power that came to reside exclusively in the hands of men during the early modern period.¹⁴ In the ecclesiastical and common law courts, as well as claiming more power over the law, men also regularly seemed to evade humiliating penance at the hands of the law while women bore the emotional shame, physical beatings and incarceration by the state - who claimed that their physical condition was to blame for adulterous

¹⁴ Tim Stretton, 'Women, Custom and Equity in the Court of Requests' in *Women, Crime and the Courts in Early Modern England*, ed. by Jenny Kermode and Garthine Walker (London: University College London Press, 1994), pp. 170- 189 (p. 171). Stretton quotes A. Clark, *Working Life of Women in the Seventeenth Century*, ed. by Amy Erikson (London: Routledge, 1993), p. 237.

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behaviour.¹⁵ Mistresses Ford and Page develop a sense of their own quasi-legal equity in the text's representation of community self-regulation. Their treatment of Sir John Falstaff is representative of an equitable sentence that would be unlikely under the jurisdictions of common law or ecclesiastical law.¹⁶ For example, before throwing Sir John 'in the muddy ditch close by the Thames side' (III.3.12), Mistress Page's feigned exclamations upon entering Mistress Ford's room express their community's moral outrage:

O Mistress Ford. What have you done?

You're shamed, you're overthrown, you're undone

forever! (III.3.87-89)

A contemporary spectator would have been aware that an adulteress was socially ostracized because they threatened the hierarchy of the family unit - and any attack on the family was received as a direct threat to the community itself.¹⁷ Mistress Page's words allude to the attendant abuse that could be expected from neighbours - ranging from sexual insults to Skimmingtonstyle processions (shaming rituals accompanied by rough music played on pots and pans beaten to make a loud noise) for a husband married to a suspected adulteress or a shrew.¹⁸ The exclamation

¹⁵ William Lambarde, *William Lambarde and Local Government: His "Ephemeris" and Twenty-Nine Charges to Juries and Commissions*, ed. by Conyers Read (Cornell University Press, 1962), pp. 23-57. Anthony Fletcher traces legislation that was openly 'class and gender specific' in *Gender, Sex and Subordination in England 1500 - 1800* (Yale University Press, 1999), pp. 277-8.

¹⁶ Tim Stretton, 'Women, Custom and Equity in the Court of Requests', pp. 171-2.

¹⁷ David Underwood, *Revel, Riot, and Rebellion: Popular Politics and Culture in England 1603-1660* (Oxford University Press, 1985), p. 9.

¹⁸ Laura Gowing, 'Language, power, and the law: women's slander litigation in early modern London', in *Women, Crime and the Courts in Early Modern England*, ed. by Jenny Kermode and Catherine Walker (University College London Press, 1994), pp. 26-47 (p. 32). See also D. E. Underdown, 'The Taming of the Scold: The Enforcement of Patriarchal Authority in Early Modern England' in *Order and Disorder in Early Modern England*, ed. by Anthony Fletcher and John Stevenson (Cambridge: Cambridge University Press, 1987), pp. 116-136 (pp. 127-28); Anne Parten, 'Falstaff's Horns: Masculine Inadequacy and Feminine Mirth in *The Merry Wives of Windsor*', *Studies in Philology* 82.2 (1985) pp. 184-99

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'shamed' therefore carries connotations of guilt, disgrace and pain, and infers a loss of esteem to reputation and standing within the community. Mistress Page's use of the term 'shamed' also invokes ecclesiastical punishments while the women's use of other ecclesiastical language evokes the imagery associated with Christian resurrection judgements:

Mistress Ford: If I would but go to hell for an eternal
 moment or so.... (II.1.43-44)

Mistress Page: Why Sir John, do you think, though
 we would have thrust virtue out of our hearts by
 the head and shoulders, and have given ourselves
 without scruple to hell, that ever the devil could have
 made you our delight? (V.5.138-41)

Church punishment was designed to provoke a sense of shame in the guilty party and fear in the congregation through a ritualised form of community humiliation. Guilty perpetrators publicly pronounced their crime of adultery as a way to appease the outrage of one's neighbours during Sunday church services and at busy times in the marketplace.¹⁹ Ecclesiastical records show that it was female perpetrators that suffered disproportionately regarding accusations of sexual transgression.²⁰ Laura Gowing explains that there was an increase in the number of female litigants attempting to clear their name in sex and adultery slander cases. She says that

¹⁹ E.R.C. Brinkworth, *Shakespeare and the Bawdy Court of Stratford* (London: Phillimore, 1972), p. 85.

²⁰ Martin Ingram, *Carnal Knowledge: Regulating Sex in England, 1470-1600* (Cambridge University Press, 2017), p. 168.

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'between 1572 and 1640, as defamation cases increased, numbers of women plaintiffs increased fivefold'.²¹ Men did not however, always or easily evade ritual humiliation because they were frequently the target of skimmingtons..²² However, in the play, the wives invert their threatened humiliation associated with Falstaff's illicit sexual advances by reflecting the guilt back on to the male offender himself. Falstaff thereby becomes the representative male malefactor who, unlike many other male perpetrators, was unable to evade penance and/or punishment. The play's Windsor community come together in the denouement to ensure that through community punishment, a sense of equity is found in justice for the two wives; justice, that was otherwise absent from common law and ecclesiastical law proceedings.

An early modern woman's modest reputation did allow for peaceful social activity outside of the family home. Mistress Page's assertion that she and Mistress Ford will be 'overthrown' (III.3.80), is used figuratively to mean 'cast down from a position of influence and prosperity' within that community.²³ Although a sexual joke (being forced under Falstaff's body) the word 'overthrown' also creates a distinction between authority and forced subjection. This can be interpreted as a loss of authority or power within the community but could equally mean a loss of authority and position within the realm of the household. Not only would this result in a loss of self-esteem and physical well-being but the *1563 Statute of Artificers* also states that

²¹ Laura Gowing, *Domestic Dangers*, p. 33. For further discussion on accusations against female defendants, see pp. 101-105. In common law, Lambarde highlights several cases in which the mother is punished punitively for the birth of a child out of wedlock. There is no mention of the father's punishment. William Lambarde, *William Lambarde and Local Government*, pp. 30-32, 37, 43, 51.

²² For ecclesiastical punishment of men for sexual offences, see E. R. C. Brinkworth, *Shakespeare and the Bawdy Court of Stratford*, rest of reference? Place of publication and date?)pp. 120-146.

²³ *OED*: n. & adj. Defeated, vanquished; removed from power, deposed.

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any female between the ages of 14 and 30 would be required to find employment within another household:

That ever person being unmarried, and every other person being under thage of thirty Yeres ... and not having Landes Tenementes Rentes or Hereditamentes Copieholde or Freeholde of an Estate or Inheritance ... of the clere yerely value of fourtye shillings ... nor being lawfully retheyned in Housholde or in any Office with anny Nobleman Gentleman or others,... unmarried or under the said Age xxxty yeres ... shall not refuse to serve according to the tenour of this Statue, upon the paine and penalties hereafter mentyoned.²⁴

Mistress Page's feigned exclamation of being 'undone' (III.3.80) by having been caught in an adulterous situation has a fiscal undertone: it suggests financial destruction.²⁵ Laura Gowing makes it clear that a woman's adultery was grounds for marital separation which suggests financial ruin.²⁶ J.H. Baker makes the point that where 'the wife eloped with a paramour, the husband might alternatively bring an action on the case for enticement, which bears a strong resemblance to the action for enticing away servants'.²⁷ It is the resemblance to an action regarding servants that makes the elopement an economic transaction.

²⁴ *The Statutes of the Realm* (George Edward Eyre and William Spottswode, 1870), IV, p. 600, <<https://encyclopediavirginia.org/the-statutes-3/>> [accessed 31 May 2023].

²⁵ 'Undone' is also used by Middleton in 1608 as a reference to financial ruin. 'Wit: Why alassee, my Creditors? could you finde no other time to vndo mee but now, rather your malice appeares in this then the iustnesse of the debt.' Thomas Middleton, *A Trick To Catch the Old-One* (London: George Eld, 1608), Act III, <<https://www.proquest.com/docview/2138579241/Z000102655/8A2DAE85C1B24738PQ/1?accountid=1197>> [accessed 31 May 2023].

²⁶ Laura Gowing, 'Language, power, and the law: women's slander litigation in early modern London', p. 29.

²⁷ J.H. Baker, *An Introduction to English Legal History*, p. 519.

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Women lived under the scrutiny and surveillance of their neighbours and if they were seen to be acting suspiciously, an adulteress could have their liberty curtailed by the community. Catherine Richardson explains that a woman's virtue had to be seen to be beyond reproach. She explores how women succumbed to a 'complex grammar of the legitimacy of actions, which can be assessed by their positioning within the common patterns of social intercourse'.²⁸ Their whereabouts at key times of the day (for example, when they left the house and their direction of travel) alongside other legitimate social activities, could be used in the narrative of a deponent in an action against the woman. Richardson points out that what was brought to court was often a complex web of small suggestions and clues – often embedded into the personal and social dynamics of a woman's daily routine.²⁹ The play's tension draws on this grammar of legitimacy when the wives engage with Falstaff and confront similar social expectations. For example, when the play places both wives in potentially compromising situations and the suspicious Ford draws closer, the dramatic tension for the characters and spectators rises to a level of biting anticipation. And just in case the likely reaction of Ford is unclear to audiences, it is played out in advance in the sequence in which Mistress Quickly is caught unsuccessfully hiding Peter Simple in a wardrobe. A 'horn-mad' (I.4.43) Caius responds to the *unauthorised* man in the private chamber of his housekeeper, echoing the explosive anger of a husband upon finding an unfaithful wife:

O *diable, diable!* Vat is in my closet? Villain, *larron!*

Rugby, my rapier!

(I.4.59-60)

²⁸ Catherine Richardson, *Domestic Life and Domestic Tragedy in Early Modern England: The Material Life of the Household* (Manchester: Manchester University Press, 2006), p. 34.

²⁹ *Ibid.*

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Ford's violence is also anticipated in Mistress Page's description of his agitated physical and psychological state. The awaited violence is played upon and deployed theatrically by the wives as part of their humour; a joke on Falstaff to ensure his compliance. But importantly, the wives' comedy is also for the benefit of the play's spectators. At one level the dramatic irony associated with Falstaff draws the spectators into the confidence of the wives – thereby making them complicit in their form of community justice against an aristocratic outsider. On another level, it emulates a community secretly enjoying the discomfort of Falstaff; the humiliation of a high ranking neighbour. On yet another level, the joke works to invert the patriarchy within the family structure, and by association, the common law itself.

Anne Parten describes the 'not uncommon assumption of the period: that levity of spirits, in a woman, implies a corresponding levity of morals'.³⁰ In the play, Mistress Page picks up on this theme in an exposition of her conscience: 'What should I say to him? I was frugal with my mirth?' (II.1.23-24). Ford highlights the same correlation when he says of his own wife, 'in other places, she enlargeth her mirth so far that there is shrewd construction made of her' (II.2.197-99). The wives' use of mirth, however, is not constrained to a series of clever jests. Instead, the wives' mirth emphasises their superior wit within the fictional Windsor community: it is borne out in their response to Falstaff, their respective husbands and in the application of their desire. They prove that 'wives may be merry yet honest too' (IV.2.89). Their wit is a carnivalesque inversion of social structures and the world order, and it is expressed in significantly legal and political terms: 'Why, I'll exhibit a bill in the parliament for the putting down of men' (II.1. 24-25). According to Cristina León Alfar, the wives' refusal

³⁰ Parten, 'Falstaff's Horns', p. 188.

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to repress their merriment and adopt the demure life that a patriarchal society expected, 'alters the discourse of female virtue, opening the possibility for a revision of "proper femininity" and deconstructing the binary between virtue and mirth'.³¹

At all times the law is represented as part of the comedy: it shapes how a spectator might think and respond to the law and its operations. For example, when the community comes together to deal with Falstaff's inappropriate behaviour, we laugh at his misfortune safe in the knowledge that his punishment is deserved and restorative. Consequently, the satire allows the text to reflect upon a bygone 'idealised' view of community engagement in which self-regulation achieves reformation and harmony because the culprit has a desire for community acceptance. Although this view is a fictional representation of pre-centralised legal operations, it was not necessarily an unusual way for a community to act. The historian Martin Ingram explains that 'when cases did occur, communities chose to deal with them by admonition and advice rather than legal action'.³²

Beyond its championing of communal self-regulation, *The Merry Wives of Windsor* represents the operations of common law as ineffective when rank enters into a case. For example, at the beginning of the play, the law and its mechanisms are shown to be incapable of action when complaints are raised against Sir John Falstaff for poaching and unrest. Although Justice Shallow is outraged, he is slow to actually prosecute Falstaff because he is a knight and therefore likely to be Shallow's social

³¹ Cristina León Alfar, "'Let's consult together'", Women's agency and gossip network in *The Merry Wives of Windsor*, in *The Merry Wives of Windsor: New Critical Essays*, ed. by Evelyn Gajowski and Phyllis Rackin (London: Routledge, 2018), pp. 38-50 (p. 39).

³² Martin Ingram, *Church Courts, Sex and Marriage in England*, p. 259.

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superior. Shallow is a Justice of the Peace and therefore a public official and a representative of the state. When Falstaff attacks Shallow, he is essentially undermining the authority of the state – and yet Shallow does very little except threatening to ‘make a Star Chamber matter of it’ (I.1.1-2). The Star Chamber was a prerogative court in which matters of state and important private cases could be brought before the judges made up of members of the Privy Council.³³ Shallow’s rush to make this a Star Chamber matter and bypass the usual local legal procedure therefore creates the comedic impression that he has delusions of his own importance and status. His threat of prosecution also parodies the rapid increase in personal litigation that swept across England through the 1590s and reveals the increasingly widening jurisdiction of the Star Chamber relating to their responsibility for breaches of the peace: ‘It is a riot’ (I.1.3). C.W. Brooks explains ‘that it was not just in the matter of numbers of cases that litigiousness may be said to have entered a new phase during the later 1590s and early decades of the seventeenth century. Before roughly 1590, most commentaries on and remedies suggested for the increase in litigation stressed the need to stem the flow of litigation into London by reinforcing local jurisdictions.’³⁴

The scene bears out Jacques Derrida’s view of the law as ‘an authorised force’, and that whoever authorises the discourse behind that exercise of force, wields immense social and political power – regardless of whether that force is justifiable or not³⁵

³³ K. J. Kesselring and Natalie Mears, ‘Introduction: Star Chamber Matters’, in *Star Chamber Matters: An early Modern Court and its Records*, ed. by K. J. Kesselring and Natalie Mears (London: University of London Press, 2021), pp. 1-18.

³⁴ C. W. Brooks, *Pettyfoggers and Vipers of the Commonwealth: The ‘Lower Branch’ of the Legal Profession in Early Modern England* (Cambridge: Cambridge University Press, 1986), p. 108.

³⁵ Jacques Derrida, ‘Force of Law: The Mystical Foundation of Authority’ in *Acts of Religion*, ed. by Gil Anidjar (London: Routledge, 2002), pp. 228-298 (p. 233).

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Shallow's status as a Justice of the Peace, locates him inside the apparatus of the law and thereby provides him with a voice that is seemingly authorised by it.

However, as quickly as Shallow's legal credentials as, 'esquire', 'Justice of Peace', 'who writes himself *Amigero* in any bill, warrant, quittance or obligation' (I.1.3, 4, 8-9) are asserted, his authority is ridiculed by comments which undermine him. He is described by Abraham Slender as 'Coram' (I.1.5) - a Latin term meaning 'without jurisdiction', and 'Rato-lorum' (I.1.7), a mocking corruption of the Latin term 'rotuloram' meaning 'record keeper for the shire'.

The taunting continues through blunders made in a description of Shallow's coat of arms. Sir Hugh Evans mispronounces 'the dozen white luces' as 'the dozen white louses' (I.1.14, 16). By presenting Shallow's character in this way, the play makes a critical point: Shallow would have been selected as a magistrate in the Quarter Sessions by the crown whatever his abilities (even if he was 'lousy' at the job). Andy Wood notes, 'Membership of the bench was as much a social statement, identifying its members as the cream of the county's gentry, as it was a magisterial office'.³⁶ Essentially, Shallow (as magistrate) shared the same class and sensibilities as the MPs who were writing the legislation in Parliament: their views about social order and conformity were aligned so that law was written and enforced in a way that favoured them. The clear aim was to centralize the law to override local customs and community-based justice, in which the voice of members of the lower classes were more immediately involved – and therefore silenced.

³⁶ Andy Wood, *Riot, Rebellion and Popular Politics in Early Modern England* (Basingstoke: Palgrave Macmillan, 2002), p. 45.

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However, when Falstaff is confronted by accusations of his alleged crimes, 'you have beaten my men, killed my deer, and broke open my lodge', his reply, 'But not kissed your keeper's daughter?' ignores proprieties of both legal and social conduct. (I.1.93-5). Falstaff's response highlights a weakness in the process of centralising the law: to be effective, law requires a community's arbitrary conformity.³⁷ Arbitrary conformity, the text reveals, is both a strength and a weakness: it creates the normalisation of a legal truth through its coercive apparatus but at the same time it highlights the absolute need for conformity. Falstaff's response, as someone who can operate outside of the law because of his rank, demonstrates that Shallow's power to sustain social conformity is lost.³⁸ In the play, the outcome is a loss of authority for the law (represented through Shallow) and the empowerment of Falstaff. As if to emphasise this point further, when Shallow threatens to take his claim to the Star Chamber, 'The Council shall know this' (I.1.99), Falstaff's response ridicules both Shallow's inflated self-importance and his misuse of the law: 'You'll be laughed at' (I.1.101). This episode may highlight a legitimate worry that the Star Chamber would not be bothered with the petty squabbles of minor private disputes, or it could be emphasising that from the 1590s onwards the number of libel cases heard at the Star Chamber increased significantly making it a crucial arena for the defence of reputation.³⁹

³⁷ For an exploration into the state's requirement for arbitrary conformity, see: Lucy J. S. Clarke, 'Testing the "participatory state" in *A Yorkshire Tragedy* (c.1605-8)', *Cultural and Social History: The Journal of the Social History Society*, 19 (2022), pp. 509-528 (pp. 509-513), doi: 10.1080/14780038.2022.2122270.

³⁸ For an example of how parliament debated the effects of how the poor law and taxation were, 'pushing the poor towards social unrest', see David Dean, *Law-Making and Society in Late Elizabethan England*, p. 17.

³⁹ Clare Egan, 'Jacobean Star Chamber records and the performance of provincial libel' in *Star Chamber Matters: An Early Modern Court and Its Records*, ed. by K. J. Kesselring and Natalie Mears (London: University of London Press, 2021) pp. 135-154 (p. 135).

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Church law, which is also foregrounded at the start of the play, is also represented as lacking clarity regarding its exact jurisdiction. This is particularly evident in the Church's representative in Windsor, Sir Hugh Evans. He is a Welsh parson who announces himself as, 'I am of the Church' (I.1.27). Evans' exaggerated Welsh accent casts a sense of irony on the fact that he is representing the Church of England, which seems to suggest that the Church itself exists outside of the Windsor community. Initially, Hugh Evans plays the pious parochial priest whose discourse teems with righteous vocabulary: 'benevolence', 'atonement', 'fear of Got', 'Christian', 'Peace, I pray you', 'Got 'udge me', and 'virtuous' (I.1.27-8, 30-31, 83, 114, 154). At one point at the beginning of the play, his focus appears to rest on his parish administration. During one of his many verbal misunderstandings, he expresses concern for his Church Council: 'The Council, look you, shall desire to hear the fear of Got' (I.1.31-2) when Shallow, with whom he was talking, was instead referring to the Privy Council (at Star Chamber): 'The Council shall hear it. It is a riot.' (I.1.29). The wordplay cleverly emphasises the issue of jurisdictional overlap through the use of similar vocabulary employed by both legal structures. It satirises the usurpation of ecclesiastical jurisdiction by the common law through Evans' misunderstanding.

By the time we meet the Windsor inhabitants, the play suggests that Evans' influence on his congregational neighbours has waned. The text seems to place responsibility for the demise in Evans' moral influence on a lack of consistency in the way he enacts the Church's teachings. For example, at the beginning of the play, Evans intervenes in Shallow's litigation against Falstaff by advocating behaviour

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commensurate with Jesus' teaching in the Lord's Prayer, 'And forgive us our sins / As we forgive those that sin against us' to act as a binding of the peace:

Evans: I... will be glad to do my benevolence, to
 make atonements and compromises between you. (I.1.27-8)

Shallow: Ha, o'my life, if I were young again, the sword should end it.

Evans: It is petter that friends is the sword, and end it. (I.1.37-9)

However, when he gets himself involved in his own confrontation with Doctor Caius, he quickly forgets his own advice. In contrast to his Holy Orders, Evans embarks on a duel of his own.

Caius: I will teach a scurvy jack-a-nape priest to meddle....

 I will cut all his two stones. (I.4.96-98)

Evans: I will knog his urinals

 About his knave's costards... (III.1.10-11)

Evans' hypocrisy is emphasised through its inconsistency with biblical teaching:

'Dearly beloved, avenge not your selves, but give place unto wrath: for it is written, Vengeance is mine: I wil repaye, saith the Lord' (Romaines 12.19). The rhetoric of Evans' dialogue while he awaits the commencement of the duel is also strange.

Instead of singing hymns, psalms or reciting prayers, Evans recites two stanzas from Marlowe's pastoral poem, 'The Passionate Shepherd to His Love' (which is ironic

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considering Marlowe's purported atheism).⁴⁰ Evans' mind is no longer on the spiritual matters evident in his earlier religious advice, but instead on the temporal.

The parson's spiritual inconsistency is further explored in the text when Evans participates in a vengeful prank that results in the theft of three horses from the Host of the Garter Inn's stable. Prank or not, such a crime could result in a significant penalty. For example, on 30th September 1600 at the Southwark Assizes, Henry Awfyled was sentenced to hang for the theft of a single grey mare. Henry Awfyled could not read so couldn't claim the 'Benefit of Clergy', which may have been an option for someone like Evans. The benefit of the clergy was a loophole in the sentencing of felony crimes (crimes that could result in the death penalty): if you could read a section from the Psalter, called the "neck-verse", then you could escape justice.⁴¹ However, like other areas of Church authority, the number of crimes in which 'Benefit of Clergy' could be used, was in decline.⁴² The play presents the prank but does not suggest any resolution, thereby leaving the theatre-goer and reader to wonder for themselves as to whether the horses were returned to the Host, or not. Perhaps Evans and Caius, as fellow Latin speakers (Church and medicine) were destined to escape anyway.

Evans is also called upon to be a witness to the suspected adultery of Ford's wife.

His status as a priest would make him an excellent compurgator (a character witness

⁴⁰ Christopher Marlowe, 'The Passionate Shepherd to His Love', in *Poems of the Elizabethan Age*, ed. By Geoffrey G. Hiller (London: Methuen, 1977), pp. 265-6.

⁴¹ Lorna Hutson, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford University Press, 2011), p. 36.

⁴² The decline in the use of the Church Courts and its subsequent effectiveness, can be defined through the increase and decrease of income derived from fees. See Ronald A. Marchant, *The Church Under the Law: Justice, Administration and Discipline in the Diocese of York 1560-1640* (Cambridge University Press, 1969), pp. 15-23.

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in an Ecclesiastical Court case). Compurgation was the testimony of a number of witnesses asserting the truth in either party's legal dispute. For example, at the Peculiar Court held in Stratford Upon Avon on 28th May 1622, Judith Sadler, the daughter of Hamnet and Judith Sadler (the godparents of Shakespeare's twins) was charged with having 'committed fornication' with William Smith:

Smith had, however, thoughtfully brought into court with him three witnesses, one man and two women (note the relative strengths) and they testified that 'Judith Sadler ... did in the house of Thomas Buck upon her knees swear and protest that the said William Smith did not ever at any time have any carnal knowledge of her body....'⁴³

The use of compurgators in an action was an essential part in asserting one person's innocence or guilt over another's. The act of adultery for example, was almost always undertaken in secrecy which meant that proof of guilt was difficult to establish. At first sight therefore, it may seem that such a system of proof could be open to significant abuse by unscrupulous individuals to either make false claims against someone or escape responsibility of their actions. However, the system was more robust than might at first be assumed. Martin Ingram cites court records from the Archdeaconry of Buckingham in his exploration of the effectiveness of compurgation: 'they were real people, drawn from the neighbours of the accused person, not legal parasites who could be picked up for hire at the doors of the court.'⁴⁴ However, the play further undermines ecclesiastical processes of witness

⁴³ E.R.C. Brinkworth, *Shakespeare and the Bawdy Court of Stratford*, pp. 76-77.

⁴⁴ Martin Ingram, *Carnal Knowledge*, p. 107.

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testimony because as audiences and readers know, Evans is shown to be a flawed character and Ford's wife hasn't actually committed adultery.

In Act Five, the community joins together to publicly humiliate Sir John Falstaff. By placing this form of judicial redress after other forms of law have been ridiculed, the play ends with the triumph of communal self-regulation. Consequently, it gives self-regulation more authority than the official legal spheres, and it presents community justice as being important because its enactment creates both a sense of belonging and reaffirmation of neighbourhood values.⁴⁵ The rhetoric deployed in the pursuit of shared social goals provided a framework of communal values through the exclusion of outsiders. This corporate sense of community justice was built upon through local customs specific to one neighbourhood, that had evolved across generations.

To minimise the inevitable contradictions that existed between local traditions, customs and the aspirations of parliamentary legislation, laws were often passed that subsumed the values appertaining to community justice into the common law. This was primarily achieved by channelling peoples' popular grievances through the regulatory and dispute management practices of trade associations, liveries, and parishes.⁴⁶ This can be seen in the play by the parson's involvement in the public humiliation of Sir John Falstaff. It is an example of the parish authority participating and thereby authorising the punishment of Falstaff, which subsumes community justice under the auspices of ecclesiastical law – and thereby by extension, state governance. Alternatively, Falstaff's humiliation could be viewed as the community

⁴⁵ Ian W. Archer, *The pursuit of stability: social relations in Elizabethan London* (Cambridge University Press, 1991), p. 59.

⁴⁶ *Ibid.*, p. 58.

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deploying ecclesiastical law as an extension of their own version of communal justice. Evans' interjections about the impending punishment highlights the Church's rhetoric surrounding illicit sexual activity: 'Methinks his flesh is punished, he shall have no desires' (IV.4.20-21). He goes on to emphasise a link between sin, penance and pain in which absolution can only be attained through the pain of public humiliation: 'But those as sleep and think not of their sins, / Pinch them, arms, legs, backs, shoulders, sides and shins' (V.5.50-51); 'serve Got, and leave your / desires and fairies will not pinse you' (V.5.124-25). His teaching is aimed at the whole community because, as a schoolteacher, he involves his pupils as the fairies as well as other adults.

Public humiliation had a significant role in the punishment of individuals – turning their sentence into a public spectacle designed to deter onlookers from undertaking similar crimes. Edwin Brinkworth points out that, 'it was an age in which a person's credit and reputation were regarded as of the utmost importance', which suggests that it is the act of public penance rather than the punishment itself which had the greatest impact on perpetrators.⁴⁷ Public penance via ritual humiliation enacted about by one's own community clearly had a significant impact on social aspirations and personal reputations; it worked by stimulating 'very powerful feelings about the moral pressures resolved or not resolved ... [via]... some kind of poetic justice'.⁴⁸ Martin Ingram also explains that there was a tangible impact on having a reputation sullied by ill-repute. It could, he says, lead to difficulty in securing employment and financial services; being brought before magistrates; barred from recourse to justice;

⁴⁷ E.R.C. Brinkworth, *Shakespeare and the Bawdy Court of Stratford*, p. 15.

⁴⁸ R.S. White, *Natural Law in English Renaissance Literature* (Cambridge: Cambridge University Press, 1996), p. 3.

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or being excluded from enjoying other social and communal benefits.⁴⁹ In *The Merry Wives of Windsor*'s case, the power of public humiliation seems to have taught Falstaff his lesson: 'This is enough to be the decay of lust' (V.5.136-7).

Justice Shallow is absent from Falstaff's punishment, thereby creating a sense of disassociation between state and community self-regulation. His absence may be explained as the state being unable to adequately control a community when it joined together as a force, to exact communal justice. Similarly, in the play, it does not matter that Falstaff has the social status of a knight. He had upset the natural balance within the community and that had to be exorcised through public penance. A community type of even-handed justice was not favourable to the wealthier classes, who framed particular laws to 'protect in particular the property and interests of ... masters and employers' while maintaining their sense of superior morality.⁵⁰ However, Falstaff's punishment shows early modern audiences and readers a glimpse of positive nostalgia about community self-regulation. Not only is the community present and involved in Falstaff's ordeal, but they demonstrate an obvious enjoyment in his discomfort, especially when they pass judgement on him after the physical punishment by the so-called fairies. Justice is therefore seen and experienced by the whole community - although the extent to which this reflected the reality of self-regulation in the face of new and plural forms of legal redress in early modern society is worth questioning. This was different from the operations of common law where 'the centralization of English authority made officials increasingly

⁴⁹ Martin Ingram, *Carnal Knowledge: Regulating Sex in England, 1470-1600*, p. 66.

⁵⁰ *Ibid.*, p.15.

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distant from community concerns'.⁵¹ Consequently, we could argue that if Falstaff was the defendant in a common law case brought to trial by the wives, the legal outcome would almost certainly be different.

Read from a theatrical context the play could be construed as resembling a case being heard in a court of common law, with the spectators as judges. Lorna Hutson points out that the rise in forms of litigation that involved a growing number and wider range of people directly led to changes in 'the strategies of representation in various kinds of theatre'.⁵² Hutson explains that this cultural change, when applied to the spectator, instilled a jury-like quality to their interpretation of theatrical action by attributing 'probability' to a character's actions in the same way a jury would in a legal court case.⁵³ The legal proceedings in a court would begin with the lawyers' presentment of the facts. This procedure is slightly different in *The Merry Wives of Windsor* because Falstaff confesses his adulterous intent in front of audiences. He expresses his own designs on the wives as: 'I do mean to make love to Ford's wife' and 'to Page's wife' (I.3.37, 50) which means that no formal presentment is required.

Falstaff's self-delusion in believing that two married women would find him attractive enough to commit adultery forms part of his defence. It adds to the satirically comic figure of a vain knight as he makes it clear that he has interpreted their observation of him through his own lascivious designs. Falstaff expresses his belief that the two women, 'give [him] the leer of invitation', 'examine... [his] parts with most judicious

⁵¹ Jessica Apolloni, 'Local Communities and Central Power in Shakespeare's Transnational Law', *Studies in Philology* 114 (2017), 124-147, (p. 126), DOI: 10.1353/sip.2017.0004

⁵² Lorna Hutson, *The Invention of Suspicion*, p. 5.

⁵³ *Ibid*, p. 75.

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oeillades' and that they view him with 'greedy intention' so that their lust seems to 'scorch... [him] up like a burning-glass' (I.3.38, 51, 57-58). Here, Falstaff interprets acts of civility as wanton intent. A similar point is raised in Thomas Dekker and Thomas Middleton's play, *The Roaring Girl or Moll Cut Purse* suggesting that Falstaff's misinterpretation was not an isolated event. For example, Moll exclaims:

Th' art one of those
That thinks each woman thy fond flexible whore,
If she but cast a liberall eye upon thee....⁵⁴

Mistresses Page and Ford are clearly distraught at Falstaff's unwanted advances to the point that Mistress Page questions herself, 'I'll entertain myself like one that I am not acquainted withal' (II.1.75-76). At the forefront of their concern is that 'the chariness of our honesty' is not sullied (II.1.87). Instead of becoming victims, the wives adopt the roles of prosecutor, judge and executioner. Judgement is given immediately because Falstaff's guilt emanates from his confession. Their sentence also includes an economic punishment specifically devised to echo his attempts at defrauding and embezzling their husbands' money: 'give him a show of comfort in his suit and lead him on with a fine-baited delay, till he hath pawned his horses' (II.1.83-84). Ecclesiastical and common law used legal precedents and rules to inform, unify and centralise different legal practices from across England through the publication of reports, commentaries, canons, and legal guides.⁵⁵ Although the wives deliver

⁵⁴ Thomas Dekker, *The Roaring Girl in The Dramatic Works of Thomas Dekker Now Collected with Illustrative Notes and a Memoir of the Author in Four Volumes*, 4 vols (London: Thomas Archer, 1611; repr. Amazon, [n.d.]), III, p. 172.

⁵⁵ For a description of the normalisation of law into precedent, see Hans Kelsen, *Pure Theory of Law*, trans. by Max Knight, 2nd edn (Berkeley: University of California Press, 1967; repr. Clark: Lawbook Exchange, 2009), p. 250. For examples of printed commentaries, etc. see, Edmund Plowden, *Commentaries or Reports of Edmund Plowden* (Catherine Lintot and Samuel Richardson, 1861; repr. Forgotten Books, [n.d.]);

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swifter judgement and more bespoke punishment than such court systems, they are occasionally given the language of forensic linguistics when they discuss Falstaff, which echoes familiar legal operations and was probably recognisable by many of the play's spectators: 'If the devil have him not in fee simple with fine and recovery, he will never, I think, in the way of waste, attempt us again.' (IV.2.183-85).

The dramatic irony in Falstaff's confession also works as part of the dramatic structure of Pistol and Nim's revenge:

Nim: I will discuss the humour of this love to Ford.

Pistol: And I to Page shall eke unfold

How Falstaff, varlet vile,

His dove will prove, his gold will hold,

And his soft couch defile.

Nim: My humour shall not cool. I will incense Ford to deal with
poison. I will possess him with yellowness.

(I.3.82-88)

Neither character warns the local Justice of the Peace or the representative of the Church about Falstaff's intended actions. Their avoidance of local authority suggests a reticence in engaging in legal operations or their structures and systems. Instead, Pistol and Nim's sense of outrage about Falstaff's poor treatment of them makes their response retributive and their actions personal, immediate, and thereby the antithesis of early modern judicial operations - as meted out by the Church and state

William Lambard, *Eirenarcha or of the Office of the Justice of the Peace* (London: Ra: Newbery and H. Bynnerman, 1581; repr. Da Capo Press, 1970).

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courts. Their desire to be at the forefront of shaming Falstaff is another example of a community dealing with issues personally and in a way that will create an equilibrium within their community.

Pistol and Nim's need for personal revenge is echoed by the wives (II.1.26, 57, and 82). Neither wife suggests invoking protection from the common law, ecclesiastical authorities or even from their husbands. Instead, the wives go about managing their retribution of Falstaff's adultery in a way that is both restorative, returning peace to their community, and reformative.

The wives' response also reflects a community intent on enacting a sense of justice based upon its own interpretation of the structures and systems of common and ecclesiastical law. They interpret the jurisdiction of law to include the whole of Windsor and all those who live there, without exception of rank; they enact a temporal immediacy in their justice that does not require waiting for the next Quarter Sessions or Assizes to come around; and there is a greater sense of moral justification in their justice in that it fits more comfortably with the biblical teaching of the Church (1 Timothy 5.20-21). Their interpretation of law is clearly different to the social and economic biases that underpinned the state's desire for absolute control. The wives lack of engagement with the state's legal operations could suggest a sense of mistrust in the state's legal structures and systems. As women, of course, they did not have the authority to bring a case to court; they would have to rely on their husbands to prosecute on their behalf.

Instead, the wives' implementation of justice prioritizes individual retribution:

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Mistress Page: ...the poor unvirtuous fat knight shall be further afflicted,
we two will still be the ministers (IV.2.190-91).

Mistress Ford: We'll betray him finely.

Mistress Page: Against such lewdsters and their lechery.

Those that betray them do no treachery.

(V.3.18-20)

For them, the point of retribution is to make the community turn on the victim.

The wives' sense of retributive / restorative justice is quickly adopted by other members of the community. Initially, Mistress Quickly helps by acting as an intermediary (II.2.30-120), before Falstaff's page is brought into the scheme (III.3.21-29). Interestingly, when Sir Hugh Evans is brought into the growing conspiracy (along with the two husbands), he does not admonish the wives or commit Falstaff to trial as his spiritual role should dictate. Instead, and in contrast to his responsibility to the Church and its ecclesiastical courts, Sir Hugh Evans allies himself with the Windsor community and its value system by joining in with the subterfuge.

As final punishment for his attempts at adultery Falstaff is subjected to a shaming event in which the Windsor community joins together to humiliate him. Anne Parten explores how the community's disapproval of Falstaff's behaviour draws on the 'cultural inventory of gestures and motifs that is tapped by native shame rituals' and echoes the folk ritual, the skimmington.⁵⁶ In this case, Falstaff is guilty of committing

⁵⁶ Anne Parten, 'Falstaff's Horns,' p. 185.

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a crime against healthy marriages. Paten observes that the ‘folk ceremony is associated with feminine ascendancy and masculine subjugation’.⁵⁷ This is borne out in the reversal of the patriarchal and class structures which Falstaff as Knight represents.

The meting out of communal justice is presented as a success: Falstaff is educated. He acquiesces, accepts, and even seems to learn from the community’s treatment of him. The community has come together and restored peace and harmony to Windsor and the wives’ reputations remain unblemished. In the Folio edition of *The Merry Wives of Windsor*, the text seems to imply that even Falstaff appreciates the lesson:

Good husband, let us every one go home,
And laugh this sport o’er by a country fire.
Sir John and all. (V.5.218-20)

In *The Merry Wives of Windsor*, it seems obvious from the outset that Falstaff would not be triumphant in his attempt at adultery. Spectators watch Falstaff’s descent into ridicule are cautioned that a similar fate would await similarly inappropriate actions on their parts.

In the episode regarding Anne Page, *The Merry Wives of Windsor* presents the jurisdictional conflict between common law, ecclesiastical law and social custom in the form of forced marriage. The common law’s jurisdiction regarding property and marriage jointure comes into conflict with the holy sacrament of marriage and the

⁵⁷ Ibid.

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custom in which a parent chose a spouse for their child. The use of contractual marriage law in this sub-plot is used to create a storyline that is both funny and uncomfortable in equal measures because it shows the use of custom being deployed alongside the misuse of ecclesiastical law to bring influence and/or pressure on the child Anne to marry her parents' choice of spouse. The choice of two different spouses that Anne Page's parents choose, are both comically inappropriate: Dr. Caius and Master Abraham Slender. According to Graham Holderness, the arranged marriage / jointure sub-plot of the play would probably have held both a fascination and horror to the play's theatregoers because the characters' names, themes and events evoked memories of a notorious legal case from the early 1590s in which, 'an elderly husband, Master Page of Plymouth, was murdered by his young wife and her lover'.⁵⁸ A young woman (Eulalia Glandfield) fell in love with a young servant (George Strangwidge) but was forced to marry the old widower, Master Page. Eulalia conspired with her servant lover to murder her older husband. Phillip D. Collington cites how the story was picked up in contemporary ballads and pamphlets that retold the tale along with a theatrical collaboration between Ben Jonson and Thomas Dekker entitled, *Page of Plymouth* that was performed by Shakespeare's rival company, the Admiral's Men in 1599.⁵⁹ Both Holderness and Collington remind us that although such murders were rare, they held a fascination in the public's consciousness which, it seems, was picked up by the playwrights of the period.

⁵⁸ Graham Holderness, 'Cleaning house: the courtly and the popular in *The Merry Wives of Windsor*', *Critical Survey*, 22.1 (2010) pp. 26-40 (p. 33), doi: 10.3167/cs.2010.220102.

⁵⁹ Phillip D. Collington, "'I would thy husband were dead": *The Merry Wives of Windsor* as Mock Domestic Tragedy', *English Literary Renaissance*, 30.2 (2000) pp. 184-212 (p. 187), doi: 10.1111/j.1475-6757.2000.tb01169.x.

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In *The Merry Wives of Windsor*, the presentation of the suitors encourages the spectator or reader to side with Anne and view the marriage contracts that were foisted upon the child as morally wrong. The play exaggerates the suitors' inappropriateness. Slender's name suggests a 'weak, feeble, slight, insignificant, trifling' character in both physical appearance and in mental capacity.⁶⁰ Dr. Caius is a much older and irritable character who, like Slender, is more interested in the 'seven hundred pounds of moneys, and gold and silver' (I.1.43-44) and the expected dowry from her father (I.1.50) than about Anne's feelings. His coveting of her dowry is so extreme that he enters into a duel with Sir Hugh Evans when he thinks that the priest is interfering with his perceived rights. The final suitor is Fenton, a young penniless aristocrat who loves Anne.

The marriage proposal constitutes a form of *assumpsit* (spoken promise) and belies the complex legal issues that surrounded the promise and intention of marriage (*sponsalia per verba de futuro*).⁶¹ The sequence in which Anne Page's parents attempt to force her into marriage shows a discrepancy between natural law (and its sense of moral justice) and that of institutional legality. Instead of upholding moral law, common law seems to be at a variance with it. A person would find it difficult to prove in law if they wanted to separate after being pressured or coerced into an inappropriate union. Mukherji points out that, 'when consent is the particular intention required for valid matrimony, it becomes difficult to ascertain validity. For how can intention be proved in law?'⁶²

⁶⁰ OED: n.1.

⁶¹ For a discussion on legal complexities surrounding marriage contracts, see *Subha Mukherji, Law and Representation in Early Modern Drama*, pp. 17-30.

⁶² Mukherji, *Law and Representation in Early Modern Drama*, p. 30.

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In both common law and canon law it was illegal for a parent to force their child into a marriage against their will, although the parent could be very persuasive by withholding the dowry for a marriage with which they disagreed.⁶³ However, it was more usual for a parent to manoeuvre their child into a marriage through family pressures by consultation and expectation.⁶⁴ The suitors, that the parents choose for Anne, seem to offer them something beyond their daughter's happiness. For the canny businessman Master Page, it seems to be Slender's three hundred pounds a year income that has caught his eye (III.4.32) and for the socially aspirant Mistress Page, it seems to be Dr. Caius' connections at court that she covets (I.4.107, II.1.39-40, IV.4.85-86). Both parents seem to view their choice of suitor as a right of custom because it holds no validity in law. The patriarchal structure of the family seems to be the place from which the custom gains authority. For example, the right to influence a child in matrimony is presented in the period through behaviour manuals:

Therefore, when her parents are deliberating about her marriage, the young woman will leave all of that concern to those who wish as much good for her as she does for herself through the love enkindled in their hearts by nature, and who by their years and experience see further ahead. For how can a girl who has been confined within the walls of her house know the character and morals of men so that she can choose among them, or in her complete inexperience know what is best for her?⁶⁵

⁶³ Richard L. Greaves, *Society and Religion in Elizabethan England* (Minneapolis: University of Minnesota Press, 1981), p. 162.

⁶⁴ Martin Ingram, *Church Courts, Sex and Marriage in England*, p. 201. For the legal definition about marriage, forced marriage and clandestine marriages, see J. H. Baker, *An Introduction to English Legal History*, pp. 545-50.

⁶⁵ Juan Luis Vives, *The Education of a Christian Woman: A Sixteenth Century Manual*, ed. and Trans. by Charles Fantazzi (Basel: Robert Winter, 1538; repr. London: University of Chicago Press, 2000), p. 155, doi.org/10.7208/9780226858166.

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Master Page tells Anne to 'love' and, by inference, marry Abraham Slender to which she outwardly obeys (III.4.64). A marriage jointure contract is thereby proposed (III.4.43-47) which is given a sense of added authority because it is proposed by the Justice, Robert Shallow. Page thereby accepts the union of Abraham Slender and his daughter Anne, on her behalf (III.4.66) in what seems a definitive agreement. However, the law stipulated that any contract agreed by a parent remained non-binding because it was not agreed by the couple themselves. According to Kiersten Honaker, 'the informality of this verbal contract, so prevalent in early modern England, works against Page, as his wife has also made a contract for Anne with Doctor Caius: 'And none but he, to marry with Nan Page' (IV.4.82).'⁶⁶

Clandestine marriage held the advantage of avoiding parental control. In the late Tudor period, they were known as informal marriages that required two witnesses and a priest. According to Baker, even 'Sir Edward Coke, while attorney-general in 1598, married his second wife in a private house'.⁶⁷ Anne Page and the young aristocrat Fenton chose this option when their appeal to the patriarchal marriage custom espoused by George and Margaret Page, failed (III.4.19). Their repeated appeal shows Anne's sense of moral duty and deference towards her father as was their family custom. Therefore, Anne and Fenton's (informal) secret marriage contract had more legal authority than those agreed upon by her parents. The play suggests that a legal loophole is used to extricate her from an assumptive obedience to marry either Slender or Caius distinguishing the assumptive promise of 'I will

⁶⁶ Kiersten Honaker, 'Ambiguous Alliances: Betrothal Confusion in Shakespeare's *The Merry Wives of Windsor*', *Journal of the Wooden O*, 6 (2006), pp. 35-47 (p. 41),

⁶⁷ J. H. Baker, *An Introduction to English Legal History*, p. 548.

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marry' from 'I marry' (de futuro or de praesenti): 'Anne uses the intricacies of betrothal law to flout it, governing her marriage choice with love instead of loyalty'.⁶⁸

The text presents patriarchal marriage custom through Master Page's threat to disinherit Anne and thereby force her into destitution. It emphasises how contractual marriage law was used to disempower young women in similar circumstances: 'If he take her, let him take her simply: the wealth I have waits on my consent, and my consent goes not that way' (III.2.64-65). Consequently, Anne indicates to Fenton that if necessary, she would reject her parents' wishes and dowry and elope: 'If opportunity and humblest suit / Cannot attain it, why, then – hark you hither!' (III.4.20-21). Her readiness to disobey her parents shows that her father's attempts at coercion have failed. They have little legal recourse because a forced marriage through the use of threats was, as Honaker explains, unlawful.⁶⁹

Both parents seek to marry Anne to their chosen suitors in separate clandestine ceremonies that work to obfuscate the difference between acceptance and consent. The use of clergy in all three the clandestine marriages (including Anne and Fenton's), was a legal requirement at a legitimate marriage ceremony. Ronald A. Marchant explains that 'Some obscure curate performing a clandestine marriage between two poor people was not committing a major offence'. However, he also states that the offence was deemed 'a social evil of considerable proportions'⁷⁰ The use of multiple clandestine marriages has not fully been discussed and is, in my

⁶⁸ Kiersten Honaker, 'Ambiguous Alliances: Betrothal Confusion in Shakespeare's *The Merry Wives of Windsor*', p. 43.

⁶⁹ *Ibid.*, p. 42.

⁷⁰ Ronald A. Marchant, *The Church Under the Law*, p. 66.

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view, important in understanding how the Church's authority and ecclesiastical law should be interpreted in the play. It affects the perceived legitimacy of a marriage.

This argument is exemplified in the play *As You Like It* when the character

Touchstone attempts to marry Audrey in the forest of Arden by the would-be vicar Sir Oliver Mar-text 'of the next village' (*As You Like It*, III.3.34). When Jaques persuades

Touchstone to marry with 'a good priest that can tell you what marriage is',

Touchstone responds by explaining that by 'not marrying well', he 'has a good excuse for me hereafter to leave my wife' (*As You Like It*, III.3.69-76).

The legitimacy of a priest formalising Anne's marriage functions shows that people will choose one jurisdiction over another if it will offer them a greater likelihood of success in a legal case or future legal case. Using the priests ensured a greater legal certainty of success because marriage was deemed a matter for the ecclesiastical courts. The play's audiences would have known that clandestine marriage provided matrimony without any community surveillance (banns).

Therefore, there would have been no evidence suggesting Anne's marriage was forced.

Clandestine marriage was associated with the pre-reformation Church and therefore deemed a threat to the reformation doctrine of protestant Church operations and by extension, to Queen Elizabeth's agenda of establishing a uniform religious practice.⁷¹

Katherine Cleland explains that 'Canon law, deriving from the Middle Ages, dictated that consent alone was all that was necessary to make a legally binding match even

⁷¹ Katherine Cleland, *Irregular Unions: Clandestine Marriage in Early Modern English Literature* (London: Cornell University Press, 2021), pp. 17-18.

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in the absence of witnesses'.⁷² It was only after the 'widespread implementation of the *Book of Common Prayer*', during Elizabeth's reign, that the marriage service adopted its more legalistic and operational tone.⁷³ Therefore, the use of multiple clandestine marriage ceremonies within *The Merry Wives of Windsor* would most likely have been viewed as a reminiscent reference towards a bygone era that seemed more simple and less controlled by the state.

The multiple clandestine marriages also seem to suggest that the clergy were willing to undertake illegal ceremonies for additional money. According to Gill Newton, 'there were clergy willing and even eager to conduct marriages, since marriage fees were an important source of income, especially for those without a benefice'.⁷⁴ Placing the financial greed of the clergy above spiritual responsibility questions the legitimacy of the Church's moral and legal position within the play's community. Similarly, the possibility of three simultaneous ceremonies occurring in the text seems to imply that the use of clandestine matrimony was both common and easy to procure and thereby normalised. It was the role of High Commissioners to ensure that the clergy and its parishioners did not participate in illegitimate marriage ceremonies. However, there is no indication of the High Commissioner's presence in the text which, when coupled with Sir Hugh Evans' silence on the subject, suggests that the ecclesiastical authority of the Church in Windsor was secondary to the expectations, practices and customs of the Windsor community.

⁷² Ibid., p. 5.

⁷³ Ibid., p. 21.

⁷⁴ Gill Newton, 'Clandestine marriage in early modern London: when, where and why?', *Continuity and Change* 29.2 (2014), pp. 151-180 (p. 154), doi: 10.1017/S0268416014000137.

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The play's conclusion in which Master and Mistress Page willingly accept Fenton as their new son in law. (V.5.209-10, 217) deftly side-steps the legal complexity surrounding their irregular union, of which audiences would have been aware. The community, it seems has joined in the celebration by 'laugh[ing at] this sport o'er by a country fire' (V.5.218), preferring a world not yet controlled by the centralisation of ecclesiastical and common law. However, the characters also inhabit a world in which self-regulation has the potential to turn in upon itself. Anne's parents demonstrate that each person may have a different perspective regarding what is jurisdictionally required, let alone what is morally right or wrong, or what differentiates justice from revenge.

The Centralisation of the Common Law:

Measure for Measure

In *Measure for Measure* (1604), the regulation of the law and its apparatus are represented differently from those in *The Merry Wives of Windsor*, which was performed only a few years previously. In *The Merry Wives of Windsor*, both common and ecclesiastical law are presented as ineffective because their representatives fail to take responsive action when required. However, in *Measure for Measure*, these legal systems are presented as corruptible because the authority given to their representatives places them beyond or above reproach. Immediately, it becomes apparent that the self-regulation of *The Merry Wives of Windsor* has been replaced by punitive state repression in *Measure for Measure*. The later play's title, along with the religious and moral attitudes of the Duke's deputy Angelo, suggest that the legal plurality of state and Church has fused into a single coercive legal

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discourse. Different characters thereby either authorise or attempt to restrict the law's forensic rhetoric.

Law is parodied in *Measure for Measure*: the text suggests that it can be manipulated, broken and seemingly inverted by corrupt officials. In addition, the play parodies several classic comic principles to present the pain of discord faced by the principal characters instead of the reconciliation and resolution of other comedies. The misuse of Duke Vincentio's legal prerogative provides the opportunity to fuse the plurality of Church and state authority to create a powerful head of state with access to both *mens rea* and *actus reus* (intent behind a crime and actions appertaining to the crime). The play reveals that different attitudes towards interpreting legislation leads to either authorising or discrediting the law and its legal processes. Marriage contracts and forensic rhetoric are also parodied in the representations of court systems. The play's parody of the judicial process produces a very dark comedy which exposes the pain experienced by individuals within and under its operations.

The title *Measure for Measure* advertises to prospective audiences that the play is about law and that the judicial concepts of mercy and equity should temper justice. It is taken from the Gospel of Matthew, 'Judge not, that you be not judged. For with the judgement you pronounce you will be judged and the measure you give will be the measure you get'. (S. Matthewe 7.1-2) The phrase is taken from Jesus' Sermon on the Mount and suggests a clear move away from the reciprocal justice of the Old Testament: 'an eye for an eye, tooth for a tooth' (Exodus 21.24). It reveals how a Christian ethic is required to modify the state's judicial approach by implicitly suggesting that the text will hold up the abuse of legal authority to critical scrutiny. As

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this chapter's analysis of *The Merry Wives of Windsor* has shown, for Elizabethan England sexual transgression most usually fell under the jurisdiction of the ecclesiastical courts, however, by the Jacobean period, their authority had already started to wane.⁷⁵

In England, the apparatus and functions of the law in both common law courts and ecclesiastical courts outwardly remained largely independent of each other despite the authority of the Church sitting underneath that of the state. But, by adopting the costume and ecclesiastical lexis of the Church, the text implies that a legal plurality existed in which a person can be interrogated both for the physical effects of a crime and the individual conscience behind the crime to ascertain 'intent':

I'll teach you how you shall arraign your conscience

And try your penitence, if it be sound

Or hollowly put on. (II.3.22-23)⁷⁶

In *Measure for Measure* the legal plurality is physicalised through the Duke. Initially, he is 'dressed' in the robes of state; a costume that signifies his authority to wield power – described in his own words as a 'terror' (justice) and 'love' (mercy) (I.1.19). He then dresses himself in the robes of the Church; a disguise that provides him access to spaces of the 'conscience' and confessional (II.3.22, 31). His movement between the two realms parallels the two competing legal jurisdictions at play in matters of sexual transgression and gives him access to the authority and power of

⁷⁵ J. H. Baker, *An Introduction to English Legal History*, pp. 149, 152.

⁷⁶ See my previous discussion of 'intent' (pp. 00-00) and the invaluable work in this field by Luke Wilson, *Theatres of Intention: Drama and the Law in Early Modern England*, Lorna Hutson, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama*, and Bradin Cormack, *A Power to do Justice*.

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both. The forensic linguistics associated with both jurisdictions also becomes entwined. Angelo describes secular legislation through the religious discourses of 'sin' and 'evil' while Isabella deploys a secular legal rhetoric to convince the deputy of her ecclesiastical discourse relating to 'grace' and 'mercy' (II.4.63, II.2.97; II.2.64-65). Almost every character ends up in a courtroom situation in which they provide a presentment that 'establishes a dialectic of morality and guilt in which characters' attempts to pursue justice ironically lead to condemnation and moral loss'.⁷⁷

The Duke's secular authority is provided by the state's 'organs... of power' (I.1.20-21) and he is very clear that his prerogative may command life or death:

We do condemn thee to the very block
Where Claudio stooped to death. (V.1.406-7)

But, for these earthly faults, I quit them all,
And pray thee take this mercy to provide
For better time to come. (V.1.477-79)

The state's side of the jurisdictional plurality is, as Matthew J. Smith suggests, morally undermined by the Duke's regal misuse of authority. Despite inhabiting the position of supreme ruler and wielding 'absolute power' (I.4.13) through a personal prerogative, the Duke embarks on a course of action that undermines both Viennese law and its coercive apparatus.

⁷⁷ Matthew J. Smith, "At War Twixt Will and Will Not": On Shakespeare's Idea of Religious Experience in *Measure for Measure*, *Religions*, 9.12 (2018), Article no. 419, (p. 2), doi: 10.3390/rel9120419.

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As Head of State, it was his responsibility to ensure that the law worked efficiently. However, at the outset of the play we are told that the Duke oversaw the laws of Vienna become (in his own words) 'more mocked... than feared', where 'liberty plucks justice by the nose', and 'quite athwart / Goes all justice' (I.4.27, 29, 30-31). His lax attitude towards his people's behaviour suggests a considerable level of impotence in his authority. The play's connection between law, society and the Duke echoes the experience and advice of King James I to his son in *Basilikon Doran*.⁷⁸ James warns, 'if otherwise you kithe your clemency at the first, the offences would soon come to such heaps, and the contempt of you grow so great, that when you would fall to punish, the number of them to be punished would exceed the punishers'.⁷⁹ James I goes on to admit, like Vincentio, that 'I thought (by being gracious at the beginning) to win all men's hearts to a loving and willing obedience, I by the contrary found, the disorder of the country and the tinsell of my thanks to be all my reward'.⁸⁰

When confronted by Friar Thomas as to his judicial responsibility, Vincentio responds by explaining that his choice to impose the office of Chief Justice on Angelo was to ensure that his public image remained untarnished (I.4.42-3). But he also states that it has a serious purpose, 'more grave and wrinkled' (I.4.5) suggesting that his absence from the judiciary may be part of a personal investigation into how the law operated in his absence; a tactic that James I also advocated in suggesting that to 'haunt...your session' would allow one to 'spie carefully their proceedings, taking

⁷⁸ Much debate exists about the character of Vincentio being based upon King James I. For an overview of how political bias was applied to both historical attributes and Shakespeare study criticism, see Kevin A. Quarmby, *The Disguised Ruler in Shakespeare and His Contemporaries* (Farnham: Ashgate Publishing, 2012), pp. 112-119.

⁷⁹ King James Stuart, *Basilikon Doron: The King's Gift*, ed. by Kevin A. Straight (Montrose: Creative Minority Productions, 2018), p. 27.

⁸⁰ *Ibid.*

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narrow tente if any bribery be tried among them'.⁸¹ It may also suggest an attempt to satisfy his curiosity and amusement about the effect of power on an individual (I.4.53-54), or that Vincentio's absence from the state shows why the law requires the monarch to temper legal justice for others.⁸² Ironically, therefore, the play may be read as a dramatization of a defence of King James I royal prerogative.

The Duke's testing of Angelo allows for the fall of a proud deputy thereby perverting classic comic principles through the use of malicious comedy (the mixture of pleasure with pain) to show the reality of the law's impact on the characters. For example, in a move away from *The Merry Wives of Windsor* in which we laugh at Falstaff's discomfort, Claudio's impending execution raises no mirth. Instead, Shakespeare's play parodies several classical comedy principles.⁸³ For instance, he parodies the principle of resolution after discord through the enforced marriages of Lucio to a 'whore' and Angelo to Mariana. The play also parodies the romantic rural environment, like Baptista's garden in *The Taming of the Shrew* or the forest of Arden in *As You Like it*. In *Measure for Measure*, the garden is represented as diabolical and fearful: a metaphor for the bestial dark mind of Angelo (rape, lies and death). And lastly, the birth motif associated with marriage is parodied so that it lies juxtaposed with the threat of death and torture of the parents Claudio and Lucio. Angelo may be an example of the comic 'fall' but he does not seem to learn anything unlike Falstaff in *The Merry Wives of Windsor*. The play therefore moves beyond comic correction into emergency redemption by the Duke. However, the near fall of

⁸¹ Ibid, pp. 57-58.

⁸² Ibid, p. 54. 'Use justice, but with such moderation as it turn not in tyranny'.

⁸³ The classical comedy principles, in which I refer, are referenced through Douglas H. Parker, 'Shakespeare's Use of Comic Conventions in *Titus Andronicus*', *University of Toronto Quarterly*, 56.4 (1987), pp. 486-497 (p. 487), doi: 10.3138/utq.56.4.486.

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the Duke himself, the ultimate figure of power, does not create comedy or pleasure for spectators. Instead, it echoes an ironic warning that an absolute monarch is not absolutely in control which, in itself, suggests communal instability. However, the scene in which the Duke and the Provost await the delivery of a pardon for Claudio, is farcical. The two characters wait passively as others enter and depart the scene at a rapid pace. Duke Vincentio could pardon Claudio on the spot, but the use of dramatic irony adds to the tone of disbelief and the consequential impotence of the monarch when he says, 'Pray you let's hear' (IV.2.110).

Importantly, the text does not attempt to conceal the impotence of the monarch, despite King James being a possible reference point for the Duke.⁸⁴ However, the play does offer an affirmation of divine authority as providing what is necessary for a monarch to operate effectively. For example, when Barnadine refuses to rise and be executed, the recently dead Ragozine's head can be supplanted in his stead, 'O, tis an accident that heaven provides!' (IV.3.69). In this sense, providence or blatant protestant theology suggests that heaven will intervene on the side of the monarch and, by extension, support the monarch's prerogative.

To members of the legal profession, students from the Inns of Court and the wider public audiences (as litigants and victims of the law), the representation of the Duke and his clandestine actions may have seemed like a dramatic parody of the King's prerogative. The Duke misuses his prerogative to insist that another character deputises for him to enact unpopular legislation in his stead; he undermines that

⁸⁴ For a discussion about the character Vincentio being modelled on King James I (VI), see: Kevin A. Quarmby, *The Disguised Ruler in Shakespeare and His Contemporaries*, pp. 112-133.

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deputy with subterfuge; and allows other characters to suffer needlessly to benefit his own interests (I.1.9-52; III.1.235-48; IV.3.106-114). These episodes work in the same way humour is used in *The Merry Wives of Windsor*: to lampoon the law for its inequality and potential for corruption. The use of parody immediately implies a negative attitude towards the law and especially the King's prerogative. The fact that legal corruption and ineffectiveness was a common trope in many contemporary plays of the period suggests that audiences would be familiar with *Measure for Measure's* negative attitude towards the law.⁸⁵

In early seventeenth century England, there was much debate about the royal prerogative's relationship with the common law. As we might expect, conflict over jurisdictions spilled out into debates surrounding the Chancery courts (Equity) and the Common Law courts. Lord Chancellor Ellesmere (1603-1617) had an 'elevated view of the royal prerogative' in which he accepted that a king's 'prerogative of 'private will' was tied to the natural body of the monarch'.⁸⁶ King James was adamant that any judgement made by the king was superior and 'transcendent' and therefore above the judiciary and parliament because both of those authorities sat beneath the king and 'borrowed' their power from both him (as king) and God.⁸⁷ He also warned judges not to cross jurisdictions because plurality within the law made it increasingly dysfunctional.⁸⁸ James argued that by encroaching upon the prerogative of the

⁸⁵ For example, see: *Thomas of Woodstock or Richard the Second Part One*, ed. by Peter Corbin and Douglas Sedge (Manchester: Manchester University Press, 2002), *A Looking Glass for London and England*, by Thomas Lodge and Robert Greene (London: Thomas Pavier, 1594; repr. Oxford: Malone Society, 1932).

⁸⁶ Glenn Burgess, *The Politics of the Ancient Constitution: An introduction to English Political Thought, 1603-1642*, (Pennsylvania: Pennsylvania State University Press, 1992), p. 160.

⁸⁷ King James I, 'A Speech in the Starre-Chamber: The XX of June Anno 1616' in *King James VI and I: Political Writings*, ed. by Johann P. Sommerville (Cambridge: Cambridge University Press, 1994; repr. 2006), pp. 204-228 (pp. 206, 211, 212).

⁸⁸ *Ibid.*, p. 213.

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crown, the judges may 'wound the King through the sides of a private person'.⁸⁹ By contrast, Edward Coke, Attorney General (1594-1606), often quoted Bracton, 'the King is subject to God and the law'.⁹⁰ His vocal opposition to the royal prerogative is best demonstrated in *The Case of the College of Physicians*, commonly called *Bonham's Case* which took place shortly after the initial performances of *Measure for Measure*. Essentially, Coke used case law precedent to argue that the King's prerogative was unlawful and could not be enforced because it was in opposition to common sense and therefore common law.

The case concerned the Royal College of Physicians who initially imposed a fine of a hundred shillings on Dr. Bonham and forbade him to practice as a physician because he wasn't a member of their College. When Bonham refused to submit to their fees and fines, he was committed to prison. Bonham, in response, brought an action for false imprisonment against the leading members of the Royal College of Physicians.⁹¹ The Royal College's argument was contained in 'letters patent dated to 10 Hen. VIII' in which they were given powers to fine practitioners in London who were not admitted by them.⁹² As part of Bonham's defence, Edward Coke cited a legal precedent from the Reformation: tenants on Church lands were permitted by law to keep their tenancies despite the King's prerogative and an Act of Parliament which legislated that all land should come directly to Henry VIII. With great daring, the court, 'refuse[d] to recognize the express words of the statute in favor of rent

⁸⁹ Ibid.

⁹⁰ Theodore F. T. Plucknett, *A Concise History of the Common Law*, 4th edn (London: Butterworth & Company, 1948), p. 230.

⁹¹ Theodore F. T. Plucknett, 'Bonham's Case and Judicial Review', *Harvard Law Review*, 40.1 (1926), pp. 30-70 (p. 32), doi: 10.2307/1330126.

⁹² The patent was subsequently 'confirmed by the statute 14 & 15 Hen. VIII, c. 5'. For further details appertaining to the case, see: Ibid, pp. 32-33.

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services, and roundly declare[d] them *extinct non obstante* the act'.⁹³ Essentially, the King's prerogative was overthrown because it was in contradiction to common sense, common law and legal equity. Coke used the same argument to adjudge the Royal College's case to be utterly void. He won.

Similarly, Duke Vincentio's royal prerogative is represented as being self-serving and devoid of legal common sense. For example, the Duke bypasses the 'science', 'sufficiency' and 'worth' of Escalus and chooses the untested Angelo to deputise as head of state and adopt a role in the play's legal system that appears to be equivalent to that of the Attorney General in the English context (I.1.5, 8). Vincentio then undertakes a series of actions that undermine the legal apparatus of the state and the rulings associated with Angelo: he accepts slander against Angelo as truth (and thereby sanctions it) without investigating its validity (III.1.184-85); conspires against Angelo - his chosen deputy (III.1.232-48); conspires to pervert a judicial ruling (IV.2.151-78); and perjures himself in the pseudo court scene at the end of the play when he feigns ignorance (V.1.105-114). Essentially, the Duke consistently deploys his royal prerogative as a tool to action his self-interest and undermine the law applied by Angelo. For jurists like Coke, such agency existed outside of the law and echoed Hamlet's description of 'a politician... one that would circumvent God' (*Hamlet*: V.1.72-73). For the Duke (and notably James I), they weren't circumventing God but 'borrow[ing] their power from God'.⁹⁴

⁹³ Ibid, P. 43.

⁹⁴ 'A Speech in the Starre-Chamber', By James I, p. 206.

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Vincentio abuses his prerogative authority to access the private spaces of his subjects: their secret thoughts, intentions and fears.⁹⁵ By adopting the persona and lexis of a friar-priest, the character Vincentio deceives the other characters with whom he comes into contact. Because this deception takes place with the assistance of Friar Thomas (1.3.35-8), it suggests the Church is complicit in Vincentio's deception. By placing this possibility on the stage, the text advertises the monarch's capacity to rule deceptively as head of both the state and the Church. Such actions or the belief that it might happen might be enough to undermine the people's trust in the Church's moral and spiritual teaching and example.

Because Vincentio is given the ability / power to step between the two institutions (as Duke and Friar) unopposed, the text draws into question the relationship between those jurisdictions: the level at which they collaborate, coerce and influence behaviour. Kevin Quarmby regards the assistance given by Friar Thomas as being largely a commonplace practice that featured in generations of romance narratives (albeit 'subverted' away from being used for 'romantic comedy history').⁹⁶ Eric Leonidas similarly concludes that the role of the disguised Duke is a common trope in which the rulers 'capitalise on the utility of experiential knowing'.⁹⁷ However, I believe that a more complex reference to jurisdictional plurality lies behind Friar Thomas' assistance. Unlike other similar monarchs who adopt costumes, Vincentio adopts the persona, occupation and importantly, the moral authority of a friar along

⁹⁵ See: Benedict J. Whalen, 'Private Conscience, Public Reform, and Disguised Rule in The Malcontent and Measure for Measure', *Ben Jonson Journal*, vol. 21.1 (2014), pp. 73-91 (p. 75), doi: 10.3366/bjj.2014.0097. Whalen makes the point, 'Specifically, both Shakespeare [in *Measure for Measure*] and Marston [in *The Malcontent*] investigate the effect of a state's intrusion into the realm of private conscience through the government's adoption of religious authority'.

⁹⁶ Kevin A. Quarmby, *The Disguised Ruler in Shakespeare and His Contemporaries*, pp. 106-7.

⁹⁷ Eric Leonidas, 'Knowledge and experience in the 'disguised duke' play', *Cahiers Élisabéthains*, 103 (2020), pp. 21-38 (p. 22.), doi: 10.1177/0184767820936690.

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with his costume. *Measure for Measure* thereby presents a recognisable synergy with the state and Church, in which Vincentio's actions are seemingly empowered, accepted, unopposed and beyond the reproach of the law. Father Thomas's assistance is more than a narrative trope: because he helps join the authority of both state and Church into one persona, his role functions to engage the moral attitudes and concerns of the playwright and of the theatregoers.

When the Duke's character judges Angelo as both the priest and the head of state, we might expect a serious and damning exposition rooted in ecclesiastical and common law. Instead, the play presents Vincentio's judgement through a jingly soliloquy in octosyllabic rhyming couplets, whose form of mock *sententiae* parodies the plurality of the law:

He who the sword of Heaven will bear
Should be as holy as severe
Pattern in himself to know,
Grace to stand, and virtue go.
More nor less to others paying
Than by self-offences weighing
Shame to him whose cruel striking
Kills for faults of his own liking.
Twice treble shame on Angelo,
To weed my vice and let his grow.

(III.1.481-90)

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Vincentio's disguise allows him freedom of movement into and out of restricted spaces. His friar costume and the ecclesiastical lexis he adopts, are the only proof of his clerical identity. They provide his character with unrestricted access to pry into the private conversations of others, access individuals in distress and use the Church's moral authority to convince others to either break the law, pervert judicial authority, and / or engage in deception (III.1.51; II.3.5-8; IV.2.62-63; IV. 2.145-51). For spectators (especially those associated with the legal profession), the text brings into question the validity of legal truths because the Duke misuses his royal prerogative in ways that supplant issues of legal certainty with those of his personal 'will'. The text's treatment of the royal prerogative therefore creates a deep sense of irony: by undermining the rule of law, the Duke places himself above the law to demonstrate the necessity of his position as head of state which is highlighted through the dramatic spectacle of the Duke settling all matters at the end of the play.

Vincentio's 'stretching of the crown's prerogative' and the 'prodigious machinery' associated with the Head of State, ensures that his actions were never adequately challenged: 'No, holy father, throw away that thought' (I.3.1).⁹⁸ Because he is not properly challenged, he demonstrates no understanding of the consequences of his actions. For example, the Duke does not seem to comprehend how his interference in the lives of the Viennese people damages them by causing needless suffering or the prolonging of existing suffering. This is best emphasised through his

⁹⁸ Kevin A. Quarmby, *The Disguised Ruler in Shakespeare and His Contemporaries*, p. 176. Quarmby quotes Ralph Houlbrooke, 'James Reputation 1625-2005', in Houlbrooke (ed.), *James VI and I: Ideas, Authority, and Government* (Aldershot: Ashgate Publishing, 2006), pp. p. 176. For a summary of how 'truth' is propagated through commentary, discipline and ritual, see: Michel Foucault, 'The Order of Discourse', *Modern Literary Theory: A Reader*, ed. by Philip Rice and Patricia Waugh, 3rd edn. (London: Arnold, 1997), pp. 239-250, (pp. 243-250). See also Michel Foucault, 'Truth and Power' in *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, ed. by Colin Gordon, trans. by Colin Gordon and others (New York: Pantheon Press, 1980), pp. 109-133, (p. 131).

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inappropriate proposition of marriage to Isabella in the play's denouement. Despite Isabella being a novice, Vincentio is unable to recognise her desire for a life of chastity and prayer (I.4.3-5); her potential disgust at his fraudulent use of holy orders; and her expected anger towards the manipulation of her emotions through his general machinations. Therefore, her silence at the end of the play does not suggest a future of everlasting happiness but more likely, her exasperation, anger and disbelief:

Your friar is now your Prince. As I was then
Advertising and holy to your business,
Not changing heart with habit, I am still
Attorneyed at your service. (V.1.374-77)

The use of the legal term 'attorneyed' is pertinent here, because it is used as an odd term of affection meaning 'to appoint (someone) as one's legal representative or proxy' (*OED*: n.1.). Vincentio's use of the term suggests he views the marriage in contractual legal terms, rather than an expression of love or emotion.⁹⁹ Jonathan Goldberg compares Vincentio's marriage proposal with Angelo's proposition as one of many 'substitutions' that exist within the play: 'the Duke appears to be in Angelo's place, offering redemption to Isabella for sexual favours'.¹⁰⁰ Vincentio's wooing of Isabella and subsequent proposal may not seem as horrific as Angelo's indecent proposition, but they are both nonetheless 'an assault on her integrity'.¹⁰¹

⁹⁹ *Online Etymology Dictionary*, n.d. <<https://www.etymonline.com/word/seduce>> [accessed 7th February 2024].

¹⁰⁰ Jonathan Goldberg, *King James I and the Politics of Literature Jonson, Shakespeare and their Contemporaries* (Baltimore: The John Hopkins University Press, 1983), pp. 234-5.

¹⁰¹ *Ibid.*, p. 235.

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Importantly, the text's representation of the royal prerogative as a tool to subject the Viennese people to surveillance suggests an acute anxiety surrounding betrayal that may be a reference to the events surrounding the Catholic conspiracy against King James in the Bye Plot. Ironically, in the play it is the Duke who complains from 'dark corners' (IV.3.147) about the threat upon liberty and freedom from surveillance, as he suggests that he has become a victim of his own state apparatus:

Millions of false eyes
Are stuck upon thee: volumes of report
Run with these false and most contrarious quests
Upon thy doings.... (IV.1.56-59)

Jonathan Dollimore interprets Vincentio's actions as a form of ideological control: religion [is represented] as 'a mere politic device' and whereas State law has 'power over our outward actions only' religion works upon men's 'inward cogitations... the privy intents and motions of their heart'. Armed with this knowledge, 'politic devisers' are 'able to create God in man by art'.¹⁰²

The operations of the court in *Measure for Measure*, and *The Merry Wives of Windsor*, function differently. In *The Merry Wives of Windsor*, the court is ineffective due to inaction whereas in *Measure for Measure* the court is too effective in that it is overly punitive.

¹⁰² Jonathan Dollimore, 'Transgression and Surveillance in *Measure for Measure*' in *Political Shakespeare: Essays in Cultural Materialism*, 2nd edn (Manchester: Manchester University Press, 1996), pp. 72-87, p. 81.

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Angelo consciously removes equity from judicial sentencing in order to assert his own religious views about moral behaviour. In Act 2, when the two chief justices discuss sentencing on their way to the courtroom, Angelo voices his fear that the laws surrounding sexual crime are at risk of being circumvented by social custom because legislation is not upheld within the courts (II.1.1-4). Escalus' response is one of restraint: 'Let us... cut a little / Than fall and bruise to death' (II.1.5-6). The gravity of this interaction is extreme because what appears to be a casual chat between two Justices walking into the court room to take their seats, is a debate over whether their court should pronounce life or death sentences to any sexual malefactor in Vienna. Absent from their conversation is reference to any institution in which sage men or representatives of the people have debated the jurisprudential value of Angelo's argument. Instead, the text suggests that they are making decisions based upon their own 'affections' (II.1.10). This parody of the law's operations contrasts with the collective consensus of the inhabitants of Windsor (*The Merry Wives of Windsor*) whose 'affections' were collectively agreed upon to alter the behaviour of the malefactor rather than commit state-sponsored murder.

Angelo's use of personal bias in the interpretation of legislation is emphasised in his strict sentencing of the Viennese people based solely on his own personal moral standards which he advocates for himself too: 'Let mine own judgement pattern out my death' (II.1.30). Unlike Escalus, he refuses to acknowledge any extenuating circumstances behind a crime; he cannot justify equity: "'Tis one thing to be tempted, Escalus, / Another thing to fall' (II.1.17-18). Instead, Angelo views law as an immovable force to which people must succumb: 'You may not so extenuate his offence' (II.1.27). This view was, according to Martin Ingram, prevalent during the

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early part of the seventeenth century. Ingram explains that the Church authorities saw the rise of prenuptial pregnancy towards the end of the sixteenth century as part of a wider moral decline. Men, he explains, were believed 'to give vent to their passions if they were not restrained by their own powers of reason and self-control, backed up by the strictures of law'.¹⁰³ Ingram goes on to say that the Church courts therefore increased the vigour by which they prosecuted prenuptial sex in a bid to stem pre-marital pregnancies.¹⁰⁴ Similarly, the common law developed a comparable approach to pre-marital sex when the cost of bastardy was placed upon the community. JPs were empowered by the statute of 1576 (18 Elizabeth I c.3) to find a person or relative responsible for the financial surety of the child. However, by 1609, a new statute (7 James I, c.4) imposed much harsher penalties on unwed parents (especially the poor) in which, 'all mothers of bastards supported by parish welfare be imprisoned in the house of correction for one year. Second offenders were not to be discharged from prison until they had provided sureties for their good behaviour'.¹⁰⁵ Angelo's moral and legal stance in the play captures this contextual change in the legal models adopted by both ecclesiastical law and common law.

Angelo's response to Claudio's sentence and Isabella's petition is devoid of equity and responsibility: 'Mine were the very cipher of a function'; 'It is the law, not I, condemn your brother' (II.2.39, 82). Angelo also presents an extreme attitude towards incontinence. Such attitudes were voiced repeatedly by zealous Puritan leaders in seventeenth-century England who yearned for a greater and more strict

¹⁰³ Martin Ingram, *Carnal Knowledge*, p. 30.

¹⁰⁴ Martin Ingram, *Church Courts, Sex and Marriage in England*, p. 221.

¹⁰⁵ Walter J. King, 'Punishment for Bastardy in Early Seventeenth-Century England', *Albion: A Quarterly Journal Concerned with British Studies*, 10.2, (1978), pp. 130-151 (p. 132), doi: 10.2307/4048339.

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control over human morality. It is an attitude that, according to Virginia Lee Strain, played into the aspirations of a socially ambitious members of the puritan gentry: 'Angelo invests exemplarity not with rhetorical power of persuasion, and not even with the positive law's power of coercion, but with logical necessity'.¹⁰⁶

Ruling strictly by the letter of the law, without equity, is evidence of the tightening up of state law in Vienna. Angelo's steadfast adherence to the letter of the law is shown in his language. The language that his character employs is devoid of empathy or sympathy for the people whom he judges. When pronouncing death for Claudio, he commands the Provost to execute Claudio at a specific time as well as provide a priest for confession (II.1.34-36). There is no sense of apprehension or guilt that Claudio is a victim of the state because he is being punished significantly more harshly than previous malefactors. Instead, there is an unemotional resolution and finality in Angelo's attitude: 'he must die' (II.1.31). This is the antithesis of Escalus' reaction which demonstrates a sense of remorse and troubled conscience: 'Well, heaven forgive him, and forgive us all' (II.1.37). Similarly, the Provost questions the severity of Claudio's sentence by double-checking Angelo's order:

I have seen
When, after execution, judgement hath
Repented o'er his doom.

(II.2.10-12)

¹⁰⁶ Virginia Lee Strain, 'Preventative Justice in *Measure for Measure*' in *Shakespeare and Judgement*, ed. by Kevin Curran (Edinburgh: Edinburgh University Press, 2018), pp. 21-44 (p. 35).

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Angelo's judgement is at odds with other members of the judiciary: he berates the Provost, threatening his livelihood (II.2.12-14). The inference is clear: doubt is placed on to the appropriateness of Angelo's judgement. His aggressive response suggests that his personal authority and that of his office are amalgamated; his personal decision and judgement, is fused into the integrity and legitimacy of the institution and apparatus of secular law. This is evident in his inverted response to Isabella's petition (to save her brother's life): 'Look what I will not, that I cannot do' (II.2.53). He places his inferred self, 'will not,' before the inferred abstract authority of the law 'cannot do'. His personal authority is thereby elevated and merged into that of the authority of his judicial position. This amalgamation emphasises a major flaw in Viennese justice: it doesn't matter how factual and empirical secular law may appear; it is vulnerable to the individual whims of the judge.

Angelo's refusal to use personal appellations when referring to malefactors demonstrates a sense of separateness from the community which he serves. Whereas the Provost refers to Juliet by name, Angelo uses the third person, stripping away her identity: 'her', 'fornicatress' (II.1.16, 22, 23). His emotional disconnection from those that find themselves in court is further underlined when his order for Juliet's welfare includes only 'needful and not lavish means' (II.2.23). The lack of compassion in Angelo's verbal interactions with or about malefactors positions them as 'others': they are stripped of their identity and dignity.

Angelo's rigorous adherence to the letter of the law is clear when Isabella requests that Angelo separate the criminal act from her brother so that the 'fault' is punishable under the law, and Angelo refuses. Instead, he reiterates the difference between

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intent (*mens rea*) and action (*actus reus*) in order to condemn the perpetrator of the crime (II.1.17-18, II.2.40-41). He then ironically removes his own personal responsibility for Claudio's sentence by claiming that he is 'the very cipher of a function' (II.2.39), the mouthpiece proclaiming and asserting the law. This sequence is framed by Isabella's 'virtuous' habit, her determination to be 'shortly of a sisterhood' (II.2.20-21) and her call to 'heaven' and use of religious parallels (II.2.69, 75-81). It adds a religious dimension that positions Angelo as a parodic pharisee (who were ciphers of the law), opposite Isabella seeking to forgive the sins of her brother like Jesus in Matthew 9.2-5, where the Pharisees are unable to empathise with the paralytic man. Angelo is thereby presented as having neither sympathy nor empathy for Claudio.

The law has to retain moral probity if it is to sustain its credibility as a central tool to maintain appropriate human behaviour and relations. In *Measure for Measure*, as soon as sexual transgression legislation is enforced assiduously, the law is shown as hypocritical and therefore unworkable. as is the case when Angelo voices his self-realisation about his descent into temptation (II.2.169-81). Because Angelo is considering perpetrating a sexual crime, his future machinations, both calculated and without compassion for his victim, present a fatally biased jurisprudence.

Angelo's linguistic interpretation of state legislation uses a lexis which associates the infraction of secular law with concepts of 'evil' and 'sin' (II.2.93, 97, 168, 176, 187). He thereby frames the secular jurisdiction of incontinence within the rhetoric of ecclesiastical jurisprudence. Angelo's emotive and figurative language and instructions appertaining to sentencing are therefore not drawn from an equitable

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understanding of legislation conducive to peace within the Viennese community. Instead, it is one based upon a Mosaic theology at odds with Jesus' teaching in S. Mattheu 7.1-2 and which is dependent upon the coercive apparatus of the state.

Consequently, the dichotomy that underpinned the differences between spiritual and secular law is once again joined in another pluralism. Angelo's misuse of authority and power mirrors Vincentio's use of legal pluralism in which the authority of the Church and state are elided: Angelo uses the state apparatus (coercion) associated with the secular court to prosecute moral transgressions. Claudio labels Angelo's rendering of justice sarcastically as godlike and then references Romans 9:15:

Thus can the demigod Authority
Make us pay down for our offence by weight
The words of heaven; on whom it will, it will,
On whom it will not, so. Yet still 'tis just.¹⁰⁷ (I.2.100-3)

Angelo's legal position is, as the text suggests, neither popular nor one with which other members of the judiciary seem to agree. For example, when Escalus discusses sentencing with Angelo, he appears to disagree with Angelo when he provides the non-committal response: 'Be it as your wisdom will' (II.1.32).

Punishing one person more harshly than others by way of example is fundamentally unfair to that individual. It prioritises collective, long-term reform over immediate individual circumstances. This is an injustice built into the legal system that still

¹⁰⁷ *Romans* 9.15. 'For God said to Moses, "I will show mercy to anyone I choose, and I will show compassion to anyone I choose."'

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happens now. The proposed death of Claudio as an example and warning to other members of the Viennese community, was an imposition placed upon Angelo by Vincentio. The death of Claudio is the Duke's attempt to 'strike and gall' (I.3.36) the people; Claudio's lawful death designed as a direct and dire warning towards other potential malefactors: 'future evils.... Are now to have no successive degrees' (II.2.97-100). Therefore, when the Provost marches Claudio around the streets in Act I Scene 3, he both reenacts the shaming element of an ecclesiastical punishment and provides a warning to other would-be malefactors. Claudio thus becomes the point of intersection between the people of Vienna and the law.¹⁰⁸ The Viennese community's response appears to suggest that the lawmakers have got this piece of legislation wrong. Despite Vienna's rulers awakening the law from its slumber and making sexual incontinence a capital offence, the community seems to have largely ignored Claudio's actions as commonplace.. Virginia Lee Strain makes the point that, 'at the prison ... Pompey delivers a soliloquy that catalogues the numerous clients of Mistress Overdone who are now locked up', thanks to the resurgence of this piece of legislation (IV.3.1-16).¹⁰⁹ The text therefore highlights a warning to lawmakers that legislating against basic human nature is futile, regardless of how punitive the punishment. Paul Yachnin goes further when he reiterates, 'that Shakespeare does not anywhere in his drama imagine "a well-functioning legal system"'.¹¹⁰ Vienna's incontinence laws, he argues, simply don't work.

¹⁰⁸ Virginia Lee Strain, 'Preventative Justice in *Measure for Measure*', p. 35.

¹⁰⁹ Ibid.

¹¹⁰ Paul Yachnin, 'The Laws of *Measure for Measure*' in *Shakespeare and Judgement*, edited by Kevin Curran (Edinburgh: Edinburgh University Press, 2018), pp. 139-156 (p. 143). Yachnin quotes Richard Strier, 'Shakespeare and Legal Systems: The Better the worse (but not vice versa)' in *Shakespeare and the Law: A Conversation among Disciplines and Professions*, edited by Bradin Cormack, Martha C. Nussbaum, and Richard Strier (Chicago: University of Chicago Press, 2013), pp. 174-200 (p. 174).

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In *Measure for Measure*, the authority of the judiciary and its interpretation of justice is built upon reputation. According to George Trevelyan, the reputation associated with a J.P. raised them to 'the most influential class of men in England'.¹¹¹ Keith Wrightson describes them as having 'an elite... status',¹¹² while Anthony Fletcher states that the reputation that the role of a J.P. brought the incumbent, 'was worth [the] undertaking'.¹¹³ Although Angelo doesn't adopt a role equivalent to the JP, he nevertheless represents the rise of a new ambitious middle class, of which JPs were a dominant part, and who were participating in 'the transfer of power over the law' from the nobility.¹¹⁴ For them, , a spotless reputation was essential. In the play, Angelo starts by building his reputation as a godly magistrate; someone to 'be counted on to use their discretionary powers to enforce personal conduct legislation'.¹¹⁵ His revival of a moral piece of legislation that, 'like unscoured armour, hung by th'wall...[for] nineteen zodiacs' (I.2.143-44) allies his position with 'actual sixteenth and seventeenth-century authorities who were "almost morbidly obsessed with bastardy."'116 Claudio notices Angelo's focus on building a reputation immediately:

for a name,

Now puts the drowsy and neglected act

Freshly on me. 'Tis surely for a name. (I.2.146-48)

¹¹¹ J. H. Gleason, *The Justices of the Peace in England 1558 to 1640* (Oxford: Clarendon Press, 1969), p. 1.

Gleason quotes George M. Trevelyan, *English Social History* (London: Longmans, 1941), P. 1.

¹¹² Keith Wrightson, *English Society 1580 – 1680*, p. 26.

¹¹³ Anthony Fletcher, 'Honour, Reputation and Local Officeholding in Elizabethan and Stuart England' in *Order and Disorder in Early Modern England*, edited by Anthony Fletcher and John Stevenson (Cambridge: Cambridge University Press, 1987), pp. 92-115 (p. 92).

¹¹⁴ Martha Widmayer, "'To Sin in Loving Virtue": Angelo of *Measure for Measure*', *Texas Studies in Literature and Language*, 49.2 (2007), pp. 155-180 (p. 156), doi: 10.1353/tsl.2007.0013.

¹¹⁵ Ibid.

¹¹⁶ Ibid., p. 162.

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It is Angelo's reputation that causes Vincentio to elect him as his 'first' deputy in his absence (I.1.46). He identifies Angelo's 'character' (distinctiveness) and 'belongings' (attributes) as 'virtues', talents which Vincentio believes Angelo has a duty to share with the public (I.1.27-31). In his public address to Escalus and Angelo, he is complimentary about Angelo's reputation, providing platitudes that explain his decision to elevate him was taken with 'special soul' and 'leavened and prepared choice' (I.1.17, 51). However, in private with his confessional priest, Vincentio presents reasons that are more specific and a lot less complimentary. Angelo, the Duke explains, is a man of 'stricture', 'firm abstinence', is 'precise', 'scarce confesses that his blood flows' and that 'his appetite / Is more bread than stone' (I.4.12, 50-54). According to Vincentio, Angelo's self-restraint is so severe that he questions whether he is human. This benefits Vincentio and Viennese law because Angelo's morally pure reputation suggests that when he pronounces judgement on a malefactor culpable of incontinence, the authority of the state is seen as above reproach and free from any sense of hypocrisy. If Vincentio had chosen to impose Vienna's new sexual repression laws, it is likely his own behaviour (reputation) would have been called into question (I.3.5-6). Therefore, the Duke overlooks any shortfalls to test Angelo to find out 'what our seemers be' (I.3.54) and we can also presume he ignores Angelo's abandonment of Mariana.

Angelo's reputation for self-restraint does elicit a negative response from Vienna's society. When soliciting Isabella's help in petitioning Angelo, Lucio describes him as:

A man whose blood
Is very snow broth: one who never feels
The wanton stings and motions of the sense,

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But doth rebate and blunt his natural edge

(1.4.56-59)

Angelo is presented as physically incapable of feeling the impact of sexual desire because he has no relatable experience. Lucio argues that Angelo needs to 'learn' what it is like to be beguiled by 'maidens' (1.4.80-83) in order for him to 'soften' (1.4.69) his attitudes towards others. The inference is that Angelo's judgement is flawed because he doesn't understand the 'intent' behind the crime. Although this does not remove the authority of the legislation, it casts doubt on to the validity of the ruling and the justice meted out by Angelo.

Other characters also seem to share Lucio's opinion of Angelo. The other magistrate also considers Angelo's reputation as being 'severe' (II.1.251) while the Provost repeatedly questions his sense of justice. From the start of the play, the text places the Provost in opposition to Angelo's representation of justice: 'I do it not in evil disposition / But from Lord Angelo by special charge.' (1.2.98-99). Similarly, the Provost angers Angelo into threatening his livelihood by implying that his sentence is unjust (II.2.10-12). It is ironic, therefore, that if Angelo were to remain a Justice, it is likely that his sentencing would be more equitable at the end of the play after he had learned how the power of human desire, behind intent, impacts upon the crime of sexual incontinence:

I am sorry that such sorrow I procure,
And so deep sticks it in my penitent heart
That I crave death more willingly than mercy.
'Tis my deserving, and I do entreat it.

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(V.1.468-71)

The play warns us that a person's reputation does not guarantee their probity. It can be deployed as a façade from which to hide behind. Angelo weaponizes his reputation. When he falls from his position of responsibility to undertake a crime, his 'unsoiled name', 'austereness', and 'place i' th' state' (II.4.155-56) are all elements of his reputation that he uses to make 'the law... curtsy to... [his] will' (II.4.175) and thereby create a credible deceit designed to entrap Isabella. His attempt to abuse his reputation for personal sexual gratification will, he believes, outweigh Isabella's protestations about his impropriety: 'Who will believe thee Isabel?' (II.4.154) The name is shortened to make the line scan. His assertion that his 'False o'erweighs your true' (II.4.170) leaves Isabella in despair and ensures that his journey from godly to corrupt justice is complete: 'I have begun, / And now I give my sensual race the rein' (II.4.159-60).

According to Fletcher, for a J.P. to undertake a position that led to corruption was risky because while 'credit among his peers might be elevated by their appreciation of his concern for justice, it could also be blotted if it became known or was believed that he abused his authority.'¹¹⁷ For example, we can infer that Vincentio's tainted reputation is responsible for the lapse in prosecuting Viennese sexual laws. The hypocrisy associated by Viennese characters being judged guilty of sexual misconduct by a judge who, according to Lucio, was guilty of the same crimes (III.1.368-70) was too much, even for the monarchical duke: 'Twould be my tyranny to strike and gall them / For what I bid them do' (I.5.36-37).

¹¹⁷ Anthony Fletcher, 'Honour, Reputation and Local Officeholding in Elizabethan and Stuart England', p. 92.

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For Escalus, reputation is formulated according to class. He interprets and attempts to mete out justice with reference to a malefactor's social status. For example, a malefactor like Claudio, who was a 'gentleman' (II.1.6), should be treated differently than a member of the peasantry. Consequently, he attempts to alter the outcome of his punishment and thereby reduce the severity of Angelo's sentencing: 'Alas, this gentleman / Whom I would save had a most noble father' (II.1.6-7). Whereas the bawd Mistress Overdone is shown little mercy for being from a lower class. After her fourth conviction of prostitution, it seems that her repeat offending is viewed as a consequence of her class. She is therefore sent directly to prison with 'no more words' (III.1.421-434).

Vincentio views Escalus' as a more knowledgeable and skilful judge than himself (I.1.3-8). Other malefactors, like the bawd Mistress Overdone, equate a good judge as one that is merciful. Escalus' overly merciful judgements seems to indicate that his sense of justice is overly lenient but, like Vincentio, he recognizes laxity in the law in the past has produced the current situation.

Mistress Overdone: Good my lord, be good to me. Your honour
is accounted a merciful man, good my lord.

Escalus: Double admonition, and still forfeit in the
same kind! This would make mercy swear and play the tyrant.

(III.1.421-424)

Vincentio seems aware of Escalus's inclination to mercy because he chooses to elevate Angelo's judicial position above that of Escalus despite the latter's apparent

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experience and seniority. Escalus's interpretation of justice subsequently lacks the authority that Angelo's carries. When Escalus' recommends Angelo, 'cut a little / Than fall and bruise to death' (II.1.5-6), he is ignored. However, when presiding in the court, Escalus chooses to ignore Angelo's strict interpretation of Vienna's laws and implement his own legal interpretation by releasing Froth and Pompey without any punishment for frequenting or working in a brothel (II.1.181-88). The text thus highlights how the severity or lenience of justice is dependent upon the whims of individual judges and their interpretation of the gravity of the crime. This point is further highlighted when Pompey ends up in prison after being sentenced for the same crime by Angelo because: 'The deputy cannot abide a whoremaster' (III.1.290).

In *Measure for Measure's* heightened atmosphere of repressed transgressive sexuality, questionable marital contracts are treated very differently from those in *The Merry Wives of Windsor*. For Anne Page, marriage is presented as a commodity to be bought and sold or as a gateway to access a higher social status. But unlike in *Measure for Measure*, there is a sense of playfulness associated to marriage. For example, the wives treat their treatment of Falstaff's advances with humour and when both parents discovered that Anne Page had married and consummated her marriage with Fenton, they seemed strangely and perhaps unrealistically too happy and joyous: 'heaven give thee joy!' and where the multiple clandestine marriages conclude with 'Heaven give you many, many merry days' (V.5.213, 217). Clearly a happy resolution sits comfortably in a Tudor comedy, but the attitudes in *Measure for Measure* are more serious because the play begins with Claudio's public shaming and death sentence (I.2.94-95 and I.5.72-73). Although Claudio's sentence is a

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function of Angelo's judicial interpretation, it also presents an alignment of both ecclesiastical jurisprudence and the contemporary moral discourses surrounding the sacrament of marriage.

Unlike the arranged marriages surrounding Anne Page in *The Merry Wives of Windsor*, it is clear from Juliet's pregnancy that both Claudio and Juliet are guilty of preuptial incontinence despite both agreeing to marriage. S. Nagarajan identifies the verbal contract between Claudio and Juliet as a *de futuro* betrothal and acknowledges that it 'did not confer the right of sexual union on the partners' and that Angelo is 'legally correct' in his ruling – albeit tyrannical.¹¹⁸ Martin Ingram explains that 'sexual intercourse between contract and solemnisation was discouraged, or even absolutely forbidden' and that legal commentators and moralists like William Gouge, regarded preuptial incontinence as 'an unwarrantable and dishonest practice'.¹¹⁹

However, Claudio's explanation to Lucio, 'she is fast my wife' (I.2.124), but they are lacking the support of friends (I.2.127-28) to secure the 'dower' needed to solemnise their marriage (I.2.129-30) voices a common experience of young people. According to Martin Ingram, poverty of the spouse was one of the major reasons that the dower was held back by friends and family. In one case, *Catherine Nicholls v. John Wilde* (1616), 'there was 'great disparity betwixt the said parties... as well in respect of birth

¹¹⁸ S. Nagarajan, 'Measure for Measure and Elizabethan Betrothals', *Shakespeare Quarterly* 14.2 (1963), pp. 115-119 (p. 117), doi: 10.2307/2867772.

¹¹⁹ Martin Ingram, 'Spousals Litigation in the English Ecclesiastical Courts c. 1350-1640' in *Marriage and Society: Studies in the Social History of Marriage*, ed. by R. B. Outhwaite (London: Europa Publications, 1981), pp. 35-57 (p. 39). Ingram quotes William Gouge, *Of domesticall duties eight treatises* (London: William Bladen, 1622), pp. 196-202].

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and descent as of estate and livelihood".¹²⁰ For example, the friends and family of Catherine Nicholls disparaged the parents (especially the mother) of John Wilde, by claiming that she received alms. However, Ambrose Wilde (John Wilde's uncle) was described as 'a man of good estate and liveth in a very good fashion', suggesting that something more than wealth and the ability to maintain an appropriate style of life, was the problem.¹²¹ Perhaps, the friends and family of Catherine Nicholls, who were members of the middle class, sought a match that reinforced issues relative to their status: wealth, property, quality of living, morality, breeding and education.¹²² These issues are alluded to in Claudio's explanation to Lucio: an explanation that is one-sided and therefore provides his interpretation of the events that led him to his current predicament.

The text positions Claudio and Juliet as victims of both Juliet's friends and family's animosity (when they withheld the dowry), and of Vienna's legal system. Claudio and Juliet's plight highlights how ecclesiastical and secular law are punitive rather than preventative: they punish after the act: 'As surfeit is the father of much fast, / So every scope by the immoderate use / Turns to restraint' (I.2.106-8). The text makes the point that criminalising pre-marital incontinence is an attempt by the state and Church to interfere with and control human interactions within the private sphere. For example, neither Claudio nor Juliet meet the profile of the pre-marital incontinence sinner who:

delights in filthiness of sin.... where the common example of the world

¹²⁰ Martin Ingram, *Church Courts, Sex and Marriage in England*, p. 203.

¹²¹ *Ibid.*, 204

¹²² *Ibid.*

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declareth how the devil hath their hearts bound and entangled in
diverse snares, so that they in their wifeless state run into open
abominations, without any grudge of their conscience.¹²³

In this extract, conscience is the key denominator because according to the sermon, it prevents illicit activity. However, in *Measure for Measure*, conscience comes after the act suggesting that the emotional and physical attraction of two people is more powerful than the threat of punishment. But the language of sin and damnation, is the same:

Claudio: Our natures do pursue
 Like rats that ravin down their proper bane.
 A thirsty evil and when we drink we die.
 (I.2.108-110)

Duke: I'll teach you how you shall arraign your conscience
 And try your penitence, if it be sound
 Or hollowly put on.
 (II.3.22-24)

Juliet: I do repent me, as it is an evil
 And take the shame with joy.
 (II.3.37-38)

¹²³ 'An Homily of the State of Matrimony', in *The Homilies: Certain Sermons Appointed by the Queen's Majesty*, ed. by G. E. Corrie (Cambridge: Cambridge University Press, 1850), p. 501.

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The text therefore seems to highlight the ineffectual nature of the laws surrounding prenuptial incontinence. Angelo's attempt to use Claudio as an exemplar inevitably fails woefully because any potential punishment does not enter into the individual's conscience prior to the offence. Instead, the actions of illicit sex remain hidden in concealed spaces whereas the discourses associated with it permeate society in a form of titillation to entertain audiences. For example, in Elbow's bumbling malapropisms, he reveals the charismatic hidden world of prostitution: 'parcel-bawd', 'bad woman', 'a hot-house', 'fornication, adultery and all uncleanliness', 'stewed prunes', and 'one were past cure of the thing you wot of' (II.1.58, 58-59, 60, 73-74, 83, 101-2). There is no place for a conscience in these illicit places and it seems, according to Pompey, that they are very popular: 'Does your worship mean to geld and splay all the youth of the city?' (II.1.205-206). The fact that illicit sex is everywhere, that bawdy discourse permeates society, that there is no room for conscience in the city, all demonstrate that the laws surrounding the crime were ineffectual in practice.

The play's structural positioning of Claudio's arrest highlights the irony surrounding illicit and permitted sexual activity. It emphasises that a Church wedding acts as a liminal authorising moment within a person's life span, that determines whether their emotional and physical attraction is either illicit (and thereby criminal) or legal and therefore morally resplendent. In the play's fictional world of Vienna, this seems outrageous because it seems to suggest that the service itself is an arbitrary authorising force to publicly declare that which the majority of Viennese society have all been covertly practising.

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The rise in ecclesiastical court cases that feature sexual incontinence highlights the general shift in prosecutions during the early modern period from mainly adultery to pre-marital sex, especially when cases of incontinence involved illicit pregnancy and bastardy.¹²⁴ According to Martin Ingram, there were two explanations that account for this shift in prosecutions. The first was to enforce or encourage a 'more vigorous valorization of matrimony' among the population, and the second was an attempt to halt the number of illegitimate children being paid for by their communities because the increase in bastardy was becoming 'increasingly visible'.¹²⁵

The treatment of marriage and sexual transgression in the plays shows that theatre is critical of any deviation from sexual social norms. Both *The Merry Wives of Windsor* and *Measure for Measure* show a significant concern about sexual transgression; much more than in the decisive treatment of poverty and masterlessness. Both plays are hugely critical of the ineffectiveness of the law's ability to protect moral standards within the community, and this is shown in the different ways they model the consequences of legal centralisation.

This punitive sentencing of illicit sexual activity hardens in *Measure for Measure*, primarily because it demonstrates the impact of a change in legal approach: a movement away from community self-regulation to a more centralised system of law. While, in *The Merry Wives of Windsor*, the primary objectives of community-based justice were to reform the perpetrator and exonerate damaged reputations. In *Measure for Measure*, the judicial objectives were mostly punitive: coercive

¹²⁴ Martin Ingram, *Carnal Knowledge*, pp. 3, 326.

¹²⁵ *Ibid.*, pp. 326-7

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punishments to act as exemplary warnings. The hardening of judicial sentencing across the two plays can be seen to reflect a contextual reality occurring in English law between the reigns of Elizabeth I and James I. It can be seen as emanating from the monarch, their government and parliament, state and ecclesiastic judiciary, and critically represented in plays presented to communities of spectators. Both plays therefore offer a form of social commentary and criticism as well as a communal and experiential voice which added to the debate regarding adultery, prenuptial incontinence and bastardy.

Gossip is shown in *The Merry Wives of Windsor* as important to the maintenance of community wellbeing. It results in greater scrutiny and self-evaluation and eased tensions because issues are dealt with at their source. However, in *Measure for Measure*, gossip is shown through slurs against reputations where reputations, especially among the judiciary, has the potential to equate itself with power. Reputation authorises the operations of the law and its power over others. Angelo's use of pronouns suggests that he sees the community as an anonymous, analogous mass rather than a group of individuals.

In *Measure for Measure*, judicial pluralism is a feature of the centralisation of the law. For example, the centralisation of legal pluralisms provided Duke Vincentio with an immense amount of power to access both the public and private spheres of an individual's life. His misuse of the royal prerogative creates a foreboding and functions as a warning to the play's audiences about the potential invasive implications of the apparatus of an unchecked state. It infers that the monarch has the authority to demand obedience and ensure compliance to the law while

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permitting personal transgressions whenever it suits them. In *Measure for Measure*, the language of secular and spiritual law is occasionally fused to manipulate the individual. It works by introducing the concept of an individual's conscience as the conduit for personal responsibility. It is achieved by adding concepts of evil and sin to infractions of common law. In *The Merry Wives of Windsor*, this is indicated through a desire for community acceptance. Whereas in *Measure for Measure*, an individual's conscience is reshaped by their desire for safety and well-being. It is the threat of punitive and physical acts of violence that acts to alter a person's behaviour.

In both plays the anxiety towards sexual crime is heightened because the legal systems and jurisdictions in which they were tried were changing. The centralisation of the law meant that judgement was becoming more impersonal and out of touch with local concerns and customs; where members of the community (for example, women and the poor) were becoming increasingly disenfranchised, and where the outcomes of sentencing was more about revenge and punishment and less about reconciliation and rehabilitation. Both plays therefore suggest that there was a better, golden era in which the judicial system was fairer and more unambiguous; a world built out of nostalgia.

Chapter 3

The Crime of Witchcraft

There are more things in heaven and earth, Horatio,
Than are dreamt of in our philosophy.

(The Tragedy of Hamlet, 1.5.168-69)

The quote above reveals the conflict between people in the early modern period who are characterized as believing in the supernatural and witchcraft and those that hold more rational and preternatural views about unexplained events.

This chapter investigates how two plays, *2 Henry VI* (1591-2) and *Macbeth* (1606), represent and inform our understanding of the crime of witchcraft. It considers how the presentation of witchcraft and its stereotypes change across the two plays under the legislative influence of the two monarchs, Queen Elizabeth and King James. This chapter explores changing attitudes towards witchcraft narratives through textual and performed representations across the end of the sixteenth century into the beginning of the seventeenth century. It then reflects upon how witchcraft narratives impacted on the contact points between people and the law.

The plays show the crime of witchcraft through the evolution of complex interactions between the law and theatre. The plays develop the myths and tropes of the witchcraft narratives and at other times, the law develops through its response to myths and tropes voiced in the theatre. This chapter acknowledges the symbiotic

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nature of law, literature, religion and culture in the development of the witchcraft narrative and the way in which the plays' audiences responded.¹

The academic field of witchcraft is too large a field of study to adequately cover in a single chapter. Therefore, this chapter charts six specific areas that relate to legal matters: prophecy, conjuration, the witch figure, legal intent, application of the law and the misuse or weaponisation of witchcraft legislation. This chapter explores the role of prophecy in the plays to ascertain how it both represents and informs legislation. It investigates the changing representation of conjuration and its codification in legal case-studies (sixteenth and seventeenth-century pamphlets) and charts its development through English and Scottish legislation, theatrical representation and other literary sources like poetry and witch-manuals. Similarly, this chapter discusses the representation of the witch figure in terms of malefic magic through linguistic structures, literary devices, dramatic tropes, and through textual representations.² The chapter investigates the application of witchcraft law through legislation, the dramatization of legal 'intent', enforcement, and the trial process. Legislation alone does not explain how witchcraft operated within the community. Finally, I analyse how theatre dramatizes the use and misuse of witchcraft legislation. Early modern witchcraft was divided into two categories: learned magic and demonically inspired (malefic) magic. Learned magic was taught by a 'wise man' or 'cunning woman', or through studying texts claiming to teach

¹ I use the term narrative to describe how the codification of a witch and witchcraft changes in a manner that is similar to a novel in which elements of plot and character develop or evolve across the length of the book's narrative.

² By maleficium I mean an act of witchcraft performed with the intention of causing damage or injury; the resultant harm; (also) the power of Satan (rare). Now *historical* (OED: 1.a). See Heinrich Kraemer, *Malleus Maleficarum*, trans. by Rev. Montague Summers from the 1489 edn (Bungay: John Rodker, 1928), <<https://archive.org/details/b3136245x/page/n11/mode/2up>> [accessed 28 December 2024].

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individuals how to cast spells on a wide range of topics including fortune-telling and necromancy.³ All learned magical offences were prosecuted through the ecclesiastical courts where magic was identified as heretical: the perceived use of 'demonic aid in their arts... [made them] guilty of idolatry'.⁴ Demonic maleficium, by contrast, was arraigned through the secular courts because victims of black magic sought reparation for physical or financial damage. In the secular courts, a guilty verdict could result in hanging.

There is a strong symbiotic relationship between English culture, the law and narratives about witchcraft. The development of early modern witchcraft legislation presents narratives in which a series of European and English monarchs and their governments attempted to respond to an evolving malefic threat.⁵ This chapter, investigates mainly English witchcraft laws during the Elizabethan and Jacobean governments and explores how legislation surrounding witchcraft evolved through legal changes introduced by their Parliaments. Charting these changes in the legislative process allows an exploration of how each alteration or addition to witchcraft legislation alters the codification of the crime of witchcraft, the representation of witches, and their activities. The symbiotic relationship between law and English culture is created by a process of interweaving. For example, the narratives behind the legislative process feed into the codification of witchcraft folklore and the stereotypes and tropes found within literature and theatre. The literary codification of witches and witchcraft in turn adds to the legal witchcraft

³ Paul Foreman (attrib.), *The Cambridge Book of Magic: A Tudor necromancer's manual*, trans. by Francis Young (Cambridge: Texts in Early Modern Magic, 2015).

⁴ Edward Peters, *The Magician, The Witch and the Law* (Hassocks: Harvester Press, 1978), p. 155.

⁵ I define a malefic threat as the perceived threat from maleficium or harmful actions caused by individuals.

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narratives that result in heightened societal anxiety. In order to assuage societal anxieties surrounding the activities of witches and witchcraft, the state tightens legislation.

To understand witch trials through the textual representations of religious and judicial systems within which they are framed requires an interdisciplinary investigation of early modern community, society and gender.⁶ This chapter therefore draws on the significant work of James Sharpe, Keith Thomas, Alan Macfarlane, Deborah Willis, and Diane Purkiss.⁷

The ideology underpinning witchcraft narratives was also shifting because they originated from religious heresy. Inevitably, definitions of witchcraft were affected by the propaganda associated with the religious realignment post-reformation, as well as providing an outlet for the political, social, and religious concerns. Furthermore, English witchcraft legislation was influenced by the prosecution of witchcraft activities across Europe, especially subsequent to the revival of the inquisition. European legislation was more closely aligned with Scottish law which meant that when King James VI of Scotland became King of England, his personal experiences of witchcraft along with his understanding of Scottish witchcraft laws, may have fed into the ideology behind the codification of English witches and witchcraft.

⁶ For a review of critical approaches to the study of witchcraft over the past 60 years, see, Malcolm Gaskill, 'The Pursuit of Reality: Recent Research into the History of Witchcraft', *The Historical Journal*, 51.4 (2008), pp. 1069-1088, doi: 10.1017/S0018246X0800719X.

⁷ James A. Sharpe, *Instruments of Darkness: Witchcraft in England 1550-1750* (London: Hamish Hamilton, 1996); Keith Thomas, *Religion and the Decline of Magic: Studies in Popular Beliefs in Sixteenth-Century England* (Harmondsworth: Penguin Books, 1984); Alan Macfarlane, *Witchcraft in Tudor and Stuart England: A Regional and Comparative Study*, 2nd edn (London: Routledge, 1999); Deborah Willis, *Malevolent Nurture: Witch-Hunting and Material Power in Early Modern England* (London: Cornell University Press, 1995); Diane Purkiss, *The Witch in History: Early Modern and Twentieth-century Representations* (London: Routledge, 1996).

Tudor attitudes to witchcraft altered significantly in 1563. Before this time, Parliament used witchcraft legislation (1541-2) as part of its anti-Catholic propaganda when establishing the protestant Tudor state, post Reformation.⁸ At this time, witchcraft had been dealt with by the Church under heresy laws.⁹ The new Henrician Act presents a fascinating glimpse into the sceptical minds of legislators as they worked to counteract superstitious beliefs and reduce witchcraft to the unlawful activities of 'sundrie persones' exploiting others for 'lucre'.¹⁰ The act is expressed in a sceptical tone due to the use of descriptors like, 'pretendyng', 'falce devyses and practises' and 'fantastical'¹¹ alongside the use of modal verbs like, 'mought' and 'shulde':

WHERE dyvers and sundrie persones unlawfully have devised and practised
Invocations and conjurations of Sprites, Pretendyng by suche meanes to
understande and get Knowlege for their owne lucre in what place treasure of
golde and Silver shulde or mought be founde or had in the earthe or other
secrete places, and also have used and occupied wichecraftes
inchauntements and sorceries to the distruction of their neighbours persones
and goodes, And for execution of their saide falce devyses and practises have
made or caused to be made dyvers Images and pictures of men women
childrene Angelles or develles beastes or fowles, and also have made
Crownes Septures Swordes rynges glasses and other thinges, and gyving

⁸ Malcolm Gaskell, 'Witchcraft Trials in England' in *The Oxford Handbook of Witchcraft in Early Modern Europe and Colonial America*, edited by Brian P. Levack (Oxford: Oxford University Press, 2014), p. 289.

⁹ For example, see the prosecution of Johannes Stokes for his use of incantations to create a fever in 1480 in William Hale, *A Series of Precedents and Proceedings in Criminal Causes: Extending from the Year 1475-1640* (Edinburgh: Bratton Publishing, 1847), p. 3. See also, Malcolm Gaskell, 'Witchcraft Trials in England', p. 290 and Keith Thomas, *Religion and the Decline of Magic*, p. 315.

¹⁰ 33 Henry 8 c.8.

¹¹ "Existing only in imagination, produced by (mental) fantasy". *Online Etymology Dictionary*, n.d. <<https://www.etymonline.com/search?q=fantastical>> [accessed 26 June 2024].

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faith & credit to suche fantasticall practises have dygged up and pulled downe an infinite nombre of Crosses within this Realme, and taken upon them to declare and tell where thinges lost or stollen shulde be become; whiche thinges cannot be used and excersised but to the great Offence of Godes lawe, hurt and damage of the Kinges Subjectes, and losse of the sowles of suche Offenders, to the greate dishonour of God, Infamy and disquyetnes of the Realme. ¹²

The 1541-2 legislation brought crimes appertaining to witchcraft into the secular courts and thereby threatened the death penalty to anyone involved in the invocation and conjuration of evil spirits:

That yf any persone or persones, after the first daye of Maye next comyng, use devise practise or exercise, or cause to be used devysed practised or exercised, any Invocations or conjurations of Sprites wichecraftes enchauntmentes or sorceries... That then all and every suche Offence and Offences, frome the saide first day of May next comyng, shall be demyde accepted and adjudged Felonye. ¹³

This witchcraft Act was repealed just five years after its inception and secular punishment for witchcraft did not return until a new law was passed in 1563 after what lawmakers suggested was an upsurge in witchcraft activity:

Sythens the Repeale wherof many fantasticall and devilishe persons have devised and practised invocations and Conjurations of evill and wicked

¹² 33 Henry 8 c.8.

¹³ Ibid.

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Spirites, and have used and practised Wytchecraftes Enchantementes Charms and Sorceries, to the Destruccioon of the Persons and Goodes of their Neighebouris and other Subjectes of this Realme.¹⁴

The sceptical tone that was pervasive in the Henrician bill is absent in the description of the crime in the new 1563 legislation. It is replaced by a sense that witchcraft is actual and can be identified empirically, it exists in the corporeal world:

That yf any person or persons...use practise or exercise any Invocacions or Conjuracions of evill and wicked Spirites, to or for any Intent or Purpose; or els if any person or persons after the said first daye of June shall use practise or exercise any Withecrafte Enchantment Charme or Sorcerie, wherby any person shall happen to bee killed or destroyed, that then as well every suche Offendor or Offendors in Invocacions and Conjuracions as ys aforesayd, their Concellors & Aidours, as also every suche Offendor or Offendors in Withecrafte Enchantment Charme or Sorcerie whereby the Deathe of any person dothe ensue, their Aidours and Concellors, being of either of the said Offences lawfully convicted and attainted, shall suffer paynes of Deathe as a Felon or Felons.¹⁵

The 1563 legislation was therefore framed around actual concerns that spirits with malefic intent were being used for murder and/or maiming a third party. Importantly, the witchcraft narrative seems to have moved on from focusing on one or two

¹⁴ 5 Elizabeth 1 c.16. Gaskell suggests that the upsurge in witchcraft crimes was a result of the 'shortages of work and resources... [which] bred competition and animosity between neighbours,' while Keith Thomas cites the absence of 'mechanical religious formulae' proscribed in medieval Catholic ritual as the cause for the upsurge (Malcolm Gaskell, 'Witchcraft Trials in England', p. 290; Keith Thomas, *Religion and the Decline of Magic*, p. 590).

¹⁵ 5 Elizabeth 1 c.16.

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‘persone or persones’ undertaking illegal witchcraft activities independently to encompassing a whole network of ‘aidours’ and ‘concellors’:

Devilische persons have devised and practised Invocacions and Conjurations of evill and wicked Spirites, and have used and practised Wytchecraftes Enchantementes Charms and Sorceries, to the Destrucioon of the Persons and Goodes of their Neighebouris and other Subjectes of this Realme.¹⁶

The pamphlet entitled *The Witches at Chelmsford* (1566) is an example of the kind of maleficium tried by the authorities after witchcraft legislation had been reestablished in 1563. The female defendants were charged with witchcraft where each supposedly made a contract with Satan to undertake activities that would improve their financial and marital status, kill disagreeable husbands, and destroy the animals of their neighbours.¹⁷ A similar case went before the Middlesex Assize magistrates in 1573 in which Joan Ellyse was hanged for killing cattle; the case centred around a revenge bewitching in which she was accused of using maleficium to cause two men to lay ‘languishing and mutilated... wasted and consumed’ and for an earlier (unspecified) witchcraft indictment.¹⁸ According to Deborah Willis, the legal process was able to countermand malefic magic. Citing the trial of Elizabeth Francis at the Essex Assize in Chelmsford (1579), Willis explains, ‘The trial itself functioned as a kind of countermagic...[in which] the witch’s exposure and forced confession also dissolved her magical powers’.¹⁹

¹⁶ Ibid.

¹⁷ ‘The examination and confession of certaine Wytches in Chensforde in the countie of Essex before the Quenes majesties Judges’ (1566), in *Witchcraft*, ed. by Barbara Rosen (London: Edward Arnold, 1969), pp. 72-82.

¹⁸ John Cordy Jeaffreson, (ed.), *Middlesex County Records* (Old Series), 2 vols (London: [n.pub], 1887; repr. London: Greater London Council, 1972), I, pp. 84-5.

¹⁹ Deborah Willis, *Malevolent Nurture*, p. 32.

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In literature, the codification of witches and witchcraft had its roots in Greek mythology. According to Cora Fox, 'Ovid's *Metamorphoses*... [was] instrumental in perpetuating the literary type of the witch – mainly through the figure of Medea – and in that sense this translated classical text directly influenced the constructions of English witches and their fates at the hands of religious and secular authorities'.²⁰ Medea, who was imbued with magical powers, sought revenge on Jason for his betrayal. Revenge therefore became a powerful, and often central motive to explain a witch's intent to harm a third party. As a consequence, using maleficium to punish neighbours for not providing foodstuffs was a subsequent development in witchcraft narratives. It combined a sense of revenge with the belief that the Devil promised the most impoverished individuals that they would escape from their 'grinding poverty...[that] they should never want'.²¹

In 1580, and in response to concerns over the succession of an aging monarch, legislation was brought forward that specifically criminalised the use of conjurations to invoke prophecies surrounding the Queen's death or speculation as to who might be the next monarch:

That yf any person or psons...shall by setting or erecting of any Figure or Figures, or by casting of Nativities, or by calculation, or by any Prophecieng Witchcrafte Cunjuracons or other lyke unlawfull Meanes whatsoever, seeke to knowe, and shall set forth by expresse Wordes Deedes or Writinges, howe

²⁰ C. Fox, *Ovid and the Politics of Emotion in Elizabethan England*, 1st edn (Basingstoke: Palgrave Macmillan, 2009), p. 126, cited in Anna Kowalcze-Pawlik, 'Vengeful Witches/Angry Whores: Representations of Revenge in Popular Culture', *The Polish Journal of the Arts and Culture*, 15.3 (2015), pp. 53-69 (p. 57), <file:///D:/L_Drive/PhD/Theses%20&%20Journals/Witchcraft,%20Sorcery%20&%20Divination/Vengeful_Witches_Angry_Whores_Representa.pdf> [accessed 7 August 2024].

²¹ Keith Thomas, *Religion and the Decline of Magic*, p. 621.

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longe her Majestie shall lyve or contynue, or who shall raigne as King or Queene of this Realme of England after her Highenesse Decease, or els shall advisedlye and with a maliciouse intent againste her Highenes, utter any manner of directe Pphecies to any suche Intent or Purpose, or shall malitiouslye by any Wordes Writing or Printing wishe will or desier the Deathe or Deprivac&n of our Sovereaigne Ladye the Queenes Majesty (that nowe ys,) or any Thing directlye to the same Effecte, That then everye suche Offence shalbe Felonye.²²

The use of the word 'Cunjuracon' (*OED*: n.l.1.) in this context is particularly fascinating because it signified 'conspiracy': 'a swearing together; a making of a league by a common oath; a banding together against a superior power; conspiracy' while simultaneously suggesting 'the effecting of something supernatural by the invocation of a sacred name or by the use of some spell; originally the compelling of spirits or demons, by such means, to appear and do one's bidding'. The language of the legislation thereby combines ideas of witchcraft with conspiracy against the monarch: treason.²³ The link between treason, prophecy, and witchcraft became enduring.

Reginald Scot presented the first major English treatise on witchcraft in 1584.²⁴ The *Discoverie of Witchcraft* argued that witches were 'absolutelie cooseners' and that

²² 23 Elizabeth 1 c.2. 'Nativities, in nativity, n.' *OED*: n.4.

²³ The connection between witchcraft and treason was made in other texts. For example, see Richard Vennar, 'A Thanksgiuing to God for the happie deliverance of the Kings most excellent Maiesty, the Queen, Prince, Nobilitie, and Commons, from the most horrible contrived treason' in *The True Testimonie Of a Faithfull Subject: Containing Severall Exhortations To All Estates, To Continue Them In Their Due Obedience* (London: [n.pub.], 1605) <<https://www.proquest.com/books/thanksgiuing-god-happie-deliuerance-kings-most/docview/2147601019/se-2?accountid=11979>> [accessed 30/07/2024]

²⁴ James Sharpe, *Instruments of Darkness*, p. 50.

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'witchcraft and inchantment' were 'the cloke of ignorance'.²⁵ Scot's treatise countered the ideas held by most people of the period but did popularise various representations of witches that he cited from 'over 200 foreign and thirty-eight English works'.²⁶ These representations helped create or develop stereotypes that defined the physical appearance of a witch: 'Commonly old, lame, bleare-eied, pale, fowle, full of wrinkles; poor, sullen, superstitious'.²⁷ These pervasive images feature in numerous representations of witches from the period. For example, in *The Merry Wives of Windsor* (1597), Scot's views about witches and witchcraft are present. Ford views his wife's 'maid's aunt of Brainford' (whom Falstaff impersonates) as a 'witch...an old cozening quean' (*The Merry Wives of Windsor*, IV.2.148-9) and forbids her presence in his house. In the text's codification of the witch, the maid's aunt is described as old six times (*The Merry Wives of Windsor*, IV.2. 71, 145-46, 147, 149, 157). Such a representation imbues the scene with humour by exaggerating the witch stereotype suggested by Scot. The use of the descriptors 'cozening' and 'daubery' by Ford emphasises Scot's belief that witches possessed no malefic powers, which ironically removes the threat of revenge from their persona and the scene.²⁸ The sequence also suggests a level of scepticism, central to Scot's treatise, surrounding some of the individuals who set themselves up as cunning women:

A witch, a quean, an old cozening quean! Have I not
forbid her my house? She comes of errands, does she? We are

²⁵ Reginald Scot, *The Discoverie of Witchcraft*, ([London (?): John Rodker, 1930; repr. New York: Dover Publications, 2020), p. 5.

²⁶ James Sharpe, *Instruments of Darkness*, p. 51.

²⁷ *Ibid.*, p. 52.

²⁸ The irony derives from the fact that the wives are taking revenge on both Falstaff and Ford. For a discussion about the wives' revenge on Falstaff, see Helen Ostovich, 'Bucking tradition in *The Merry Wives of Windsor*, 1602: Not a bad quarto, really' in *The Merry Wives of Windsor: New Critical Essays*, ed. by Evelyn Gajowski and Phyllis Rackin (London: Routledge, 2018), pp. 96-106.

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simple men. We do not know what's brought to pass under the
profession of fortune-telling. She works by chants, by spells,
by th'figure, and such daubery as this is, beyond our ele-
ment. We know nothing. -Come down, you witch, you hag,
you!

(*The Merry Wives of Windsor* IV.2.149-55)

The play also adopts another of Scot's stereotypes in the character of Evans the minister when he suggests that the disguised Falstaff 'is a witch' by codifying her with a beard (*The Merry Wives of Windsor*, IV.2.168). The addition of a beard seems to be a way of removing, partially, the sense of femininity from an individual; a dehumanising attribute.²⁹

In 1587 the puritan preacher George Gyfford published his book, *A Discourse of the subtill Practises of Devills by Witches and Sorcerers* in which he reiterated and further codified the powers and abilities of witches and the devils that served them.³⁰ Gyfford, a firebrand preacher, explained candidly that part of the evolution of witchcraft narratives stemmed from the involvement of the Catholic Church: 'this wicked folly which posseth the minds of the ignorant sort, is a fruit of Poperie, For they took away the light and the Devil did delude them in the darke for his pleasure'.³¹ This ideology entered into elements of Protestant thinking – primarily as

²⁹ See Richard West, 'Witches, Sorcerers, Coniurers, and Enchanters' in *The Court Of Conscience Or Dick Whippers Sessions. With the Order Of His Arraigning and Punishing Of Many Notorious, Dissembling, Wicked, and Vitious Livers In This Age* (London: G. Eld, 1607). <<https://www.proquest.com/books/witches-sorcerers-coniurers-enchanters/docview/2148100349/se-2?accountid=11979>> [accessed 30/7/2024]; *Richard III*, I.3.164 & 212.

³⁰ George Gyfford, *A Discourse of the Subtill Practises of Devills by Witches and Sorcerers*, (London: T. Orwin, 1587; repr. Great Britain: Amazon, [n.d.]).

³¹ *Ibid.*, p. 26.

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a way of 'othering' Catholicism. The state therefore identified witchcraft as a direct threat to the smooth-running of society and the social structures required to ensure stability, control and social cohesiveness. In legislating on witchcraft, the state therefore gave authority to narratives that in turn 'might encourage the educated to believe in the reality of witchcraft and the threat that witches offered to Christian society'.³²

To turn now from this overview of Elizabethan witchcraft legislation and its contexts to the key theatrical texts of the chapter, Shakespeare's *2 Henry VI* is a dramatic example of how legislation can be weaponised by different factions to attack an individual through accusations of wrongdoing. The play uses the kinds of witchcraft legislation discussed here to suggest that the law was a series of flawed structures, systems and procedures that could be manipulated by an individual for their own political and economic advancement. The play depicts how this is achieved by misusing witchcraft legislation to both falsely and illicitly implicate and thereby prosecute anyone who stands in opposition to one's own political or social position. Astonishingly, this does not appear to be illegal because, as John Finnis makes it clear, there was no legal requirement for any courtroom protagonist to act or behave in a moral, truthful or scrupulous manner.³³

³² James Sharpe, *Instruments of Darkness*, p. 56.

³³ John Finnis, *Natural Law and Natural Rights*, p. 41.

Weaponizing witchcraft legislation for political advantage:

2 Henry VI

The representation of witchcraft in *2 Henry VI* critically dramatizes how legislation, specifically the 1563 Act Against Conjurations, Inchantmentes and Witchcraft and the 1580 Act Against Seditious Words and Rumours, could be weaponized. The downfall of Humphrey Gloucester presents the operations of witchcraft law as a politically inspired and crafted weapon. The text thereby infers that the current operations of witchcraft laws were judicially flawed.

In *2 Henry VI*, Eleanor Cobham engages in a form of magic that can be learned from another wise man or cunning woman (I.ii.75). The play's audiences and readers were likely to have interpreted Cobham's witchcraft crime as a minor legal infraction. Several contemporary accounts state that the use of the 'cunning woman' or 'wise man' as a way of overcoming issues of theft, loss, family issues or as a defence against malefic magic was common. For example, William Hale cited a similar case to that of Cobham which was brought before the court of the Archdeaconry of Essex on the 26th April, 1585. According to Hale, John Shonk admitted seeking the aid of a witch to assist his wife. He was ordered to repent publicly.³⁴ In *Religion and the Decline of Magic*, Keith Thomas argues that the raising of spirits to prophesy the future was standard magical activity during the latter part of the sixteenth century.³⁵ According to Glyn Parry, even Queen Elizabeth (as princess) had turned to the conjuror John Dee in April 1555 to 'divine the future awaiting herself, Mary and

³⁴ William Hale, *A Series of Precedents and Proceedings in Criminal Causes*, p. 185.

³⁵ Keith Thomas, *Religion and the Decline of Magic*, p. 274.

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Philip'.³⁶ In the play, the learned magic that Eleanor Cobham engages in was common place and not regarded as a major offence. By contrast, there was more pervasive fear and condemnation of malefic magic. Witchcraft, it seems, was able to cross social hierarchies from monarch to village life. Cobham is prosecuted under the secular law for an offence with much more serious consequences for something that would probably be considered under the ecclesiastical law as a more minor offence, were it not for the connection to prophesy.

In *2 Henry VI*, it is Cobham's association with the act of prophesying about King Henry VI's future that switches her offence from the lesser jurisdiction of Ecclesiastical law to that of secular law. Keith Thomas explains that King Henry VIII introduced legislation regarding magical prophesy in 1542, because his 'government[']s concern was provoked by the close link which had always existed between prophecy and action'.³⁷ The inference was that if someone prophesied the death of the King, it could encourage traitors to act against him through the expectation of success. H. A. Kelly adds that the motives behind 'this revelation were to take away from the king the cordial love (of the people)' and thereby accelerate his demise.³⁸ And, from almost the beginning of the play, Cobham's guilt is established: in Act one Scene two, the intent behind her ambition (for her husband to

³⁶ Glyn Parry, *The Arch-Conjuror of England* (London: Yale University Press, 2011), p. 31. Jessica Freeman goes further in her exploration of Margery Jourdain's deposition, proposing that magic was common at the court of Henry VI, where 'Margery imagined herself safeguarded by her aristocratic clients...who met a demand for love potions, folk medicines and charms, in a practice that was usually tolerated by the authorities' (Jessica Freeman, 'Sorcery at court and manor: Margery Jourdemayne, the witch of Eye next Westminster', *Journal of Medieval History*, 30.4 (2004), pp. 343-357 (p. 357), doi: 10.1016/j.jmedhist.2004.08.001).

³⁷ Keith Thomas, *Religion and the Decline of Magic*, p. 471. See also James Sharpe, *Instruments of Darkness*, p. 29.

³⁸ H. A. Kelly, 'English Kings and Fear of Sorcery', *Medieval Studies*, 39 (1977), pp. 206-238, (pp. 224-225), <<https://archive.org/details/english-kings-and-the-fear-of-sorcery/page/207/mode/2up>> [accessed 22 April 2021].

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attain England's throne) is foregrounded: 'Put forth thy hand, reach at the glorious gold. / What, is't too short? I'll lengthen it with mine' (I.2.11-12).³⁹ Initially, these thoughts of usurpation are cloaked within the allegorical world of a dream, but by giving voice to them, she repositions her ambition from a place of imagination into one of actuality. Her tone quickly develops into a more aggressive 'hammering treachery' (I.2.47) when she adopts a more assertive and goading style, which reads as a precursor to Shakespeare's later creation of Lady Macbeth:

Were I a man, a duke, and next of blood,
I would remove these tedious stumbling blocks
And smooth my way upon their headless necks.
And being a woman, I will not be slack
To play my part in Fortune's pageant.

(I.2.63-67)

However, when Suffolk later asserts that he will 'lime a bush' (I.3.92) to catch Eleanor Cobham, the spectator is provided with a sense of conflicting empathy. Clearly, the spectators' attitudes towards witchcraft are shaped by Suffolk's words and actions; that the necromancy spell is false and relies on the agency of what Reginald Scot calls 'absolutelie cooseners'.⁴⁰ The play manipulates our response towards Eleanor Cobham because it presents the duchess as a victim; a victim of her own and others' ambitions. Eleanor thereby becomes a casualty to the branch of witchcraft legislation that conflated treason with magical prophecy: 'the authority of a

³⁹ Cobham's journey originated as the progeny of a baronetcy. Lily B. Campbell (ed.), 'How Dame Eleanor Cobham Duchesse of Glocester for Practising of Witchcraft and Sorcery, Suffred Open Penance, and After was Banished the Realme into the Yle of Man' in *The Mirror For Magistrates: Edited from the Original Texts in the Huntingdon Library* (Cambridge: Cambridge University Press, 1938), p. 432.

⁴⁰ Reginald Scot, *The Discoverie of Witchcraft*, p. 5.

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ruling ideology...define[d] enemies of the state as witches.⁴¹ Unlike Macbeth, Shakespeare's Humphrey is not tempted into treason but instead chastises his wife for 'the canker of ambitious thoughts' (I.2.18). For the spectators, his reputation is left honourable, but we immediately become aware that his wife's attitude towards prophecy places him in a vulnerable position against political and legal exploitation.

Buckingham is able to exploit witchcraft law to attack both Cobham and her husband for his own political aspirations by asserting that Cobham is the 'ringleader' of a conference with 'wicked spirits' rising from a hell-like 'under ground' to prophesy about Henry's 'death' (II.i.165-176). He places her conference within the realms of *maleficium* which reconstitutes it as treasonous conspiracy. This offence had contemporary resonance since Elizabeth's updated 1580 sedition statute identified 'any act of sedition or attempt at "Prophecieng Witchcrafte Cunjuracons ...[to] seeke to knowe ... howe longe her Majestie shall lyve"' as criminal and made it punishable by death.⁴² Diane Purkiss references the threat posed to Queen Elizabeth's reign by 'those who threatened to do her horoscope to determine her death'.⁴³ Purkiss links the prophetic activities of various Catholics to treasonous plots to highlight how seriously the authorities viewed such activities: 'Norfolk had been influenced to join the Ridolfi plot by a prophecy. Francis Babington, too was convinced he could succeed because of his reading of one of the Merlin prophecies'.⁴⁴

⁴¹ Nina S. Levine, 'The Case of Eleanor Cobham: Authorising History in *2 Henry VI*', *Shakespeare Studies*, vol. 22 (1994), pp. 104-121 (p. 110), <<https://www.proquest.com/docview/1297960899?pq-origsite=gscholar&fromopenview=true&sourcetype=Scholarly%20Journals&imgSeq=1>> [accessed 20 April 2021].

⁴² 23 Elizabeth 1 c.2.

⁴³ Diane Purkiss, *The Witch in History*, p. 191.

⁴⁴ Ibid. Diane Purkiss cites Keith Thomas, *Religion and the Decline of Magic*, p. 480.

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The level of proof required to convict defendants accused of prophesying was low. The insertion into the 1580 sedition statute for 'Testimonye Deposition and Othes of two sufficient Witnesses' to the crime introduced further proofs that might have suggested a more rigorous investigation of truth. In fact, the reliance on witness testimony opened the law up to further abuse by the unscrupulous or politically motivated.⁴⁵ According to Anne Reiber DeWindt and Orna Alyagon Darr, the misuse of accusation as a strategy for manipulating hierarchal relations within a community was a relatively common occurrence. In their studies, they cite multiple examples of witchcraft accusations used to ostracise or remove completely individuals from within their community.⁴⁶

Audiences see Cobham's intent as a concern to know what the future holds for herself and her husband. Audiences also see what Suffolk frames as her intent: a criminal desire to commit treason. Consequently, Cobham's actions do not lead spectators or readers to interpret her specifically using malefic magic. Instead, the representation of her witchcraft opens up a number of interpretations which spectators are invited to witness and judge. Firstly, the scene seems to have exploited what Robert Weimann calls 'bifold authority' - in which two representations of authority are separated by different spaces on the stage.⁴⁷ In this sequence, the

⁴⁵ 23 Elizabeth 1 c.2. On the role of oaths in the legal process see Barbara J Shapiro, 'Oaths, Credibility and the Legal Process in Early Modern England: Part One', *Law and Humanities*, 6.2 (2016), pp. 145-178, doi.org/10.5235/LH.6.2.145.

⁴⁶ Anne Reiber DeWindt, 'Witchcraft and Conflicting Visions of the Ideal Village Community', *Journal of British Studies*, vol. 34.4 (1995), pp. 427-463, doi: 10.1086/386086; Orna Alyagon Darr, 'Experiments in the Courtroom: Social Dynamics and Spectacles of Proof in Early Modern English Witch Trials', *Law & Social Inquiry*, 39.1 (2014), 152-175, doi: 10.1111/lisi.12054. See also, Jonathan Barry and others (eds), *Witchcraft in Early Modern Europe: Studies in Culture and Belief* (Cambridge: Cambridge University Press, 1999), pp. 278-279.

⁴⁷ Weimann, Robert, 'Bifold Authority in Shakespeare's Theatre', *Shakespeare Quarterly*, 39 (1988), pp. 401-417 (p. 402), doi: 10.2307/2870705. See also Nina S. Levine, 'The Case of Eleanor Cobham: Authorising History in *2 Henry VI*', p. 110.

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bifold authority is a collision between an upstage '*locus*' (Cobham's necromancy) and the downstage '*platea*' (the 'agency' of the conspirators, York and Buckingham). In this sequence, the play combines witchcraft with an exploitation of legal authority to present us with an insight into how legal procedure was constructed and deconstructed within a wider political matrix. In other words, Cobham's crime is staged to facilitate the political and power machinations of others. For example, the criminal act is instigated by Suffolk (I.3.92-104) and artificially captured by the conspiring witnesses: the Dukes of York and Buckingham. As Matthew Greenfield explains, in early modern law it is the 'intention' of a person that is on trial.⁴⁸ If a person looks like they are intending on doing something bad, then that is as wrong as doing it. Consequently, in Cobham, the play constructed a characterization in which linguistic labels are used to define guilt through a 'scapegoating and...displacement of fear'.⁴⁹

Eleanor Cobham is manipulated for political expediency. Normally, 'it was only possible to testify to motives and effects, not to witness the actual act of witchcraft' because 'the secret nature of the crime made normal legal evidence, confession and two direct witnesses, most unlikely'.⁵⁰ Deborah Willis suggests that conspiracy was not atypical. Willis cites the case of Mrs. Dewes who was similarly caught up in 'a "sting" operation' in which her attempts at witchcraft were 'embedded in a larger

⁴⁸ Matthew Greenfield, 'Trial by Theatre: Jonson, Marston and Dekker in the Court of Parnassus', in *Solon and Thespis: Law and Theatre in the English Renaissance*, ed. by Dennis Kezar (Notre Dame: University of Notre Dame Press, 2007), pp. 19-39 (p. 24).

⁴⁹ Victoria Bladen, 'Shaping Supernatural Identity in *The Witch of Edmonton*', in *Supernatural and Secular Power in Early Modern England*, ed. by Marcus Harms and Victoria Bladen (Farnham: Ashgate, 2015), pp. 95-116 (pp. 97-98).

⁵⁰ Alan Macfarlane, *Witchcraft in Tudor and Stuart England*, p. 16.

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drama of intrigue, rivalry, and revenge, of power struggle over [her husband's] office and retaliation for its loss'.⁵¹

Eleanor Cobham's right to a fair and impartial judicial hearing is compromised because the witchcraft accusation includes a prophecy against the king (II.1.168-176). In his study of Tudor legislation, J. G. Bellamy emphasises that a defendant in a case against the monarch 'was certainly not allowed...to produce his own witnesses'.⁵² Although there is no reference to Cobham being denied access to witnesses within the play, spectators may have been aware that it was normal legal procedure to have witnesses. For example, some spectators may have recalled the recent and controversial trial of the puritan John Udall who was indicted for sedition in 1590.⁵³ Udall was tried by the government because they suspected he had written a tract entitled, *A demonstration of the truthe of that discipline which Christ hath prescribed in his worde for the government of his Churche in all tymes and places untill thende of the world*, in which he allegedly criticised the reformed Church and its bishops.⁵⁴ The government's legal team had no actual proof that Udall was the author but had strong suspicions that were inflamed when he adopted the defence of equivocation. In order to prove Udall's guilt, the government's lawyers presented the testimonies of two witnesses of a questionable nature, both of whom were absent at

⁵¹ Deborah Willis, 'Shakespeare and the English Witch-Hunts: Enclosing the Maternal Body', in *Enclosure Acts: Sexuality, Property, and Culture in Early Modern England*, ed. by Richard Burt and John Michael Archer (London: Cornell University Press, 1994), pp. 97-99.

⁵² J. G. Bellamy, *Criminal Law and Society in Late Medieval and Tudor England*, p. 48.

⁵³ For the full indictment, see *Calendar of Assize Records: Surrey Indictments Elizabeth*, ed. by J.S. Cockburn, 2 vols (London, Her Majesty's Stationary Office, 1980), I, pp. 348-49 [2075A].

⁵⁴ John Udall, *A demonstration of the truthe of that discipline which Christ hath presceibed in his worde for the government of his Churche in all tymes and places untill thende of the world* (East Molesey: Waldegrave, 1588; repr. London: Archibald Constable, 1895).

<<https://ia600205.us.archive.org/24/items/ademonstration00udaluoft/ademonstration00udaluoft.pdf>> [accessed 10th June 2021].

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the arraignment. When Udall requested witnesses that would discredit the government's witnesses and prove his innocence, the judge ruled that they were inadmissible 'because their witness was against the queen's majesty'.⁵⁵

When the character Eleanor Cobham is sentenced for the crime of witchcraft, early modern spectators and readers may have inferred that the judicial process in her trial was subjective, similar to those in Mrs. Dewes' and Udall's cases. The historical sources that Shakespeare may have referenced contradict each other in this point: Hall and Holinshed record only the trial and judgement in which Cobham was found guilty of directing the melting of a waxen figure of Henry in a fire.⁵⁶ In contrast, Foxe's *Acts and Monuments* and the tragedy of 'Dame Elianor Cobham' from *The Mirror for Magistrates*, focus on the alleged events which suggested that Cobham was used as part of a wider political plot to confound her husband.⁵⁷ In yet another version of the story, John Stowe claims that Cobham was merely an 'accessary'.⁵⁸ The play favours the latter interpretation: she is not a direct participant in the invocation, but placed 'aloft' from the 'ceremonies' (stage directions I.4.10, 20) so as to make her an observer and thereby highlight the misuse of law by those that frame her for personal gain. The scene also omits the use of a waxen figure. The state's two witnesses or 'secrete spyes' against Cobham are two of Gloucester's political

⁵⁵ Ibid. See also William Cobbett and others, *Cobbett's Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanours*, 33 Vols (London: Bagshaw, 1809), I (1809), pp. 1271-1316 [758-780] <<https://babel.hathitrust.org/cgi/pt?id=njp.32101049431149&view=1up&seq=780&q1=Udall>> [accessed 28 October 2019].

⁵⁶ See Edward Hall, *Chronicles Containing the History of England During the Reign of Henry the Fourth and the Succeeding Monarchs to the End of the Reign of Henry the Eighth in which are Described the Manners and Customs of Those Periods* (London: J. Johnson, 1809; repr. London: Forgotten Books, 2018), p. 202 and Raphael Holinshed, *Hollinshed's Chronicles of England, Scotland, and Ireland*, p. 204.

⁵⁷ John Foxe, *The Unabridged Acts and Monuments Online or TAMO*, 1583 edn, 12 vols (Sheffield: The Digital Humanities Institute, 2011), vi, p. 727 [703], <<https://www.dhi.ac.uk/foxe/index.php?gotopage=727&realm=text&edition=1583&gototype=&x=8&y=11>> [accessed 24 May 2021]; Lilly Campbell, *The Mirror for Magistrates*, p. 437.

⁵⁸ John Stowe, *The Annales or Generall Chronicle of England*, p. 381.

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enemies and their role within her actual trial is referenced in *Acts and Monuments* as 'a matter made, & of euil wil compacted, rather then true in deede', and in *Mirror for Magistrates* as 'without ruth or reason... Traytors did devyse / By statute law, in most unlawful wise'.⁵⁹ In *2 Henry VI*, the representation of these witnesses makes it clear that they are both enthusiastic to bear false witness. York's claim that, 'we watched you at an inch' (1.4.40) sets up his role as a witness and Buckingham's enthusiasm 'To be the post' (1.4.65) suggests that he was keen to be another 'sufficient witness'.

The play's representation of Eleanor Cobham is shaped by the contradiction caused by the conflation of social norms and law. For example, although she seems guilty of treason because of her coveting of the crown (1.2.63-7), without her husband's (male) assistance, she was unlikely to successfully initiate anything treasonous against the crown. In *2 Henry VI*, this point is highlighted in her earlier soliloquy with the words: 'Were I a man....' (1.2.63-7). Early modern justice did not differentiate between a woman and a man when dispensing punishment (unless that woman could prove she was pregnant) but treated them in the same way within the same social class. Consequently, this meant that the law punished women for some crimes that they could not commit because as 'femmes covert', women were not legal entities in their own right, but were instead legally represented by their husbands.

Diane Purkiss makes the observation that witchcraft was the only way a woman could work politically because it occurred in secret and not in the halls of public

⁵⁹ Lilly Campbell, *The Mirror for Magistrates*, p. 436-37; John Foxe, *The Unabridged Acts and Monuments Online* or *TAMO*, p. 727 [703]. See also, Ralph A Griffiths, 'The Trial of Eleanor Cobham: An Episode in the Fall of Duke Humphrey of Gloucester', in *King and Country: England and Wales in the Fifteenth Century* (London: Hambledon Press, 1991), pp. 232-252.

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debate.⁶⁰ She states that, 'Women involved in witchcraft entered vigorously into a struggle to control the meaning of their own lives'.⁶¹ Cobham's attempts to control her life in the play take place within a private sphere unlike her husband, who operated within the public sphere. Victoria Bladen and Marcus Harmes view witchcraft as an intersection of supernatural and secular powers in which a person was labelled by a community (or individuals) as a witch in order to discredit or destroy them.⁶² In *2 Henry VI*, we see how the text conflates these two views of witchcraft through the use of tropes and stereotypes to develop the initial 'witch-like' labelling of Cobham as an outsider (I.3.79-80), working in the shadow of night (I.4.15-19), a social climber (I.3.87) and virago (I.3.144-6). This labelling is represented through a constructed legal narrative in which her assertive personality is used to discredit her:

Under the countenance and confederacy
Of Lady Eleanor, the Protector's wife,
The ringleader and head of this rout
Have practised dangerously against your state,
Dealing with witches and with conjurors,
Whom we have apprehended in the fact. (II.1.167-72)

The play's narrative amalgamates presupposition with emotional language to infer her guilt: 'confederacy', 'ringleader', 'practised dangerously', 'Dealing with witches and conjurors'. This image of a witch was represented in several literary cautionary

⁶⁰ Diane Purkiss, *The Witch in History*, p. 191.

⁶¹ *Ibid*, p. 145.

⁶² Harmes, Marcus, and Bladen, Victoria (eds), *Supernatural and Secular Power in Early Modern England*, pp. 1-14.

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texts. George Gyfford's *A Discourse of the Subtill Practises of Devills by Witches and Sorcerers*, for instance, explored how the threat that these women posed was constructed and construed; how they worked within the shadows to seek knowledge about the future so as to alter outcomes.⁶³ Gyfford juxtaposed a series of negative images within a gender dichotomy in which the pronoun 'she' is presented as the aggressive violator while the pronoun 'he' is shown as the innocent victim.⁶⁴ This social inversion is also picked up in contemporary courtroom reports where communities were destabilised by the 'female' and where patriarchal insecurities were emphasised through ambivalent subversive behaviours.⁶⁵ Each text built upon and developed the virago-witch narrative while simultaneously validating it. The audiences of *2 Henry VI* would have brought their prior knowledge of witchcraft behaviour to the play and applied it to the representation of Cobham - thereby making her seem guilty of witchcraft despite not actually casting any spells.

For Nina Levine, the image of Cobham looking down from 'aloft' (I.4.8) upon the 'prostrate' (I.4.10) Jourdain while the priest Bolingbroke prepares for their performance is a validation of patriarchal anxieties about ruling or unruly women. She refers to Cobham as 'almost a caricature of a dominating female'.⁶⁶ It may therefore seem unimportant to early modern masculine sensibilities whether she is guilty or not.

⁶³ G. Gyfford, *A Discourse of the Subtill Practises of Devills by Witches and Sorcerers*, p. 5 & p. 7.

⁶⁴ *Ibid.*, p. 48.

⁶⁵ See *The Apprehension and Confession of Three Notorious Witches. Arreigned and by Justice Condemned and Executed at Chelmes-Forde, in the Countye of Essex, the 5. Day of Julye, Last Past* (London: E. Allde, 1589), <ProQuest, <http://proquest.umi.com/login/athens?url=https://www.proquest.com/books/apprehension-confession-three-notorious-witches/docview/2240899371/se-2?accountid=11979>> [accessed 6th October 2021]; C. L'Estrange Ewen (ed.), *Witch Hunting and Demonism* (USA: Kessinger Publishing, [n.d.]; repr. London: Heath Cranton, 1933).

⁶⁶ Nina S. Levine, 'The Case of Eleanor Cobham: Authorizing History in *2 Henry VI*', p. 110.

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Unlike a court case, where the jury is presented with a discrete set of narratives about a particular crime after the event, the theatre acknowledges that various members of the audience may hold different viewpoints regarding the ongoing representations of the crime and the participants' various voices. In other words, the theatre uses the multiplicity of spectator interpretations to pluralise the narratives surrounding a crime. Linguistic constructions thereby become important because they indicate the level of personal intent within the event, which is often obscured in the rhetoric of a courtroom. Drama, it can be argued, exposes the rhetoric of the courtroom because in the courtroom the motivations and personal circumstances are not made manifest whereas in a theatre they are selectively revealed to audiences prior to the trial. The text uses a number of strategies to emphasise Cobham's lack of agency in the act of witchcraft. For example, in the scene there are linguistic constructions such as verbal deixis in the phrase: 'To this gear, the sooner the better' (I.4.12-13) to signal Cobham's anxiety. Unlike the other characters, she uses no conjuration imperatives (I.4.1, 15, 20). Similarly, while the event is directed by Bolingbroke (I.4.10-11, 14-21), its organisation is handled by Hulme (I.2.78-81) who explained that the purpose of the meeting was to seek knowledge through contacting the dead (I.2.79).

Although, as argued above, the text emphasises Cobham's lack of agency in the conjuration, there is a degree of difference in how the folio and quarto versions of the play represent her guilt as active or passive. In the Folio version of the play, the invocation is presented as a passive non-conjuration deception in which mimesis is signified through the use of figurative language:

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Deep night, dark night, the silent of the night,
The time of night when Troy was set on fire,
The time when screech-owls cry, and bandogs howl
And spirits walk, and ghosts break up their graves. (I.4.15-18)

Each metaphor builds upon the previous one to create a composite picture of temporal, visual and audio imagery to create a frightening, tense and dramatic atmosphere. The scene continues by drawing on contemporary conventions surrounding the construction of a spell: a circle and symbol(s) are drawn on the floor; latin is spoken from '*conjuro te*' ('I conjure you'); and in response, a '*spirit riseth*' up through the trap door.⁶⁷ After some prophecies are given, the tone in which Bolingbroke speaks to the actor playing the spirit changes and audiences are informed for the first time that the actor or spirit is a demon: 'False fiend', 'Descend to...the burning lake' (I.4.37). But the 'spirit', the 'witnesses' and even the 'conjuraton' itself are part of a metatheatrical trajectory in which a staged deception is built upon a staged deception.⁶⁸ Inevitably, this prompts the play's spectators to question the legitimacy of evidence supplied by the entrapping witnesses and, more importantly, question the probity of the evidence supplied to the judiciary. This critique of judicial evidence is further heightened if we assume that Suffolk sets Cobham up by arranging for a spirit to appear. The evidence he gives about Cobham conducting witchcraft is therefore definitely false causing him to perjure himself. This is ironic because by arranging for someone to appear as if they were a spirit, he

⁶⁷ See Paul Foreman, (attrib.), *The Cambridge Book of Magic*.

⁶⁸ Sofer correctly asserts that the act of conjuration is in itself a performance, and the speech act has the potential 'to blur the distinction between theatre and magic' (Andrew Sofer, 'How to do Things with Demons: Conjuring Performatives in *Doctor Faustus*', *Theatre Journal*, vol 61.1 (2009), pp. 1-21 (p. 2), doi: 10.1353/tj.0.0154).

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undertakes a form of conjuration himself. This reading of the scene is given traction by the emotional intensity of the two co-conspirators who step out from the shadows to, 'Lay hands on these traitors' (I.4.39). It undermines what should have been the dramatic and frightening ending of the conjuration itself. The play's framing of this conjuration as a deliberate dramatic construction by the conspirators as evidence against Cobham draws attention to how easily the law could be duped when politically motivated accusations of witchcraft were put on trial.

In the earlier 1594 quarto edition, the conjuration is presented as a much more frightening and realistic event in which Cobham's complicit guilt is signified through kinesisis:⁶⁹

Bullen: Darke Night, dread Night, the silence of the Night,
Wherein the Furies maske in hellish troupes,
Send up I charge you from Sometus lake,
The spirit Askalon to come to me,
To pierce the bowels of this centricke earth,
And hither come in twinkling of an eye,
Askalon, Assenda, Assenda.
(It thunders and lightens, and the spirit riseth up).

Spirit: Now Bullenbrooke what wouldst thou have me do?

(I.4.14-21)⁷⁰

⁶⁹ The revision in conjuration language between the two editions may be due to the growing scepticism that crept into witchcraft allegations after King James' involvement with cases like that of Anne Gunter. See Brian P. Levack, 'Possession, Witchcraft, and the Law in Jacobean England', *Washington and Lee Review*, 52 (1995), pp. 1613-40. <<https://heinonline-org.ezproxy.lancs.ac.uk/HOL/Page?handle=hein.journals/waslee52&id=1631&collection=journals&index=journals/waslee>> [accessed 23 April 2021].

⁷⁰ William Shakespeare, *The First Part of the Contention: The First Quarto, 1594, from the Unique Copy in the Bodleian Library, Oxford*, ed. by Frederick James Furnivall and Richard Grant White (London: Praetorius, 1889; facsimile repr. London: C. Praetorius, 1889).

The language used by Bullenbrooke within this extract is even more theatrical than the Folio version. It is imbued with contradictory metaphoric parallelisms in which the imagery is both forbidden yet fascinating.⁷¹ For example, the darkness represents evil, but the demonic spirit appears gentle and personable and without verbal malice. The imagery evoked in the invocation is deeply religious yet structured like an inverted judicial interrogation (what will happen rather than what has proceeded). Throughout the scene, any meaning behind the Spirit's answers remains both slippery and chaotic but, according to Jonathan Van Patten, has the potency to 'reach deeply into the subconscious'.⁷² This is because the sense of danger lies beneath the invocation. This intentional use of discursive language is potent and sways audiences or juries about the guilt of those that participate in the conjuration on both a literal and subconscious level. It therefore makes Cobham seem more guilty by association in the quarto version than the folio one because the invocation in the quarto contains more horror.

Like Eleanor Cobham, audiences are also implicated in the crime of conjuration by association because they too chose to attend; they also engaged in a forbidden activity. According to Andrew Sofer, 'conjuring models a performative speech act that threatens to blur the distinction between theatre and [real] magic'.⁷³ To emphasise his point, Sofer cites William Prynne's anecdotal account that the words of conjuration caused the 'visible apparition of the Devil on the stage' in a production of

⁷¹ Ibid, p. 2.

⁷² Jonathan K. van Patten, 'Magic, Prophecy, and the Law of Treason in Reformation England', *The American Journal of Legal History*, 27.1 (1983), pp. 1-32 (p. 16), doi: 10.2307/844911.

⁷³ Andrew Sofer, 'How to Do Things with Demons: Conjuring Performatives in *Doctor Faustus*', p. 2.

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Doctor Faustus.⁷⁴ Sofer explains that 'the dangerous verbal magic of performativity...enact[s] theatre's potential to escape from the character's (and actor's) control and unwittingly bring into being that which it names'.⁷⁵

The scene uses the effects of performativity when forbidden language is verbalised on the stage. The prerogative to repeat forbidden language legally was reserved for the courtroom and, to a lesser extent, the theatre. The courtroom legitimised and thereby brought into being the physical attributes of forbidden language like malefic witchcraft, which is both identifiable and measurable as soon as it is uttered. The repeating of forbidden utterances by a lawyer within a formal courtroom setting was and is unnaturally precise. It is used to suggest innocence or guilt by a lawyer manipulating the register, context and emphasis of words in the courtroom. In a courtroom, the words are separated from the speaker and either used in third person within a narrative or as part of a second person interrogative process. According to J. L. Austin, the courtroom (like the theatre), is a space that provides the cultural conditions in which the performativity associated with an utterance is made false and therefore not legally offensive.⁷⁶ However, Austin also makes the distinction that, 'the uttering of the words is, indeed, usually a, or even *the*, leading incident in the performance of the act' and therefore inevitably takes on an emotive quality that shocks, frightens or makes a jury feel discomfort.⁷⁷

⁷⁴ Ibid. Sofer cites William Prynne, *Histrio-Mastix* (London, [n.pub], 1633) in *Marlowe the Critical Heritage, 1588-1896*, ed. by Millar Maclure (London: Routledge/Keegan Paul, 1979), p. 249.

⁷⁵ Ibid.

⁷⁶ J. L. Austin, *How To Do Things With Words*, 2nd edn (Oxford: Oxford University Press, 1989), p. 14.

⁷⁷ Ibid., p. 8.

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In contrast to the courtroom, the theatre creates a liminal space when it represents malefic witchcraft and sedition that feels more frightening than when it is spoken in the courtroom. Even in a fictional context, words have the power to become legitimised as true because they have been voiced or, as Andrew Sofer asserts, ‘to call upon it solemnly – is to risk calling that thing into existence.’⁷⁸ In the theatre, verbalising spells ensures that the playgoers experience the event through empiricism: language, sounds, signs and atmospheres. Todd Wayne Butler posited that the theatre transcends an act of performativity into moments of experience through which similar events in history are reaffirmed and legitimised.⁷⁹ Butler explains how the impact of reproducing beliefs on stage intensified the performance because of its ‘deliberate claim on the real’.⁸⁰ Audiences, upon hearing the *maleficium* in *2 Henry VI*, would therefore have become participants in the conjuration of the spirit; experiencing forbidden language and all its latent effects on the mind. Moreover, in the varying degree of agency that the folio and quarto versions of the play assign to Cobham, audiences may have identified with her as passive bystanders or been distanced from her as active participants in the performative power of conjuring.

In the courts, a legal narrative was used to represent circumstantial evidence as a reconstruction of a suspect’s intention; the defendant’s guilt may thereby be inferred more deeply.⁸¹ However, in the theatre, intention can be represented through the actions and words of a character. In *2 Henry VI*, Cobham’s ambition for her husband

⁷⁸ Andrew Sofer, ‘How to Do Things with Demons’, p. 9.

⁷⁹ Todd Wayne Butler, ‘Bedeviling Spectacle: Law, Literature, and Early Modern Witchcraft’, *Yale Journal of Law & the Humanities*, 20.2 (2008), pp. 111-130 (p. 118), <<https://heinonline.org/HOL/P?h=hein.journals/yallh20&i=113>> [accessed 29 July 2022]

⁸⁰ *Ibid.*, p. 122.

⁸¹ Matthew Greenfield, ‘Trial by Theatre: Jonson, Marston and Dekker in the Court of Parnassus’, p. 24.

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to be King - along with her desire to use forbidden magic in Act 1 Scene 2, foreshadows a potential seizure of the throne. As a consequence of understanding Cobham's intentions, the playgoer becomes connected to the character through a sense of empathy. When she is judged guilty by the King, it is Suffolk's version of her *intent* to harm the 'King' and some of his 'Privy Council' that condemns her (II.1.174-5). Despite her passive separation from the act of conjuration presented to varying degrees of agency in the folio and quarto versions, Suffolk asserts that she directed the whole event (II.1.170-1). The play therefore emphasises the difference between the audiences' empathy with Cobham based on what they know of her intent on the one hand and the version of her intent that Suffolk presents them with in the trial on the other.

In actuality, it is Suffolk's intent to protect the King from danger that audiences know is a pretence because it is opposite to his actions. His character contrasts a duplicitous intent with that of a loyal subject. The use of duplicity of intent in *2 Henry VI* echoes contemporary issues surrounding the identification of a person's true intention within the courtroom: 'In several of the major seditious libel trials from the 1580s through the 1630s... the defense hinged on raising doubts about the court's ability to discern what it was that an author intended by his words'.⁸² Sir Edward Coke's report on the *Edwards v. Woolton* libel case (1607) exemplifies the issue:

It was resolved, 'That the Ecclesiastical Judge cannot examine any Man upon his Oath, upon the Intention and Thought of his Heart, for *Cogitationis pœnam nemo emeret*. And in Cases where a Man is to be examined upon his Oath,

⁸² Debora Shuger, *Censorship and Cultural Sensibility: The Regulation of Language in Tudor-Stuart England* (Philadelphia: University of Pennsylvania Press, 2008), p. 220.

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he ought to be examined upon Acts or Words, and not of the intention or Thought of his Heart; and if every Man should be examined upon his Oath... he is not bound to answer the same; for in Time of Danger, *Quis modo tutus erit*, if every one should be examined of his Thoughts.⁸³

A few decades earlier, Queen Elizabeth raised doubts about the futility of uncovering the conscience or intent of another when she remarked about her subjects' religious preferences, "that she did not wish to 'make a window into men's souls'".⁸⁴

Because Cobham's association with forbidden magic was part of Suffolk's 'intent' to disempower her husband and thereby weaken the King, the audiences' empathy (and sympathy) towards Cobham is altered because her character becomes a victim. Cobham's involvement in the crime suddenly seems less central and her punishment and disgrace therefore feels more unjust. Cobham's 'intent' to find out the future for herself and her husband is over-taken by Suffolk's version of her 'intent' which was to harm the King; and of course, Suffolk's version wins out. Consequently, the text shows that it does not matter whether the 'intent' to commit a crime can be established as fact through circumstantial or factual evidence, or whether Margaret Jourdain can be identified as a good or bad witch, or even whether Eleanor Cobham was innocent or guilty. Instead, the play shows that intent can be (and was) constructed like a dramatic narrative in order to influence a jury. To emphasise this

⁸³ 13 *Coke Reports* 9, p. 23.

<http://lawlibrary.wm.edu/wythepedia/library/ReportsOfSirEdwardCoke1738Pt13.pdf> [Accessed 02/08/2022]. For more discussion on the Edwards v. Woolton case, see: Gary Schneider, 'Libelous Letters in Elizabethan and Early Stuart England', *Modern Philology*, 105 (2008), pp. 475-509.

⁸⁴ J. B. Black, *The Reign of Elizabeth 1558–1603*, 2nd edn (Oxford: Oxford University Press, 1994), p. 23.

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point more deeply, in *Richard III* Margaret returns to curse and give voice to prophecy but without prejudice:

Though not by war, by surfeit die your King
As ours by murder, to make him a king.
Edward thy son, that now is Prince of Wales,
For Edward my son, that was Prince of Wales,
Die in his youth, by like untimely violence.
Thyself, a queen, for me that was a queen,
Outlive thy glory like my wretched self:
Long may'st thou live to wail thy children's death,
....
And after many lengthen'd hours of grief
Die neither mother, wife, nor England's Queen.

(Richard III, I.3.194-206)

Margaret does what Eleanor does not: prophesy about the King's death and, according to Richard, directly engage in witchcraft. Richard's description of Margaret belies the same witchcraft tropes of an elderly outsider: 'Foul wrinkled witch', 'Have done thy charm, thou hateful wither'd hag' (*Richard III*, I.3.164, 212).⁸⁵ Importantly, no legal action is taken against Margaret suggesting that she no longer has any political authority and is therefore no longer a threat to Richard's (or any other faction's) political aspirations. Such legal inaction parodies the law. It emphasises starkly a lack of consistency in the application of its operations because despite

⁸⁵ For a description of the elderly outsider represented as a witch, see Keith Thomas, *Religion and the Decline of Magic*, pp. 660-63; James Sharpe, 'Introduction' in *Witchcraft in Tudor and Stuart England: A Regional and Comparative Study*, 2nd edn (London: Routledge2005), p. xiv.

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Margaret's intent to commit treason through prophesy, no conviction is made. It also highlights the subjective interpretation of a defendant's intention to commit crime.

Even if a prosecution is unjust, the ways in which legal procedures function mean that the operations of law are able to legitimise it. The unjust sentence is accepted because of the normative status law is given within society: the court found him guilty so he must be guilty.⁸⁶ In *2 Henry VI*, Cobham's punishment emanated from both the ecclesiastical and common law courts suggesting that her punishment had to be authorised by both the spiritual and temporal authorities. Marcus Harmes and Victoria Bladen remind us that early modern law derived its authority and power for the state as emanating from God: '[the] power of the civil state...came from natural law. The power of the Church came from divine law'.⁸⁷ The legitimisation of judgement through God (by association) is therefore another way that unjust prosecutions could be normalised through both institutions. Consequently, the play carefully labelled Henry as a representative of God, his mouthpiece: 'In sight of God, and us, your guilt is great: / Receive your sentence of the law for sins / Such as by God's book are adjudged to death' (II.3.2-4).

Queen Elizabeth's claim that 'the power vested in the Crown was merely a jurisdictional authority' over 'ecclesiastical' matters was an under-exaggeration.⁸⁸ J.

B. Black notes that the 'publication of the royal Injunctions' clearly shows that 'she

⁸⁶ I refer to John Finnis' interpretation of the term 'bad law' to represent: 'unjust legislation', 'the lack of moral obligation' and 'the abuse of power'. For a more detailed explanation of Finnis' distinction, see John Finnis, *Natural Law and Natural Rights*, pp. 352-360.

⁸⁷ Marcus Harmes, and Victoria Bladen, 'Introduction: The Intersection of Supernatural and Secular Power' in *Supernatural and Secular Power in Early Modern England*, ed. by Marcus Harmes and Victoria Bladen (Farnham: Ashgate Publishing, 2015), pp. 1-14 (p. 4).

⁸⁸ J. B. Black, *The Reign of Elizabeth 1558-1603*, p. 15.

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had power under the law equal to that of the pope or the archbishop of Canterbury'.⁸⁹

Within the play, the representation of Henry's position as head of state and Church and their respective legal processes, echoes that of Queen Elizabeth. Henry's bad adjudication highlights his lack of physical or spiritual insight into Cobham's involvement in witchcraft and treason, casting doubt by association on Elizabeth's (and by extension, her counsellors) insight and ability to see the innocence or guilt of a person. The text thereby makes the point that the monarch is motivated by self-preservation and social amelioration rather than altruistic justice.

In *2 Henry VI*, we are not shown the trial process but a movement in narrative from accusation into judgement as if the trial process itself was part of the political manoeuvres of the various factions, leaving the spectators to witness the actual event and judge it for themselves in lieu of being shown a legal trial. However, by joining the two legal institutions of Church and state to authorise Cobham's punishment, the text shows us the normative discursive functions of the respective courts. Firstly, there is a reference to the ecclesiastical court through the declarative phrases, 'In sight of God', 'the law for sins' and 'by God's book' (II.3.2-4). This use of language places ecclesiastical law within a supernatural setting where God is presented as omnipresent, as well as within the historical context of Mosaic law. Secondly, King Henry VI's use of the plural pronoun, 'and us' (II.3.2) places judgement within the secular authorities because 'us' represents the King's body natural and politic.⁹⁰ It also sets up the dichotomy in which the 'common good' of

⁸⁹ Ibid.

⁹⁰ See the case of the Duchy of Lancaster for Plowden's legal interpretation of the bodies natural and politic. Edmund Plowden, *Plowden, Commentaries or Reports of Edmund Plowden*, p. 213. See also, Ernst Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theory* (Oxford: Princeton University Press, 2016), p. 7.

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England (represented by secular law) is placed in opposition to Cobham's activities.⁹¹ However, the most damaging aspect of the conflation of spiritual and secular law is that it results in the normalisation of blind acceptance of the law's decision in society. This is most astonishingly represented in Gloucester's acquiescence: 'Eleanor, the law, thou see'st, hath judged thee: / I cannot justify whom the law condemns' (II.3.15-16).

The pathos in Gloucester's weak response belies the play's biting criticism regarding justice and judgement: we are programmed to accept blindly the outcomes of legal procedure. Like Gloucester and King Henry, we conceive the law as an abstract entity which can then be perceived as independent from human agency: 'And poise the cause in Justice' equal scales, / Whose beam stands sure, whose rightful cause prevails' (II.1.214-15).

In an attempt to expose the limitations of this perception, the play first shows us the normalisation process before presenting its fallacy. For example, when Gloucester asserts that it is 'the law' that had judged his wife, he validates the legal procedure and accepts that his wife's guilt requires justice. In other words, by placing the ideals of law above 'self', Gloucester, alters his behaviour, attitudes and thinking accordingly.⁹² The play then warns us that it is only when it is too late, that we realise that law is neither independent of human agency nor supernatural: 'I know their complot is to have my life' (III.1.147) and 'By false accuse doth level at my life'

⁹¹ The principle of 'common good' within law is explored in John Finnis, *Natural Law and Natural Rights*, pp. 164-165.

⁹² 'Natural law provided a constructed model whose basic reference points of 'right reason' and conscience had virtually normative status in the Renaissance' (R. S. White, *Natural Law in English Renaissance Literature* (Cambridge: Cambridge University Press, 1996), p. xiii).

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(III.1.160). And, in a clear reference to the corruption of forensic ideals, Gloucester claims: 'I shall not want false witness to condemn me' (III.1.168). This is the only time Shakespeare deploys the term 'false witness' throughout the entire canon, and it weighs heavily in a scene (and play) in which truth and law are shown to be in opposition. The effect of a false allegation on readers or audiences is terrifying because like Gloucester and Cobham, we are reminded that we too have little defence against it.

Today, as in the late Tudor period, we are programmed to accept blindly the outcomes of legal procedure. Our perceptions regarding the efficacy of law are still largely shaped by a belief that legal legitimacy is derived from the moral assumption that the law serves everyone, equally. However, Shakespeare's *2 Henry VI* makes it clear that the law was dysfunctional because it neither necessitated equality nor morality. The play shows us that a legal truth is dynamic in that it can be manipulated by something as simple as an alternative perspective or by something more nefarious like a reinterpretation based upon the political assumptions and economic management of a faction or individual. For example, hegemony dictated that the law had inequality built into it through legislation. Legislation was created by the ruling elite to serve their own interests above those of others. Consequently, we are shown that a disconnect existed and exists (inevitably and predictably) between law, justice and equity.

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***The Symbiotic Relationship Between Culture and the Law:
Macbeth***

In early Jacobean Britain, the portrayal of 'weird women' (III.1.2) and witchcraft narratives had changed. Social anxieties about malefic magic seem to have become more pervasive because their representation in plays and other literature became increasingly prolific. According to James Sharpe, towards the end of Elizabeth's reign the drama of the period rarely placed witchcraft as a central theme; it remained peripheral to the main plot. However, by 1605 and subsequent to James' coronation as King of England, there was an increase in cultural referencing of the subject.⁹³ In *2 Henry VI* (1591-2), Eleanor Cobham's involvement in witchcraft is part of a subplot. However, in *Macbeth* (1606), prophecy dominates the plot leading to the subsequent regicide of King Duncan (II.1.62-4), the murder of Banquo (III.3.18), Macduff's family (IV.1.87-8), and his misplaced belief of personal safety (IV.1.96-97, 108-110). This shift was no doubt influenced by the change in monarch, but such an increase in cultural representation also contributed to more widespread social anxieties. Witchcraft had become pervasive. And the government's reaction was to make punishment for convicted persons even more punitive.

With James' accession to the English throne, there was an increase in the lack of tolerance towards the supernatural. Early Jacobean witchcraft legislation may have been a response to Scottish and European ideas about malefic magic, similar to those with which James I was already familiar (1563 Mary c.73). In Scottish law, the death penalty was pronounced for any knowledge of, dealings with or any attempt to seek help from witchcraft:

⁹³James Sharpe, *Instruments of Darkness*, pp. 47-48.

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Na maner of persoun nor persounis, of quhatsumever estate, degre or
conditioun thay be of, tak upone hand in ony tymes heirefter, to use ony
maner of Witchcraftis, Sorsarie or Necromancie, nor gif thame selfis furth to
have ony sic craft or knowlege thairof, thairthrow abusand the pepill: Nor that
na persoun seik ony help, response or cosultatioun at ony sic usaris or
abusaris foirsaidis of Witchcraftis, Sorsareis or Necromancie, under the pane
of deid, alsweill to be execute aganis the usar, abusar, as the seikar of the
response or consultatioun.⁹⁴

This Scottish law was more severe than previous English legislation and may have influenced James's approach when he came to the English throne.

The Scottish state was also more involved in prosecuting witchcraft activity. Unlike Elizabeth's legal administration, James' Scottish Privy Council (from 1597) took jurisdiction from the central court of judiciary, which was similar in jurisdiction to the English Assize courts, 'to decide if individual witchcraft cases should proceed' to investigation.⁹⁵ Such involvement of the Scottish Privy Council was a direct response to the misuse of Scottish witchcraft legislation: unscrupulous individuals had weaponised legal procedures for personal profit in a similar way to the misuse of witchcraft legislation exposed in *2 Henry VI*.⁹⁶ The Scottish Privy Council therefore investigated alleged cases of witchcraft rather than leave their inquiry to local magistrates. The existence of and concern over manufactured accusations is

⁹⁴ Mary c.73.

⁹⁵ Lawrence Normand and Gareth Roberts (eds), *Witchcraft in Early Modern Scotland: James VI's Demonology and the North Berwick Witches* (Exeter: University of Exeter Press, 2000), p. 87. See also pp. 93-94.

⁹⁶ *Ibid.*, p. 94.

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pertinent because it shows the Scottish government's anxiety over slander.⁹⁷

However, in contrast to the Scottish state, the English Privy Council did not engage in any regular involvement with witchcraft trials, but they did take seriously any witchcraft cases appertaining to prophecy because of its potential to encourage or auger attempts upon the monarch's life.

In 1604, fresh legislation was passed by King James' new English parliament which brought England in line with Scotland as James began his English rule. A prison sentence was included for anyone purporting to use sorcery, enchantments, or charms regardless of whether it was successful or not:

And for the better restraining of said offences, and more severe punishing the same, be it further Enacted by the Authority aforesaid; That if any person or persons...shall use, practise, or exercise any invocation or conjuration of any evil and wicked spirit: or shall consult, covenant with, entertaine, imploy, feed, or reward any evil and wicked spirit, to or for any intent or purpose; or take up any dead man, woman, or child, out of his, her, or their grave, or any other place where the dead body resteth; or the skin, bone, or any other part of any dead person, to be imployed, or used in any manner of Witchcraft, Sorcery, Charme, or Inchantment, or shall use, practise, or exercise, any Witchcraft, Inchantment, Charme or Sorcery, whereby any person shall be Killed, Destroyed, Wasted, Consumed, Pined, or Lamed, in His or Her body, or any part therof; that then every such Offender, or Offenders, their Ayders,

⁹⁷ Ibid., pp.95-96.

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Abettors, and Counsellors, being of the said offences duly and lawfully
Convicted and Attainted, shall suffer paines of death as a Felon or Felons.⁹⁸

The new legislation brought England broadly in line with Scotland; it outlined the concern that malefic witchcraft was employed as a force against a person or their possessions, which differentiated it slightly from continental beliefs: 'The English largely focused on the practical and everyday side of the witches' ability to use magic for harm, while in continental belief, shared to a larger extent in Scotland, witchcraft could escalate into being perceived as a large-scale diabolical threat to society'.⁹⁹ While the 1604 legislation infers demonological influence through familiars (wicked spirits) there is a lack of emphasis on the devil or heresy, which according to Alisa Manninen, were 'frequently recurring features in continental trials'.¹⁰⁰

In 1597, James I wrote *Daemonologie* in which he described the proliferation of witches and their enchantments.¹⁰¹ As a monarch, his writings on the subject gave both credibility and legal legitimacy to the practice of witchcraft. And, in common with King James' text, many educated people adopted a similar intellectual position with regard to witchcraft. In the introduction of his didactic book, James singled out prominent detractors like Reginald Scot as a 'doubting hart' who presented 'damnable opinions' when he denied the 'assaultes of Sathan'.¹⁰² James Sharpe

⁹⁸ 1 James 1 c.12.

⁹⁹ Alisa Manninen, 'The Charm's Wound Up': Supernatural Ritual in *Macbeth*', in *Magical Transformations on the Early Modern English Stage*, ed. by Lisa Hopkins and Helen Ostovich (London: Routledge, 2016), p. 67.

¹⁰⁰ *Ibid.* n.7.

¹⁰¹ King James I, *Daemonologie: In Forme of a Dialogue, Divided into three Bookes* (Edinburgh: Robert Waldgrave, 1597; repr. London: William Cotton and Will Aspley, 1603).

¹⁰² King James VI, *Daemonologie*, sig. A2.

<<https://www.proquest.com/docview/2248537658/fulltextPDF/62E069CDB4B549A7PQ/1?accountid=11979&sourcetype=Books>> [Accessed 26/08/2024].

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explains that when King James first published *Daemonologie* in Edinburgh, it was as a direct response to an attempted treasonable plot against him, that had ended in mass trials and numerous executions in 1590-1.¹⁰³ The North Berwick witch trials became political after the authorities identified treason. Two further reprints of *Daemonologie* were made in London during 1603 which means that it was widely available, and influential, prior to King James' English coronation and the 1604 change to witchcraft legislation.

James started the legitimisation of his English kingship immediately. According to Christina Lerner a protestant king 'anxious to demonstrate their legitimacy... pursue[d] Catholic[s]' and 'united a people' through 'witch-hunting'.¹⁰⁴ Lerner states that this conflation united people because both Catholics and witches were hostile towards the true protestant faith.¹⁰⁵ In *Daemonologie*, King James suggests that there is a Catholic association with elements of witchcraft. For example, when discussing the use of exorcism, King James explained that, 'it is first to be doubted if the Papistes or anie not professing the onlie true Religion, can relieve anie of that trouble', because so many of them 'counterfite...for confirming of their rotten Religion'.¹⁰⁶ His distrust of Catholicism was again emphasised when he stated that, 'rather the Devill is content to release the bodelie hurting of them, for a shorte space, thereby to obtaine the perpetual hurt of the soules of so many that by these false miracles may be induced or confirmed in the profession of that erroneus Religion'.¹⁰⁷

¹⁰³ James Sharpe, *Instruments of Darkness*, p. 48.

¹⁰⁴ Christina Lerner, *Enemies of God: The Witch-Hunt in Scotland* (Baltimore: John Hopkins University, 1981), p. 195.

¹⁰⁵ Ibid.

¹⁰⁶ King James VI, *Daemonologie*, p. 70.

¹⁰⁷ Ibid.

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Samuel Harsnett then added further criticism of the link between witchcraft and Catholicism when he was directed by James I's new English government to expose false possessions and Catholic claims that its priests were able to exorcise evil spirits and demons that were afflicting innocent people.¹⁰⁸ The title of his book makes clear that Harsnett and his political masters believed the use of exorcism was derived from a plot to undermine the English Protestant state – thereby making a clear correlation between Catholicism and witchcraft. Such a plot sought to

Withdraw the hearts of her Majesties subjects from their allegiance, and from the truth of Christian religion professed in England, under the pretence of casting out devils. Practised by Edmunds, alias Weston a Jesuit, and divers Romish priestes his wicked associates. Where-unto are annexed the copies of the confessions, and examinations of the parties themselves, which were pretended to be possessed, and dispossessed, taken upon oath before her Majesties commissioners, for causes ecclesiasticall.¹⁰⁹

Harsnett claimed that he had uncovered numerous examples of fake victims and false possessions. One such examinee was Anne Smith whom he examined on 17 May 1602, he concluded that, 'She was verie much abused by the said priests'.¹¹⁰ Not only was she not 'possessed' by 'a wieked spirit', but no 'peece of a knife came out of her mouth when she was in one of her fits'.¹¹¹ This episode reflects the opinion voiced by James Sharpe that King James 'seems to have been more likely to

¹⁰⁸ Although the allegations investigated by Harsnett emerged at the end of Elizabeth's reign, it was James' government that seized on its potential for unifying the people of England.

¹⁰⁹ Samuel Harsnett, *A Declaration of Egregious Popish Impostures* (London: James Roberts, 1603). <<https://quod.lib.umich.edu/e/eebo/A02750.0001.001/1:8?rgn=div1;view=fulltext> > [accessed 23 July 2024].

¹¹⁰ *Ibid.*, p. 242.

¹¹¹ *Ibid.*

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intervene to save witches than to secure their convictions'.¹¹² King James' scepticism seemed focused on the reasons behind a witchcraft allegation than the allegation itself. Shakespeare's play *King Lear* echoes this new scepticism when Poor Tom utters the names of devils from Harsnett's pamphlet to suggest he's mad.¹¹³

To turn now from the Jacobean legislative context to the representation of witchcraft on the stage, in *Macbeth* and *2 Henry VI*, the conjuration scenes are highly performative and highlight a sense of horror for the benefit of the spectator.

However, before considering how *Macbeth* presents witchcraft, it is worth noting that the Hecate passages in which the coven meet, are believed to have been written by Middleton and 'that two songs identified in the Folio stage directions of *Macbeth* (1623) appear in a manuscript of Middleton's *The Witch*, usually dated 1616 or earlier' and are 'the result of interpolations that Middleton made after Shakespeare's death'.¹¹⁴ According to the textual note in the *Norton Shakespeare*, Middleton 'could, in addition to the songs, have added all of 3.5 (which seems to diverge stylistically from the rest of the play) as well as parts of 4.1, particularly Hecate's speeches'.¹¹⁵

The purpose of staging conjuration is to show that acts of witchcraft are malefic.

Whereas the conjuration sequence in *2 Henry VI* is noticeably English, the witchcraft in *Macbeth* stretches beyond English legal codifications to echo a more European sense of demonic evil. For example, human remains are included in the weird sisters' necromantic spell. The First Witch boasts to her coven that she has a 'pilot's

¹¹² James Sharpe, *Instruments of Darkness*, pp. 48-49.

¹¹³ Kenneth Muir, 'Samuel Harsnett and King Lear', *The Review of English Studies*, 2.5 (1951), pp. 11-21 (p. 11), <<https://www-jstor-org.ezproxy.lancs.ac.uk/stable/511905?sid=primo>> [accessed 26 August 2024].

¹¹⁴ Lukas Earne, "'Our Other Shakespeare": Thomas Middleton and the Canon', *Modern Philology*, 107.3 (2010), pp. 493-505 (p. 504), doi:10.1086/650565.

¹¹⁵ Stephen Greenblatt, Walter Cohen and others (eds), *The Norton Shakespeare*, p. 2577.

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thumb. / Wrecked as homeward he did come' (I.3.26-27). And later in the play, other human remains are added as ingredients to a caldron: a 'liver' (IV.1.26), 'nose' (IV.1.29), 'lips' (IV.1.29) and an infant's 'finger' (IV.1.30). The 1604 legislation describes these items as 'the skin, bone, or any other part of any dead person' for use in a 'Charme'.¹¹⁶ Francis Young suggests that 'the primary targets of the 1604 act at the time were necromancers who made use of human body parts'.¹¹⁷ However, the weird sisters are not undertaking their spell for any personal benefit or act of revenge (as is the accusation surrounding Eleanor Cobham in *2 Henry VI*). Instead, their maleficium is positioned as a direct threat against society, a more European codification of witchcraft. Dramatically, *Macbeth* creates the sense that witchcraft's malefic evil is more pervasive, unchecked and uncontrollable.

The weird sisters work in collaboration, which suggests that they are working within a coven. Keith Thomas points out that the accusation of 'covenant with the Devil' or diabolical pact, 'did not formally become a crime in England until 1604' because of the inclusion of the word 'covenant' in the updated legislation.¹¹⁸ This update in the law, he explains, transpired after 'at least half...of the witch-trials had already taken place'.¹¹⁹ In *Macbeth*, although there is no explicit reference to the weird sisters having a covenant with the Devil (not even in the Hecate scene 4.1), there is a glimpse into the inverted hierarchical framework within which they operate: 'Say, if thou'dst rather hear it from our mouths / Or from our masters?' (IV.1.78-79).¹²⁰

¹¹⁶ 1 James 1 c.12.

¹¹⁷ Francis Young, *History of Sorcery and Treason* (London: I. B. Tauris, 2017), p. 163.

¹¹⁸ Keith Thomas, *Religion and the Decline of Magic*, p. 543.

¹¹⁹ *Ibid.*

¹²⁰ When King James refers to the witches' master in *Daemonologie*, he is directly referencing the Devil / Satan.

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Another difference between Elizabethan and Jacobean witchcraft was an evolution in the malefic purpose of the spell or curse. In Elizabethan witchcraft, malefic magic tended to facilitate an act of revenge. According to Keith Thomas, 'the witch was a person already known to her victim.... [and although] contemporaries may have been horrified by the witch's activities, ... they never denied that she had some genuine reason for wishing ill upon her victim'.¹²¹ The link between the witch and their victim was so important a factor within the trial process, that 'when the Throckmorton children of Warboys blamed Alice Samuel for their fits, the bystanders at first refused to accept the charge because they could think of no reason for her malice'.¹²² This makes the unsolicited prophetic visions given to Macbeth and Banquo (I.3.50-71) all the more frightening by contrast because it suggests that the choice of victim is random; that the victim may not have met or even known the witch. The Jacobean play thereby dramatizes the sense that the weird sisters' metaphysical presence represents an unseen malevolent force.

In contrast to a metaphysical reading of the weird sisters, David Kranz suggests a more humanist interpretation. He suggests that although spatially the witches are at one remove from human existence, linguistically they operate, as Macbeth does, in a concrete secular world with very real human fears. Kranz identifies the linguistic patterning and poetic rhythms of the weird sisters as being filled with antitheses and paradoxes. His position on witchcraft is similar to that of Reginald Scott in that he sees their existence as non-spiritual and worldly. In his linguistic and literary analysis, Kranz identifies the weird sisters' language as functions of the

¹²¹ Keith Thomas, *Religion and the Decline of Magic*, pp. 658-9.

¹²² *Ibid.*, p. 659.

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'cosmological disorders' of their world.¹²³ And, when their words are repeated by Macbeth, Kranz suggests that through implication he too acts upon a compulsion that is driven by 'instinctual needs'.¹²⁴ Their 'childlike rhyming' and linguistic 'coupling' is described by Kranz as 'regressive repetition'.¹²⁵ He acknowledges that the weird sisters can be interpreted as representing a diabolical parody, but also explains that they are representational of 'a sign of more positive, or at least neutral, elemental and universal power'.¹²⁶ This interpretation of linguistic patterning places the weird sisters within the secular world and subject to its human fears and superstitions. It suggests that their intentions are predicated on human instincts like the projection of self, need to feel safe, or the predilection to believe that we are in control of our destiny. Interestingly, despite this very human representation of witchcraft, Kranz makes the point that the use of repetition has the effect of infiltrating 'the unconscious minds of others', including us as the spectator or reader.¹²⁷ Essentially, this secularisation of Macbeth's interaction with the weird sisters blurs the lines between crime and sin, thereby elevating the overlap and disparity between the secular and spiritual worlds.

In Jacobean law period, witchcraft legislation could be transgressed by talking to a witch. Macbeth and Banquo do not solicit any prophecy from the weird sisters, but they certainly 'entertained' their message. The word 'entertain' was absent from

¹²³ David L. Kranz, 'The Sounds of Supernatural Soliciting in *Macbeth*', *Studies in Philology*, vol 100.3 (2003), pp. 346-383 (p. 350). doi:10.1353/sip.2003.0013.

¹²⁴ Ibid.

¹²⁵ Ibid., p. 369.

¹²⁶ Ibid., p. 370. Kranz acknowledges the classical association in which the three weird sisters are presented as a function of the furies. For a detailed discussion of the three weird sisters as a function of the furies, see Arthur R. McGee, '*Macbeth* and The Furies', *Shakespeare Survey*, 19 (1967), pp. 55-67, doi: 10.1017/CCOL0521064325.006.

¹²⁷ Ibid., p. 369.

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witchcraft legislation prior to its insertion in the 1604 statute.¹²⁸ The definition of 'entertain' since the mid-fifteenth century is shown as 'transitive. To occupy or engage the attention or time of (a person)' (*OED*: n.IVa). This change in law meant that it was illegal to hold a conversation with a witch. In the play, both Macbeth and Banquo transgress witchcraft legislation from their first entry on to the stage, albeit in an unsolicited conversation. This contrasts with Eleanor Cobham's interactions with witchcraft because although she is a passive bystander, she is still found guilty. The inclusion of 'entertain' in witchcraft legislation makes the statute open to abuse because witnessing a conversation implies guilt rather than needing to prove any agency.

The language used in witchcraft legislation to describe the witch and witchcraft activities is designed to be empirical so that transgression is identifiable for the purpose of prosecution. However, in *Macbeth*, the language that represents the weird sisters is less empirical and defies categorization. The weird sisters are never referred to as witches and their presence becomes both pervasive and evasive throughout the play. In *Macbeth*, the weird sisters' physical appearance is also presented as non-human and therefore elusive. They are revealed as powerful (I.3.7-27) ambiguous asexual beings (I.3.42-44) that appear withered (I.3.38), diseased (I.3.42) and savage (I.3.38) and who emanate from a bubbling earth (I.3.77). They fill the world with mistrust, deceit and murder (III.3) and selfishly engage in necromancy (IV.1).

¹²⁸ 1 James 1 c.12

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Much of the text's action is viewed through a lens of prophetic deception in which concepts of truth and knowledge are fluid and perverted for personal gain. The play's political intrigue is developed within the context of unchecked witchcraft resulting in the rise and fall of a Scottish king. To sustain this deception, the prophetic sisters are illusive: neither fully corporeal or fully spiritual; neither agitated or nonchalant; and neither working towards personal gain or the destruction of specific individuals. Instead, their impact in the play is subversive because they create a sense of an all-pervasive evil that is waiting in shadows and isolated spaces.

The legislative changes regarding prophesying about the monarch (1582) can be identified throughout *Macbeth* and when conflated with the play's references to equivocation (II.3.10-11) by the Porter (an allusion to the trial of the Gunpowder Plot conspirators), audiences are encouraged to connect the crime of witchcraft with Catholicism, questions of kingship, legitimacy, the divine origins of a monarch and the threat of treason. The play, it seems, affirms the position of King James as the legitimate monarch by showing what happens when an illegitimate king seizes the throne. A sovereign's rule, the play intimates, will only be blessed by God if their kingship is legitimate. Leonard Tennenhouse explains that King James actively 'represented himself with a litany of biblical images for patriarchal power' in order to legitimise his sovereignty through God.¹²⁹ For example, in the introductory sonnet to *Basilikon Doron*, James explains how God has given kings 'the style of gods' to rule.¹³⁰ Antonia Fraser similarly points out that 'James refers to a sovereign as "a

¹²⁹ Leonard Tennenhouse, *Power on Display: The Politics of Shakespeare's Genres* (London: Methuen, 1986), p. 149.

¹³⁰ King James Stuart, *Basilikon Doron: The King's Gift*, ed. by Kevin A. Straight (Montrose: Creative Minority Productions, 2018), p. 6.

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little God””; kings are ‘the breathing images of God’, ‘God Lieutenants’ and ‘even by God himself they are called Gods’.¹³¹ In his inaugural speech to Parliament (1604) James drew on the gospel imagery associated with the good shepherd (S. John 10:11) when he explained his relationship with England, Ireland and Scotland: ‘I am the shepherd and it is my flocke’.¹³² He similarly references Paul’s first letter to the Corinthians when he explains that he is the ‘head’ and his kingdom ‘is my body’ (1 Corinthians 14.12-27).¹³³

Further departures from previous legislative and dramatic representations of witches and witchcraft activity can be identified in *Macbeth*. In both *1 Henry VI* (1592) and *2 Henry VI* (1591-2) and the contemporary witchcraft pamphlets (1566-1589), witchcraft was represented as individual instances of contact with evil spirits which interfered in human activity. In *Macbeth*, however, a conjured evil spirit no longer requires human intervention to enter into the corporeal world. And, unlike human witches, the weird sisters can move between the spiritual and corporeal worlds at will and exist in the liminal spaces between them, dramatized as heathland and moor. This makes any proof or refutation of witchcraft elusive because the play’s witches (representation of malefic magic) are able to ‘melt’ between the spiritual and corporeal worlds at will, ‘as breath into the wind’ (I.3.80). Attempts at containing malefic magic within a community therefore seem futile and impossible. There are only victims of the shadowy influencers: ‘mine eternal jewel / Given to the common enemy of man’ (III.1.69-70).

¹³¹ Antonia Fraser, *King James VI of Scotland I of England* (London: Weidenfeld and Nicolson, 1974; repr. 1994), p. 69.

¹³² King James I (VI), ‘Speech to Parliament 19 March 1604’, in *King James VI and I: Political Writings*, ed. by Johann P. Sommerville (Cambridge: Cambridge University Press, 1994; repr. 2006), pp. 132-146 (p. 136).

¹³³ *Ibid.*

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One point of continuity between the Elizabethan and Jacobean legislation surrounding witchcraft was that the law assumed the geographical location of a witch's activities as being static; they practised their dark arts where they lived. For example, in the Middlesex Sessions *Gaol Delivery Roll*, Rose Mersam's prosecution is presented like almost all early modern defendants charged with witchcraft. She was indicted for undertaking malefic magic at her home (Whitecrosse Street) in May 1606.¹³⁴ There was no legal contingency for a person to be tried for an injury caused by malefic magic if the spell was undertaken in a different county. In *Macbeth*, however, the weird sisters are shown as unattached to any particular community, village or town. Instead, they seem to appear and vanish in uncultivated heathland and non-descript spaces (I.1.6), and their interference in mortal affairs is not restricted to the area in which they live or exist. In this respect, the play and other cultural representations of witchcraft appear to have influenced legislative change. Consequently, in 1634 witchcraft legislation was altered to recognise that a death, injury or other event caused by malefic magic could take place in an alternative space 'as if the same death had happened in the same county where such stroke, poisoning, and witchcraft was given, committed or done'.¹³⁵ No longer was a witch deemed to be a resident of a particular community or geographic location. Instead, they were interpreted like the weird sisters in *Macbeth*, as autonomous.

The weird sisters also seem able to reach into loci that were traditionally seen as places of safety. In the play, they seem empowered to undermine by the use of

¹³⁴ *Middlesex County Records: Old Series*, ed. by John Cordy Jeaffreson, 2 vols (London: [n.pub], 1887; repr. London: Greater London Council, 1974), II, p. 20.

¹³⁵ 10 Charles 1 c.19.

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subversive symbolism surrounding particular spaces; metaphors designed to evoke a sense of innocence or happiness are juxtaposed with references to deceit and horror. For example, the Macbeths are shown to live in a castle that is presented as warm and inviting:

King Duncan:	This castle hath a pleasant seat. The air Nimbly and sweetly recommends itself Unto our gentle senses.
Banquo:	This guest of summer, The temple-haunting martlet, does approve By his loved mansionry that the heavens' breath Smells wooingly here. No jutty frieze, Buttress, nor coign of vantage but this bird Hath made his pendant bed and procreant cradle; Where they most breed and haunt I have observed The air is delicate. (I.6.1-9)

The use of positive vocabulary like, 'loved', 'wooingly', 'procreant' and 'breed' describes their ancestral home as happy and fertile. L. C. Knights suggests that these scenic descriptions are 'all images of love and procreation, supernaturally sanctioned'.¹³⁶ M. Daly, in his article, 'Of Macbeth, Martlets and Other "Fowles of Heaven"', however, reminds us that Banquo's 'martlet' metaphor can also signify being duped.¹³⁷ The arrival of the trusting Duncan into the 'castle [that] hath a

¹³⁶ L. C. Knight, *Explorations: Essays in Criticism Mainly on the Literature of the Seventeenth Century* (London: Chatto & Windus, 1958), p. 22.

¹³⁷ Peter M. Daly, 'Of Macbeth, Martlets and other "Fowles of Heaven"', *Mosaic: An Interdisciplinary Critical Journal*, 12.1 (1978), pp. 23-46, (p. 25). <<http://www.jstor.org/stable/24777109>> [accessed 18 February 2022].

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pleasant seat' is given a heightened sense of horror through the irony that Macbeth's castle is in fact a place of murder and deceit.

The permeable quality of the castle's walls is particularly demonstrable when we consider the events surrounding the murder of Duncan. Macbeth's castle is penetrated by a malignant energy when Lady Macbeth invites the spirits to enter her body and transform her from being a maternal hostess to a fiend-like promoter of regicide. The castle changes physically from the 'pleasant... procreant cradle' (I.6.1-8) into the 'hell-gate' (II.3.1-2) where the name of 'Beelzebub' is called upon (II.3.4) to collect the souls of those, like the farmer 'that hanged himself' after his hopes were crushed (II.3.4), 'equivocators' (II.3.8-11), and those caught 'stealing' (II.3.13-14). Macbeth's castle walls have lost their defensive capability. His godly home, as Henry Holland warns against in his *A treatise against witchcraft* is being penetrated by the contagion of witchcraft.¹³⁸ And, the sense that witchcraft is geographically pervasive, is increased.

Some of the human activity described as witchcraft in the 1604 legislation is also present in the play. For example, in the legislation a person is deemed to be transgressing the law if they 'use, practise, or exercise any invocation or conjuration'.¹³⁹ In the legislation, human interlocutors are inferred as retaining control of the malefic relationship. However, in the play's world, evil spirits are shown to dominate the partnership. For example, after Macbeth recounts his meeting with the

¹³⁸ Henry Holland, *A treatise against witchcraft* (Cambridge: John Legatt, 1590) <https://i2-prod.walesonline.co.uk/incoming/article13817259.ece/ALTERNATES/s615b/jmc_26102017_gwentreatise.jpg> [accessed 11 May 2024]. See also Thomas Cooper, *The Mystery of Witch-craft: discovering the truth therof* (London: Nicholas Okes, 1617). <https://archive.org/details/bim_early-english-books-1475-1640_the-mystery-of-witch-cra_cooper-thomas-preacher_1617> [accessed 11 May 2024].

¹³⁹ 1 James 1 c.12

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weird sisters, Lady Macbeth undertakes a psychological metamorphosis. Initially described by Duncan as 'honoured' (I.6.12), 'loved' (I.6.14) and selfless (I.6.16), she transforms into an 'unsex[ed]' being (I.5.39) that is filled with 'direst cruelty' (I.5.41) and devoid of 'remorse' (I.5.42-45). Her desire for 'thick night' and 'the dunnest smoke of hell' (I.5.48-49) to hide her 'knife' in murder (I.5.50) is heightened by an inversion of nature and natural law regarding her lack of maternal bonds of motherhood (I.7.54-58). Significantly, each of these characteristics can be identified in the representation of the weird sisters in Act I, Scenes 1 and 3. The similarity in characteristics suggests that the weird sisters have not only penetrated the castle but have also started to transfigure Lady Macbeth into their image.

Macbeth ignores the law appertaining to witchcraft. In I.3, Macbeth's discussion with the weird sisters transgresses legislation: do not 'consult... [with] any wicked spirit'.¹⁴⁰ His conversation with the weird sisters may suggest that he feels his status as thane and the king's cousin places him above common law (like Suffolk's lack of adherence to enclosure law in *2 Henry VI* (I.3.23-24)). Brian Morris notes that when Macbeth first encounters the weird sisters, it is not their ethereal representation that shocks him, but the brevity of their information leading to his entreaty for them to speak: 'Stay, you imperfect speakers, tell me more' (I.3.68).¹⁴¹ Macbeth's response is a desire to learn more information about the future, which is a clear contravention of witchcraft legislation. Absent from his manner is any sense of surprise and concern, like that articulated by Banquo, who seems to view the 'instruments of darkness' (I.3.122) with anxiety. Perhaps Banquo recognises that the sisters are a

¹⁴⁰ 1 James 1 c.12.

¹⁴¹ Brian Morris, 'The Kingdom, the Power and the Glory in *Macbeth*', in *Focus on Macbeth*, ed. by John Russell Brown (London: Routledge, 1982; repr. 2005), pp. 30-53 (p. 31).

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potential instrument of the devil and therefore any communion with them is legally prohibited. Interestingly, Banquo echoes Horatio's warning about King Hamlet's ghost, when he attempts to draw Hamlet into isolation (*Hamlet*, I.4.50-58):

And oftentimes to win us to our harm
The instruments of darkness tell us truths,
Win us with honest trifles, to betray's
In deepest consequence.

(*Macbeth*, I.3.121-24)

Banquo and Horatio's warnings suggest that witchcraft legislation is designed to protect the potential perpetrator as much as other people; that a malefic spirit makes everyone within its communion a victim. Banquo's caution is therefore moralistic and legalistic, but it nevertheless goes unheeded. Instead, Macbeth ponders over the reliability of the weird sisters' assertions:

[Aside] This supernatural soliciting
Cannot be ill, cannot be good. If ill,
Why hath it given me earnest of success
Commencing in a truth? I am Thane of Cawdor.

(I.3.129-32)

Macbeth's reflection on his first meeting with the weird sisters places his attitude firmly in the secular world with secular laws. The play thereby suggests that cynicism, rejection of spirituality through humanism, or even the use of legal jurisdictions won't protect anyone from witchcraft. For example, his conclusion to the weird sisters' prophecy, 'If chance will have me king, why, chance may crown me'

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and 'Come what, come may' (I.3.142 and 145) suggests an apathetic response. The word 'chance' means 'the falling out or happening of events; the way in which things fall out; fortune; case.' (*OED* n.1a). The word is noticeably secular because it does not suggest or infer supernatural assistance or superstition. His character therefore seems devoid of spiritualism and as someone 'to whom the rewards and terrors of eternity are unimportant. Macbeth seems to 'count religion but a childish toy, / And hold there is no sin but ignorance'.¹⁴² Moreover, when Macbeth is overthrown, it is through physical combat. God is neither invoked nor presented as a retributive agent in the play: 'It is nothing like the end of *Richard III* where Richmond is identified as God's retributive agent'.¹⁴³ For Macbeth, kingship is viewed as the highest rung on the ladder to 'greatness' (I.5.10) rather than a spiritual predetermination as viewed by King James. Macbeth's decision to ignore secular and spiritual law in the play places him on a journey to kingship in which his actions are viewed retrospectively, from a position that he will adopt after his coronation. As king and head of state, Macbeth places himself above the law and, ironically, answerable to God alone.

John Drakakis sees this process as a shift from a theological to a political focus in the play.¹⁴⁴ He also sees Macbeth's solemnization of the crown and legitimizing moment of sovereign authority as being made through secular law rather than through a spiritual authority given to the king by God. Drakakis cites the publication of Aristotle's *Politics* (translated 1598) as anticipating Macbeth's secular sense of legalism:

¹⁴² *Ibid.*, p. 32. Morris quotes the Prologue: Christopher Marlowe, *The Jew of Malta*, ed. by T.W. Craik, 3rd edn (London: Ernest Beven, 1979), p. 9.

¹⁴³ *Ibid.*, p. 33.

¹⁴⁴ John Drakakis, 'Macbeth and 'Sovereign Process'', in *Macbeth: A Critical Reader*, ed. by John Drakakis and Dale Townshend (London: Bloomsbury, 2013), pp. 123-152 (p. 125).

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[I]s the intending king to have about him a force with which he be able to impose his will on those who seek to resist his rule? How else is he to exercise his authority? For even if his sovereignty is such that he can act only in accordance with the law, and do nothing in his own volition that is illegal, it will still be necessary for him to have sufficient armed force to give the law protection.¹⁴⁵

Aristotle's assertion that a monarch has a symbiotic relationship with the law provides the ruler with the legal authority to wield force in order to maintain peace. In the play, Macbeth's words, 'to be safely thus' (III.1.50) herald a series of bloody murders justified through his understanding of the crown's legal authority. His procurement of men to murder Banquo for instance, is justified in his mind through the inference that Banquo is guilty of treason and betrayal: 'That every minute of his being thrusts / Against my near'st of life' (III.1.118-19). Ironically, this shows Macbeth as content to break Scotland's laws with impunity but his hold on power requires that everyone else abides by them. His use of force is therefore never overt and performatively kingly, but always secretive, underhand and murderous; 'Masking the business from the common eye' (III.1.126) and thereby echoing the activity of an accused witch. In this way, Scotland's laws are ignored causing Macbeth to operate outside of their jurisdictions in the same way that a criminal would operate. However, in Macbeth's view he is entitled to act in this way as future monarch. His actions, however, are completely different to the state sanctioned murder of the Thane of Cawdor by King Duncan. Cawdor's crime of treason is established on the battlefield

¹⁴⁵ Ibid., p. 128. Drakakis cites Aristotle, *The Politics*, trans. T. A. Sinclair (Harmondsworth: Penguin, 1992), p. 224.

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(I.2.53-57), his sentence pronounced by the King (I.2.63-64), and execution undertaken in public (I.4.1-11). This is what Giorgio Agamben calls the 'paradox of sovereignty'.¹⁴⁶ The sovereign enjoys absolute authority to withdraw from and act outside the law in order to uphold its principles. This is essentially the philosophy perverted by Macbeth to justify his murderous rampage. The play, therefore, reveals how close such behaviour is to the actions of a criminal.

However, despite his best efforts, Macbeth's kingdom cannot, it seems, exist outside of the spiritual realm. The supernatural occurrences after the murder of Duncan and the haunting of Banquo's ghost pull him into a realisation that to combat the supernatural, he must fortify himself with the supernatural. And, despite speaking with a reasoned rationale, Macbeth engages in superstitious reflection:

It will have blood, they say: blood will have blood.

Stones have been known to move and trees to speak,

Augers and understood relations have

By maggot-pies and choughs and rooks brought forth

The secret'st man of blood. What is the night?

(III.4.121-25)

These views seem to be atypical of Macbeth's earlier behaviour and mark a difference with other earlier Shakespearean plays. For example, Macbeth's choice of retinue is devoid of ecclesiastical figures like Winchester in *2 Henry VI*, the bishops

¹⁴⁶ Giorgio Agamben, 'Bataille and the Paradox of Sovereignty', Trans. by Michael Krimper, *Journal of Italian Philosophy*, 3 (2020), pp. 247-253 (p. 251), <<https://research.ncl.ac.uk/italianphilosophy/previous%20issues/volume32020/11.%20Agamben%20-%20Bataille%20and%20the%20Paradox%20of%20Sovereignty.pdf>> [accessed 27/08/2024].

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of Canterbury and Ely in *Henry V* (*Henry V*: I.1) or like those used as a visual metaphor by Richard, the Duke of Gloucester in *Richard III* (*Richard III*: III.7).

Although their absence indicates a lack of spiritual law and religious temperance in Macbeth's actions, the text still allows for an ecclesiastical subtext to run underneath the main plot. For example, biblical scripture can be seen as functioning parabolically within the play: in Matthew's Gospel, Jesus explains, 'for all they that take the sworde shal perishe with the sworde'.¹⁴⁷ Macbeth acknowledges this scripture before he kills Duncan: 'that we but teach / Bloody instructions which, being taught, return / To plague th'inventor' (I.7.8-10) and it serves as a warning at his final demise. However, Macbeth's statement that he has given his 'eternal jewel /...to the common enemy of man' (III.1.69-70) and been refused a blessing (II.2.30-31) demonstrates a lack of understanding or concern for the concept that repentance and penance for his sins would cancel out his prior misdeeds.

The dramatic effect of an ecclesiastic absence in Macbeth's retinue is that it makes him appear to forfeit or ignore God. His kingdom is therefore juxtaposed against Duncan's (I.7.16-20) and Edward's kingdoms (IV.3.148-59), thereby highlighting his lack of 'sanctity', 'good[ness]', 'royalty', and 'grace' (IV.3.145, 148, 156, 159). The English monarch (Edward the Confessor) for example, is presented as a pious and spiritual king. Unlike Macbeth, King Edward is blessed with heavenly powers to heal 'a crew of wretched souls' (IV.3.148-53):

How he solicits heaven

Himself best knows: but strangely visited people,

All swoll'n and ulcerous, pitiful to the eye,

¹⁴⁷ S. Matthewe 26.52

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The mere despair of surgery, he cures,
Hanging a golden stamp about their necks
Put on with holy prayers: and 'tis spoken,
To the succeeding royalty he leaves
The healing benediction. With this strange virtue
He hath a heavenly gift of prophecy,
And sundry blessings hang about his throne
That speak him full of grace. (IV.3.150-59)

In contrast to Scotland, England is lawful and thereby represented as a supportive land of peace, strength and justice whereas Macbeth's Scotland is shown to have developed the qualities of the weird sisters: murderous, chaotic, and duplicitous. Unlike the pious Edward, Macbeth has fatal visions (II.1.33-56), hears voices (II.2.33-4) and is a prisoner to dark and evil thoughts (III.2.37). It is therefore inevitable and feels appropriate that Macbeth the tyrant should lose the Scottish throne and that 'a fruitless crown, / And...a barren sceptre' should have been placed in his 'grip' (III.1.62-3). Anything else might have the play infer that treason can be justified.

In *2 Henry VI*, the crime of witchcraft was punished by imprisonment and execution (*2 Henry VI* II.3.5-13) whereas in *Macbeth*, witchcraft's ability to evade human intervention gives it a sense of a wild and uncontrollable chaos: an all-pervasive force committed to corrupting human affairs. Unlike Eleanor Cobham, the weird sisters are never punished in a secular court. Instead, they are repositioned as an independent self-aware force which gives the play an atmosphere of heightened

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danger and a sense of dark foreboding. It also provides the play with the opportunity to introduce another development in the witchcraft narrative: the 'witch-family'.

The witch-family is predominantly defined through their representation in written material related to accusation and trial at law. By adopt this trope, the play reflects a cultural construction of witches through their contact points with the law. A witch-family was a family that passed their knowledge of conjuration and magic down through family hereditary: 'Witches are wont to communicate their skill to others by tradition, to teach and instruct their children and posterity, and to initiate them in the grounds, and practises of their owne trade, while they live, as may appeare by the confessions recorded in the courts'.¹⁴⁸ Deborah Willis suggests that there was a rise in the witch-family trope during 'the late sixteenth century and intensifying during the early decades of the seventeenth century'.¹⁴⁹ Although there is no evidence to suggest that either Macbeth or his wife are witches themselves, their representation as a family unit within the play firmly places them within that developing narrative.

It is the Macbeths' utilisation of witchcraft in their murderous collaboration that presents them as a witch-family. Individually, their actions can be identified within the 1604 legislation as targeting a person or persons through the use of 'invocations', 'conjurations', an 'enchantment', 'charme' or 'sorcerie' in which a person is killed.¹⁵⁰ Neither of the Macbeths has any intrinsic magical power of their own; 'their powers

¹⁴⁸ M. William Perkins, *A Discourse of the Damned Art of Witchcraft* (London: James Boler, 1631; repr. Great Britain: Amazon Printing, [n.d.]), p.104.

¹⁴⁹ Deborah Willis, 'The Witch-Family in Elizabethan and Jacobean Print Culture', *Journal for Early Modern Cultural Studies*, 13.1 (2013) pp. 4-31, doi: 10.1353/jem.2013.0003; Malcolm Gaskill, *Crime and Mentalities in Early Modern England* (Cambridge: Cambridge University Press, 2002), pp. 57-60.

¹⁵⁰ 1 James 1 c.12

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are purely derivative'.¹⁵¹ In the pamphlet *More Executions at Chelmsford* (1589), the art of the witch seems to be based on the knowledge of how to pray to Satan - who was apparently waiting unseen, 'ready to do for her what she would desire'.¹⁵² Joan Cunny requested that her two spirits (Jack and Jill) 'hurt the wife of John Sparrow' alongside a list of other members from the community, including the minister of the local church.¹⁵³ However, she herself could not magically attack anyone. Elizabeth Francis, during a previous trial, revealed a similar experience during her questioning. Her ability to magic up wealth or a husband was not in her remittance but only made possible by the magical intervention of her white spotted cat, whom she called Satan. In *Macbeth*, this process is inverted: it is Macbeth who does the weird sisters' bidding.

Communicating with spirits was, according to Elizabeth Francis, one of the skills taught to her by 'her grandmother'.¹⁵⁴ Lady Macbeth presents a theatrical invocation of evil spirits in which she invokes 'murd'ring ministers' (I.5.46) to pervert the stereotypical temperament of her feminine gender. There is no evidence within the text to suggest that Lady Macbeth was taught to invoke spirits by a relative, but her use of language is comparable to other supernatural invocations which suggests that she was taught by someone.¹⁵⁵

Come, you spirits

That tend on mortal thoughts, unsex me here

And fill me from the crown to the toe top-full

¹⁵¹ Deborah Willis, 'The Witch-Family in Elizabethan and Jacobean Print', p. 18.

¹⁵² *More Executions at Chelmsford*, in *Witchcraft*, p. 184.

¹⁵³ *Ibid.*

¹⁵⁴ *The examination and confession of certaine Wytches in Chensforde in the countie of Essex before the Quenes majesties Judges* (1566), in *Witchcraft*, edited by Barbara Rosen, pp. 73-4.

¹⁵⁵ See my earlier analysis of spiritual invocation from *2 Henry VI*.

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Of direst cruelty. Make thick my blood.

(I.5.38-41)

Although this shares some similarities with the invocation associated with Eleanor Cobham in *2 Henry VI*, in many ways it is very different. Lady Macbeth exclaims a series of imperative sentences which act to evoke magical assistance: 'Come', 'unsex', 'fill', 'make'. It is not only an invocation for evil 'murd'ring ministers' (I.5.46), but according to Debra DeLeo Moolenaar, it is an invocation for physiological humoral alteration: a movement away from a balanced or phlegmatic feminine wet humour towards a dry choleric masculine humour that resides within yellow bile.¹⁵⁶ Lady Macbeth's use of the word 'thick', according to David Landreth, points towards her desire to 'dry out her temper while retaining its heat'.¹⁵⁷ Her call to 'take my milk for gall', also highlights the drying action of acid in milk, 'curdling from liquid to solid within her mammary glands'.¹⁵⁸

Lady Macbeth's ability to alter her emotional temperament appears to be outside of her own physical control. The invocation therefore implies that her initial attitudinal position is one of traditional feminine values: subservient, supportive, controlled, maternal, etc. These were the qualities developed through the narrative of popular Jacobean family conduct books.¹⁵⁹ The conduct books emphasised the godly nature

¹⁵⁶ Debra DeLeo Moolenaar, 'The Significance of Humoural Theory in Early Modern Drama', *Archetypal Assets: Innovation in Cultural Cosmology*, 18 June 2015 <<https://archetypalassets.com/2015/06/18/the-significance-of-humoural-theory-in-early-modern-drama/>> [accessed 20 April 2024].

¹⁵⁷ David Landreth, 'Thick and Thin: Change of state in Macbeth', *Renaissance Drama*, 51.2 (2023), pp. 175-189 (p. 179), doi:10.1086/727186.

¹⁵⁸ Ibid.

¹⁵⁹ See Deborah Willis, 'The Witch-Family in Elizabethan and Jacobean Print Culture', p. 10; Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford: Columbia University Press, 1988), pp. 37-47; S.D Amussen, 'Gender, Family and the Social Order, 1560-1725, in *Order & Disorder on Early Modern England*, edited by Anthony Fletcher and John Stevenson (Cambridge: Cambridge University Press,

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and biblical responsibility of the father / husband and the duty, subjugation, and modesty of the wife / mother within the family model. In the chapter entitled, 'What the dutie of a Wife is towards her Husband' from John Dodd and Robert Clever's, *A Godlie Form of Householde Government*, the hierarchical relationships within the family are specifically related to scripture where the wife's subservient duty towards her husband is emphasised through her actions, speech, and restraint: 'shee submit her selfe and be obedient unto him'.¹⁶⁰ However, there is also a clear sense that the husband and wife should govern together – especially the family, and this is seen in the early partnership of Macbeth and his wife when he forwards a letter detailing his meeting with the weird sisters: 'This have I thought good to deliver thee – my dearest partner of greatness – that thou mightst not lose the dues of rejoicing by being ignorant of what greatness is promised thee' (I.5.9-11). The word 'partner' characterizes their relationship.

The relationship between Macbeth and his wife reflects a wider cultural shift towards the nuclear family being reliant on a companionate marriage; a decisive shift in a marital relationship that first began after the Reformation.¹⁶¹ This change in attitude was a move away from the medieval belief that chastity was preferable to marriage - to one in which 'conjugal affection' was slowly becoming 'the ethical norm for the

1987), pp. 196-205; John Dodd and Robert Clever, *A Godlie Form of Householde Government: For the Ordering of Priuate Families, according to the direction of Gods word* (London: Thomas Man & George Norton, 1561; repr. 1610); A. H. Dodd, *Life in Elizabethan England* (London: Batsford, 1961), pp. 70-71; Anthony Fletcher, *Gender, Sex & Subordination in England 1500-1580* (London: Yale University Press, 1999), pp. 154-157. See also: William Gouge, *Of domesticall duties eight treatises* (London: William Bladen, 1622), <https://archive.org/details/bim_early-english-books-1475-1640_of-domesticall-duties-ei_gouge-william_1622> [accessed 7 November 2024]; R. B. Cleaver, *A godlie forme of householde gouernment: For the ordering of priuate families*, edited by John Dod, and Robert Cleuer (London: Thomas Mann and George Norton, 1610) <<https://www.proquest.com/books/godlie-forme-householde-gouernment-ordering/docview/2240897568/se-2>> [accessed 24 April 2024].

¹⁶⁰ John Dodd and Robert Clever, *A Godlie Form of Householde Government*, p. 217.

¹⁶¹ Lawrence Stone, *The Family, Sex and Marriage: In England 1500-1800* (London: Weidenfeld and Nicolson, 1977; repr. 1979), p. 135.

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virtuous Christian'.¹⁶² The new marital ideal became a much emphasised model in early modern homilies and conduct books. The Protestant model provided the woman with 'a greater variety of roles', greater 'dignity' and 'authority' and subjected to less 'clerical misogyny'.¹⁶³ However, according to Stone, it was unanimously acknowledged that the wife remained 'subordinate to the husband'.¹⁶⁴ In *Macbeth*, we see the marital ideal of a loving companionship perverted. Instead of working together for the happiness and the efficient running of the family, their partnership enters a world of criminal activity that includes prophecy, witchcraft and murder; everything opposite to that espoused by a godly family.

The opposite of the godly family is the 'ungodly' or witch-family. In the 1589 pamphlet, *A true and particular observation of a notable piece of witchcraft practised by John Samuel the father, Alice Samuel the mother and Agnes Samuel their daughter, of Warboys in the county of Huntingdon upon five daughters of Robert Throckmorton*, the Samuel family are represented as an ungodly family: a witch-family.¹⁶⁵ The pamphlet traces how each Throckmorton daughter suffered numerous fits in which they would fall, 'as one in a great trance and swoon and lay quietly'.¹⁶⁶ The daughter would then 'begin to swell and heave up her belly so as none was able to bend her or keep her down'.¹⁶⁷ These fits were symptoms of alleged witchcraft

¹⁶² Ibid.

¹⁶³ N. H. Keeble, *The Cultural Identity of Seventeenth-Century Woman: A Reader* (London: Routledge, 1994; repr. New York: Routledge, 2002), p.116.

¹⁶⁴ Lawrence Stone, *The Family, Sex and Marriage*, p.136.

¹⁶⁵ *A true and particular observation of a notable piece of witchcraft practised by John Samuel the father, Alice Samuel the mother and Agnes Samuel their daughter, of Warboys in the county of Huntingdon upon five daughters of Robert Throckmorton of the same town and county, esquire, and certain other maidservants to the number of twelve in the whole, all of them being in one house: November 1589*, in *Witchcraft*, ed. by Barbara Rosen, pp. 240-297

¹⁶⁶ Ibid., p. 241.

¹⁶⁷ Ibid., p. 241.

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caused by each of the Samuel family. The pamphlet presents the godly family (Throckmorton) as middle-class, calm, logical, religious and open while the witch-family (Samuel) is shown as lower-class, coarse, dishonest, unable to control their emotions, irreligious (unable to pray, recite scripture, etc) and in conflict with each other. Willis explains that the Throckmorton children and the pamphlet's author, 'seize upon class-based differences in manners and increasingly interpret them in a sinister light'.¹⁶⁸ The difference in manners is clearly an example of good versus bad nurture where the parent instructs the child through both education and modelling. The pamphlet is derogatory in tone when it describes Mrs. Samuels' 'lewd bringing up of her daughter'.¹⁶⁹ The pamphlet also tries to present the investigation into the witchcraft accusations as logical and methodical to emulate a sense of an Assize Court's legal forensic.

One of the 'witch' tropes highlighted in the pamphlet is the inability to undertake prayers or recite scripture. Although there is no discussion of the Samuels' inability to engage in any religious discourse, the children who were allegedly tainted by witchcraft were demonstrably unable to pray, be in the presence of prayer, or listen to scripture being read aloud because the evil spirit within her, "'would not suffer"' it.¹⁷⁰ Instead, she became 'more strongly and strangely tormented that ever she was before'.¹⁷¹ Macbeth, on his return from the King's bedchamber after the murder of Duncan is placed into a similar position: 'I could not say 'Amen', 'But wherefore could

¹⁶⁸ Deborah Willis, 'The Witch-Family in Elizabethan and Jacobean Print Culture', p. 13.

¹⁶⁹ *A true and particular observation of a notable piece of witchcraft practised by John Samuel the father, Alice Samuel the mother and Agnes Samuel their daughter, of Warboys in the county of Huntingdon upon five daughters of Robert Throckmorton of the same town and county, esquire, and certain other maidservants to the number of twelve in the whole, all of them being in one house: November 1589, in Witchcraft*, ed. by Barbara Rosen, p. 269.

¹⁷⁰ *Ibid.*, p. 251.

¹⁷¹ *Ibid.*, pp. 250-251.

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not I pronounce 'Amen'? / I had most need of blessing, and 'Amen' / Stuck in my throat' (II.2.26, 29-31). The parallels between the pamphlet's account of witchcraft possession and Macbeth's condition following the murder suggest to audiences that the Macbeths have begun to take on the recognisable features of a witch-family.

The pamphlet also introduces and repeats that the familial relationship between husband and wife in a witch-family is characterised by conflict.¹⁷² In *Macbeth*, the relationship between Macbeth and his wife is also characterized by conflict. From her initial introduction, Lady Macbeth demonstrates moments in which she places herself in a position of authority over her husband. For example, her initial response to Macbeth's prophetic elevation to kingship is one of derision regarding his character (I.5.14-15) followed by a sense of disappointment in his abilities (I.5.15-18). Their family's patriarchal organisation is turned into conflict when Macbeth proposes not to murder Duncan (I.7.31). Instead of acquiescence, Lady Macbeth's reaction to his decision contains unregulated expressions of anger - another trope of the Samuel witch-family.¹⁷³ Lady Macbeth attempts to control her husband through derision (I.7.35-36), attacks on his courage (I.7.43) and by lampooning his sense of masculinity (I.7.43-44, 49-51) until he agrees to act upon her demands. Throughout his wife's tirade, Macbeth remains passive or defensive (I.7.45-47, 59). As the play progresses, Lady Macbeth continues to adopt the role of the assertive partner as she schools her husband in concealment after the first murder (II.2.19, 28, 31-32, 43-45, 68-69).

¹⁷² Ibid., p. 277.

¹⁷³ Ibid., p. 287. See also Deborah Willis, 'The Witch-Family in Elizabethan and Jacobean Print Culture', p.13 & p. 14.

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This disruption of the patriarchal family hierarchy was interpreted as particularly threatening to local communities, as well as the wider state structures of the Church, guilds, and economic and legal practices more generally: 'James I... made the family central to the iconography of state and to political theory'.¹⁷⁴ Glenn Burgess reminds us that James' subjects were 'frequently reminded of the duty of submission to their ruler and the divine right by which he and all legitimate powers exercised their authority' when they were 'listening to sermons (especially Assize sermons) or homilies'.¹⁷⁵ Assize sermons prefaced the Assize trials and consisted 'of general and conventional observations on law and order in normal times' thereby conflating law and religious observance.¹⁷⁶ The witch-family's transgression of this philosophy ensures that the world is turned upside down, peasant is placed above the king, Satan is placed above God and the family is placed above the state. In the Macbeth's case this is even more subversive because they are not of lower class like the Samuel family of the pamphlet but are of sufficient social standing in the first place for their machinations to facilitate their rise to the very top of the monarchical hierarchy.

Although the Macbeths' relationship features conflict, it is nevertheless characterised at the outset of the play as a companionate marriage. The Macbeths create a more powerful unit than would otherwise be the case if they were separate. Each empowers the other to undertake a more extreme course of action. Macbeth could not kill Duncan without the goading of his wife and likewise, Lady Macbeth is unable

¹⁷⁴ Ibid., p. 10.

¹⁷⁵ Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642* (Pennsylvania: Pennsylvania State University Press, 1992), p. 131.

¹⁷⁶ J. A. Sharpe, *Crime in Seventeenth Century England: A County Study* (Cambridge: Cambridge University Press, 1983), p. 22.

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to kill Duncan without the physical assistance of her husband (II.2.11-13). Macbeth would not have embarked upon his killing spree without the perverse support of his wife. His transformation from 'brave' (I.2.16), 'valiant' (I.2.24), and 'noble' (I.2.67) hero to 'Devilish' (IV.3.118), 'abhoréd tyrant' (V.7.11), and 'hell-hound' (V.10.4) villain is therefore an emblem of the disordered family culture: the consequential influence of evil spirits.

The Macbeth family is, however, missing the prerequisite witch-child to be deemed a proper witch-family. It is noticeably absent. The death of the Macbeths' child (I.7.54-55) may offer an insight into Lady Macbeth's attempted invocation of evil spirits. Her desire to exchange her breast 'milk for gall' is representative of the bad instruction given to witch-children by their parents. Willis reminds us that like godly parents, 'witch parents took pains to educate their children'.¹⁷⁷ Inevitably, the child's nurture would lead them to the gallows. And Lady Macbeth, it seems, is willing to lead any future child, by example, in the ways of murder (I.7.58).

The Macbeths, as a witch-family, become an inverted mirror image to the godly Macduffs. Whereas the Macbeths seek out evil spirits, conjuration and prophecies, the Macduffs are innocent (IV.2.3-4), seek out God (well versed in scripture) (IV.2.31-33) and Macduff himself, is described as a 'child of integrity' (IV.3.116). It is therefore ironic, that the godly Macduff family (the good) are rightly prophesised as triumphant by the forces of evil. The irony here derives from the fact that, whilst we might expect the godly family to triumph, in fulfilling a prophesy made by the forces of evil, their success lends some legitimacy to the power and foresight of the weird

¹⁷⁷ Deborah Willis, 'The Witch-Family in Elizabethan and Jacobean Print Culture', p. 15.

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sisters. Macduff defeats Macbeth and thereby releases Scotland from his ungodly tyranny, who fulfils the parabolic narrative that echoes the right of kingship as God's anointed earthly representative. Placed in opposition to the Macduffs, the Macbeth family's descent into subversive and resistant political ideologies, positions them in opposition to godly ones and thereby highlights their representation within the narrative as a shadowy crime family which, according to Willis, included aristocratic rebels.¹⁷⁸

Witchcraft legislation, during the Elizabethan period, reflected and fed into a developing narrative that was circulating through cultural, literary and theatrical sources. Symbiotically, they codified witchcraft. The play *2 Henry VI* dramatized how malefic magic was largely understood to emanate from a few people operating independently from within the community. It was believed that those people tended to engage in demonic invocations to improve their financial state, social status, or to simply revenge an insult of some sort. Their actions, as in the play, could be countered or contained through common law. The state was sensitive to any supernatural prophecies that focused on foretelling the demise of the monarch. For example, concern existed that Catholic agitators might galvanise rebellion or insurrection around a prophetic date. Therefore, a connection between witchcraft and Catholicism was established. There were some individuals who demonstrated a sense of cynicism and disbelief in witchcraft and chose to manipulate witchcraft legislation for their own benefit.

¹⁷⁸ Deborah Willis, 'The Witch-Family in Elizabethan and Jacobean Print Culture', p. 22.

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In the Jacobean period, the symbiotic nature of witchcraft legislation becomes more apparent. Jacobean witchcraft legislation, cultural mythology, literary and dramatic sources start to adopt a more European representation of witchcraft. In *Macbeth*, the play dramatizes this shift in codification through presenting the weird sisters as a malefic energy that is pervasive, uncontainable and therefore unpunishable through law. The demonic activity no longer requires any human intervention but can exist in both the corporeal and spiritual worlds. The play signifies a departure from a static and community-based witch to one that can move around with impunity to fill the world with a sense of mistrust, disease and murder. *Macbeth* also develops several narrative elements appertaining to the evolving witchcraft narrative, including the witch-family.

* * * * *

Conclusion:

The Changing Attitudes Towards the Operations of Early Modern Law in Shakespeare

The relationship between early modern law and Shakespeare's plays is continually shifting and dynamic. Moreover, it is symbiotic. The anxieties of the elites are eased by legislators in parliament, which enforces its will through national and local courts and their legal operations. Law is affirmed through the pulpit and enforced in ecclesiastical courts and is validated by the monarch. Shakespeare's plays reveal public attitudes towards the law because they are fashioned out of popular culture and economically reliant on the experiences and perspectives of their audiences; they speak for their audiences and to them. Like theatre, legislation has a narrative that describes the criminal act and its perpetrator, which is itself also constantly evolving. Sometimes, Shakespeare's plays feed into those narratives and add to them and at other times, they speak in opposition to them.

This thesis identifies the relationship between people and the law as a type of friction caused by the interaction of crime, legislation or canons, and the people. It shows the changing literary representation of a crime and its perpetrator when the level of violence appertaining to punishment is increased exponentially. It presents how literature reveals the incongruity between legislators and ordinary people, especially when the people disconnect from laws governing them. And it explains how that disconnection is also represented when legislation created by central government

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ignores the local customs and anxieties specific to regional communities. However, when there is an alignment of the views of the people, the legislators and cultural outputs in relation to a particular crime, then literature has the potency to interact with, feed into and alter legal and criminal narratives.

Social attitudes towards the operations of early modern law can be glimpsed at through the representation of crime in Shakespeare's plays. They can be seen by comparing the dramatic representations of three specific crimes (masterlessness, sexual transgression and witchcraft) across the Elizabethan and Jacobean periods against state legislation. Instead of focusing on a single play as a moment captured in history, this thesis tracks the three crimes from an Elizabethan play to a Jacobean play. When taken together, the changes in dramatic representations of each particular crime present a narrative in which shifting societal attitudes are shown as the articulation of human anxieties.

The representation of the courts, their apparatus and operations also change across the periods and across the three crimes considered. In relation to masterlessness, the Elizabethan play *2 Henry VI* the legal outcomes are presented as subjective: both the king and chancellor issue prerogative judgements and the use of trial by combat presents the law as being uncertain. This is reinforced by Jack Cade's attempt to forcefully initiate an inverted legal system that benefits himself and his followers. In the Jacobean play *Coriolanus*, the plebians do not attempt to dismantle the legal operations of the state but choose to develop them in a more equitable manner. By contrast, the criminal Autolycus is never caught in the Jacobean play

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The Winter's Tale, but his fear of a whipping or hanging rests over him throughout his scenes, suggesting that the legal procedure is a formality to an inevitable conclusion.

In relation to crimes of sexual transgression, the Elizabethan play *The Merry Wives of Windsor* depicts how different legal jurisdictions intersect within a rural village. Windsor is shown as representative of a time before the centralisation of secular law where a community self-regulates its own behaviour. Adjudication is undertaken by the victims of the crime, and punishment is agreed upon and carried out by the community. The purpose of the communal punishment is to encourage the rehabilitation of the offender, which is different to the use of coercion foregrounded in the Jacobean play *Measure for Measure*. In this later play, judicial punishment is centralised, so the state monopolises control over social behavioural patterns. To ensure adherence, the courts present punishments as a spectacle: the public shaming of the offender, the high prison population and the execution (beheading) of its inmates are all a display of centralised state authority and power.

In the Elizabethan play *2 Henry VI*, witchcraft legislation is presented as a tool to manipulate people on both a micro and macro state level. For example, the threat posed by prophecy to determine the monarch's future, is used to exemplify how easily the law can be cynically manipulated to manoeuvre the political whims of an individual. Similarly, the play also suggests how witchcraft allegations may operate on a micro level to influence local community relations. The codification of witchcraft within the legal narrative is not static but shown to be part of an evolving narrative

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that is in a symbiotic relationship with a community's culture, its myths, and literary and dramatic representations. In the Jacobean play *Macbeth*, the very mechanisms of power that authorise the legal rights of kingship are questioned: is the monarch above the law or must they conform to it? The play's position is clear: the bad king Macbeth does not adhere to the same legal principles as his subjects but operates outside of Scotland's laws.

The theatrical depiction of the courts or places of adjudication presented in the Elizabethan and Jacobean plays also suggests that there was a change in tone between the two periods. In the Elizabethan texts, there is a sense of playfulness attached to the courts and their apparatuses and operations. However, in the Jacobean plays, the representations seem much more serious and critically reflective. This change in tone broadly follows the genre trajectory from comedies to tragedies and more complex tragicomedy/problem plays. For example, in the history and comedy genres of *2 Henry VI* and *The Merry Wives of Windsor*, there is a sense of comic depiction in the social resolution that is less present in the Roman play *Coriolanus*, the tragedy *Macbeth*, the comedy *Measure for Measure* or the tragicomedy *The Winter's Tale*. Collectively, the plays move towards an increasingly critical reflection on the legal structures and the operations of the law between the Elizabethan and Jacobean periods. For example, they reflect society's increased engagement with the common law to resolve personal conflicts. It is therefore interesting that the theatrical representations of law are increasingly critical at the same moment.

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Importantly, however, although the overarching change in tone from one period to the next is consistent across the plays analysed here, for each crime the plays' depiction of the relationship between the law and social and cultural perceptions of the offence differs. Chapter 1 charts the divergence in the theatrical depiction of masterlessness between the Elizabethan play *2 Henry VI* and the Jacobean plays *Coriolanus* and *The Winter's Tale* beside state legislation. When *2 Henry VI* was first performed, both state legislation and theatrical depiction presented the masterless man as parasitic and detestable. However, in the Jacobean play *The Winter's Tale*, a divergence takes place between the state narrative and the theatrical depiction. This change is illustrated in the masterless characters Simpcox (*2 Henry VI*) and Autolycus (*The Winter's Tale*). When the Simpcoxes are first introduced to us, they are shown as parasitic and detestable by the way they cynically defraud the people of St. Albans. When Autolycus is introduced in *The Winter's Tale*, he is characterized as likeable, witty and clever and someone with whom Jacobean audiences could empathise. This more positive representation contradicts the state's narrative in which the itinerant person refusing work is deemed dangerous and a threat to society because they operate outside the law.

The contrast between the characterisations of the Simpcoxes and Autolycus also emphasises a more assertive social theme: poverty. In Jacobean contemporary accounts, poverty is repeatedly associated with socially deviant behaviour. It is hinted at by Simpcox's wife in *2 Henry VI*, 'Alas, sir, we did it for pure need' (*2 Henry VI*: II.1.157), but it is given much more prominence in *Coriolanus* and *The Winter's Tale*. We see its echo in Autolycus' backstory, his economic fall from employment at court to the role of itinerant rogue. The inference is that his behaviour, however

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carnavalesque, is not his choice but his response to events that are out of his control: it is either play the rogue or die on the streets. The play moves away from the state narrative about masterlessness when it compares Autolycus' actions with those of the play's aristocrats. There is no nefarious action undertaken by Autolycus that is not exceeded in intensity by the play's elite characters. Autolycus does not order the murder of a woman and child out of jealousy and when he uses costume to disguise his true identity, he does it for personal gain rather than as a coercive means of controlling others. The characterisation of Autolycus shows social deviance but also highlights the social deviancy of the privileged and the elite.

The Winter's Tale is set against the punitive punishments prescribed to deal with the masterless. Throughout the Elizabethan era, judicial punishments continued to increase in ferocity and violence into and throughout the Jacobean period. However, as the testimonies of those in authority show, the views of the elite who created and interpreted the law were not universally agreed upon or accepted by the poorer classes. Instead, the 'victims' of the masterless actively chose not to engage in the legal processes of the law. Through the characterisation of Autolycus, *The Winter's Tale* develops this cynicism surrounding the state's laws and judicial punishments through its tragicomic structure.

Chapter 1 also uses the Elizabethan text *2 Henry VI* to explore the conflation between poverty and violence. Poverty and violence quickly became conflated politically after rioting associated with hunger and poverty spread across the country in the 1590s. In *2 Henry VI* the riots are given a sense of carnival as Jack Cade, a

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returning masterless soldier, creates a rebellion with the support of ordinary people. The play is littered with different rebellions and machinations for rebellion in which each protagonist attempts to justify their actions through their interpretation of the law. Their justification, or 'intent', suggests that the power to legislate or interpret the law is therefore arbitrary; that whoever controls the narrative, controls the law. The addition of Jack Cade's insurrection emphasises the sense that legislation is used to benefit the interests of a small group of individuals. His plan to destroy the law and instigate his own brand of inverted government is both reckless and chaotic but works to counter the myth that the law is somehow fixed and unmoveable.

By contrast, in the Jacobean play *Coriolanus*, there is a shift in attitude shown towards insurrection and riot by the poor. The play was written shortly after the Midland Rising in which many poor people protested about enclosure, the eviction of families, and the erosion of rights established through local customs. The plebians' protest in *Coriolanus* appears to emulate similar social anxieties surrounding forestalling but is dealt with in a much more serious way within the play. Unlike in *2 Henry VI*, the play does not emulate the state's narrative about the masterless rogue's propensity to violence. Instead, it presents a dichotomy between the state narrative and the social perception that those who riot are ordinary people protesting against social injustice. Instead of a carnival of violence, the play presents the plebians' protest as both peaceful and measured. This is a much more thoughtful and reflective representation of riot, which is contradictory to the narratives propagated by the ruling elite and the state's judicial narratives about the threat posed by masterlessness.

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The representation of the plebians' riot in *Coriolanus* is very different from the chaos and destruction in *2 Henry VI*. Instead, their protest suggests a desire for a political resolution that will bring about a moral economy based upon assumptions of Natural Law in contrast to the values associated with an economic economy. It is easy to surmise that the play offers a political resolution, which could be used as an idealised model for English governance. The reality, of course, could be different, but the increase in the political aspiration on the part of the poor shown in the Jacobean play *Coriolanus* when compared with the Elizabethan text *2 Henry VI* is astonishing and enlightening. It advocates that the concerns and anxieties of the plebians constitute a reference to the poor and dispossessed of England. It suggests that the play has intervened in contemporary legal discourses surrounding poverty, government and the role of the law and its operations. The play is proposing that the law should have? a social conscience.

The text also presents the plebians as the organisers of their own riot, a similar point picked up by the elite during and after the Midland Uprising. This dramatization of leadership reflects a certain amount of concern over the political agency of the rioters in the Midland Rising, which was picked up by King James I in his proclamations during the troubles: he promised to examine the causes of the rioters' grievances if they desisted from their protest. The play suggests that the people have a much greater political self-consciousness arising from their increasing familiarity with and recourse to law and legal structures than that alluded to in the earlier Elizabethan plays *2 Henry VI* and *Julius Caesar*, or in the state's own view of

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the people as outlined in the judicial narratives.¹⁷⁹ The attitudes of the plebians are more reflective of the social and political structures and operations associated with the law within the Jacobean period. But, more importantly, they also offer a prospective vision for an alternative, equitable and more inclusive society for the future.

In chapter 2, the Elizabethan and Jacobean plays examined both grapple with the crime of sexual transgression and its punishment, but they do it in a different way to that of the crime of masterlessness. Instead of changing the representation of the criminal perpetrator, the plays *The Merry Wives of Windsor* and *Measure for Measure* focus on the different jurisdictions in which the crime is judged. In *The Merry Wives of Windsor*, the play deals with sexual transgression using a nostalgic version of community self-regulation while in *Measure for Measure*, the play explores a darker interpretation of a centralised common law judicial structure.

The early modern state dealt with the transgression of sexual law through two jurisdictions: the ecclesiastical courts and the secular common law courts. The ecclesiastical courts dealt with sexual transgression locally and attempted to dissuade further offending through public shaming. They were also used to expunge slanderous comments about an individual's reputation. The common law remedy was sought when there was monetary liability at stake, such as primogeniture or the financial burden of a child conceived out of wedlock. There was a marked increase in the number of prosecutions surrounding sexual transgression or accusations of

¹⁷⁹ Annabel Patterson, *Shakespeare and the Popular Voice* (Oxford: Basil Blackwell, 1989), p. 127.

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transgression (reputational) in the ecclesiastical courts from the Elizabethan period into the Jacobean era. In the common law courts, there was an increase in punitive punishments. This is characterized through an increase in the level of violence: beatings, whippings and incarceration, especially against women when cases of bastardy came to the attention of the common law.

The changing representations of jurisdictions and their fictional effectiveness in *The Merry Wives of Windsor* and *Measure for Measure* reflects a shift in attitudes towards the operations of the law. In *The Merry Wives of Windsor*, the spectator is encouraged to look back and reminisce with nostalgia over a legal system that is shown to put the community at the centre of its operations. It is an idealised legal system that works for the people because it is operated by the people. Whereas in *Measure for Measure*, the spectator is presented with a dystopian future where those in power at the heart of government can operate with moral impunity, shrouded by the law's cloak of respectability and authorised and empowered by the coercive functions within the operations of the law.

The change in tone between the plays suggests that there is an acute anxiety surrounding the increasing centralisation of the law in early modern England. It highlights the dysfunctional nature of legal plurality by showing how easily the common law could be corrupted by other legal jurisdictions, such as prerogative or equity courts, to suit the machinations of those who held power. The Jacobean play presents a fearful future in which there is no avoiding the operations of the law because the law claims both the secular and spiritual jurisdiction over people's lives.

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The change in the representation of the law suggests that between the reigns of Elizabeth and James the law has come to be seen increasingly as a tool for a draconian state to survey and bend its population to the will of those in power. The plays thereby participate in criticising government policy in its move towards creating a more centralised legal system, by creating a sense of impending threat. This change in tone between the two plays is stark and clearly impacts upon the generic structure of comedy.

Chapter 3 explores the changing attitudes towards the crime of witchcraft from its representation in the Elizabethan play *2 Henry VI* into the Jacobean play *Macbeth*. The plays chart a relationship between evolving witchcraft narratives inherent in superstition and mythology on the one hand and the state's legislative attempts to keep pace with its evolving codification of the crime on the other. There was not an increase in the severity of violence meted out for a felon convicted of witchcraft in the same way that transgressors of laws surrounding masterlessness or sexual transgression might experience across the Elizabethan and Jacobean periods because the crime of witchcraft was already a capital offence. However, the number of infringements in witchcraft legislation that resulted in hanging, increased significantly across the two periods. Legislators were intent on eradicating this crime by making any interaction with malefic magic punishable by death. New legislation, entered into the statute books shortly after King James' accession to the throne of England, brought English witchcraft laws closer to those in Scotland and, consequentially, closer to those in the rest of Europe.

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The dramatic representations of witchcraft and witches are aligned with the evolving legislative codifications of the crime. This is different to the crime of being masterless where the theatrical and legislative narratives diverge. It is also different from the representation of sexual transgression where legal definitions and legislation are aligned with the theatrical representation for Elizabeth's reign but then diverge and become more critical in James's reign.

In the Elizabethan play *2 Henry VI*, witchcraft is represented as an individual or individuals that undertook magic to either seek information or pursue a malefic outcome. In *2 Henry VI*, Eleanor Cobham engaged the services of the witch Margaret Jourdain to conjure spirits and ascertain future events but was not directly involved in any malefic magic herself. However, the witchcraft in the Jacobean play *Macbeth* is more pervasive and invasive. It does not require human intervention to establish itself within mortal realms and it is altogether more potent, evil and shown to be a much greater threat to society.

Moreover in the play *2 Henry VI*, witchcraft legislation is shown to provide opportunities for individuals to weaponize the law's operations against other people for their own benefit. For example, Eleanor Cobham is arraigned on charges of witchcraft despite the play showing that she was a spectator and not directly responsible in the conjuration of spirits, like theatre spectators. The use of prophecy in the play presents a strong parallel with its illegal use in the late sixteenth century to determine the end of Elizabeth's reign. The 1563 and 1580 witchcraft legislation designed to halt prophesy about the monarch is weaponised in the play to slander

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the wife of Humphrey Duke of Gloucester in order to damage him. In this subplot, the play's focus remains largely on the political misuse of witchcraft legislation but indirectly the play reveals the fragility of the law. Instead of the 'historical jurisprudence' narrative which 'argued that the law had not changed since it first materialised as customary law', the law is presented as easily manipulated.¹⁸⁰

In the Jacobean play *Macbeth*, the witchcraft narratives continue to develop in light of a more European codification of the crime. An evil spirit no longer requires human intervention to enter into the corporeal world but can exist independently and the weird sisters do not undertake their activities for any personal benefit or act of revenge. The pervasive nature of witchcraft displayed in *Macbeth* mirrors the expansion of Jacobean legislation surrounding the crime, which in turn occasioned a proliferation of printed pamphlet material on the subject. *Macbeth* therefore demonstrates the existence of a symbiotic relationship between the theatre and the law. Any involvement in witchcraft was strictly forbidden in Jacobean England but interestingly, no one is punished for witchcraft in *Macbeth*. When the tropes of witchcraft are explored, they show the world in which Macbeth exists is representative of the anxieties within Jacobean society by contrast to the other crimes examined here where the law and the theatrical representations of it diverge.

This thesis begins to reveal how attitudes towards the law change across plays that were written in the late Elizabethan and early Jacobean period. It shows that this

¹⁸⁰ Virginia Lee Strain, "'The Winter's Tale' and the Oracle of the Law", *ELH*, 78.3 (2011), pp. 557-584 (pp. 558-559), doi: 10.1353/elh.2011.0025.

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change in attitude is led by the complex relationships between the law and popular culture, the anxieties that are generated by the ending of Elizabeth's reign and the commencement of James' rule, and the implementation of key strands of government policy regarding the law, its operations and jurisdictions.

Crucially, I argue the change in attitudes towards the law as identified in Shakespeare's plays is not driven by one specific underlying ideology. Instead, attitudes were driven by the implementation of a rapidly changing and expanding laws in an England, which differed according to the particular crime, context and legal jurisdiction in question. The representation of the law in the plays analysed here is also shaped by responses to a diverse range of other societal events: war, disease, raging inflation, crop failures, and the perceptions of the impact of engrossing and enclosure. The plays analysed here acknowledge these broader societal contexts in the way they represent the lives of ordinary and extraordinary characters, meaning that we see how they interact with the operations of the law differently for any given crime. .

Clearly, there is a complex, dynamic and symbiotic relationship between the law and Shakespeare's plays. For example, in the crime of masterlessness, the plays show a divergence in attitude where the law becomes increasingly punitive while the representation in the plays becomes increasingly positive. In the crime of witchcraft, the plays show the complex interaction of the law and theatre in which the plays develop the myths and tropes of the witchcraft narratives and at other times, the law develops through its response to myths and tropes voiced in the theatre. In the crime

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of sexual transgression, the conflict between secular and spiritual jurisdictions is intersected with a nostalgic sense of community self-regulation. However, the continuing centralisation of the common law across the period, represents anxieties about the effectiveness and equity of the law in the plays. Sexual transgression is therefore used as an example of how far a centralised law could impact on the daily lives of the people.

One attitude that remains constant across all of the plays, however, is the representation of the law being dysfunctional, unfair and inequitable. Again and again, Shakespeare's plays show us that the law has not developed through the jurisprudential narrative. Instead, we are shown that the law is fragile and yet dangerous because it can be misused, weaponised, or given a bias to benefit the elites within society. Whoever holds power, holds the coercive authority of the law. They can write or change legislation or even interpret existing legislation to benefit themselves.

There is an overarching pattern that emerges in the way that law responds to the three crimes of masterlessness, sexual transgression and witchcraft in early modern England: punishments become increasingly punitive or where they were already maximally punitive, as in witchcraft, the definition of the crime is expanded. By increasing the severity and spectacle of punishments, early modern law attempted to dissuade people from perpetrating those crimes. In contrast, the thesis identifies separate evolving representations of the law by the theatre. The plays show that attitudes towards the crime of masterlessness runs counter to government

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narratives; that there is anxiety towards jurisdictional change and a more centralised legal apparatus in relation to sexual transgression; and that the attitudes demonstrated in the plays towards the crime of witchcraft are aligned and are symbiotic. For studies of law and literature, this complex picture suggests that each crime needs to be regarded as distinctive, as changing over time, and to be understood within its own particular jurisdiction. Such an observation calls for a change in methodology: this thesis has demonstrated that, in addition to acknowledging temporal changes in the law's operations, one must also consider how the law and theatrical representations of it operate with reference to specific crimes. Each type of crime has its own distinctive character, its own specific development and its own set of theatrical representations. Crucially, the attitudes of a range of different people from across the spectrum of social statuses towards each crime can be understood as evolving independently of each other.

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Appendix

Burials: Southwark Parish

	1590	1591	1592	1593	1594
Jan	23	7	23	23	46
Feb	25	19	28	28	45
Mar	33	16	28	31	52
Apr	25	25	30	33	54
May	20	22	22	34	50
Jun	18	33	32	27	51
July	22	31	14	32	104
Aug	19	31	19	50	266
Sep	31	22	38	90	242
Oct	19	32	29	62	131
Nov	14	26	21	61	71
Dec	19	26	39	50	38
	268	290	323	525	1150

- Burials reach a peak in August 1594.
- There is a 430% increase in deaths between 1590-94

Christenings: Southwark Parish

	1590	1591	1592	1593	1594
Jan	24	24	16	27	13
Feb	15	25	19		10
Mar	25	29	24	29	24
Apr	19	18	17	20	20
May	15	23	14	29	13
Jun	23	19	15	20	17
July	22	14	26	11	15
Aug	21	27	15	30	29
Sep	20	17	17	24	29
Oct	23	26	17	7	24
Nov	28	18	15	18	25
Dec	25	23	24	17	28
	260	263	219		247

- Christenings remain largely stable

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Weddings: Southwark Parish

	1590	1591	1592	1593	1594
Jan	4	8	15	2	13
Feb	13	14	12	10	18
Mar	6	2	2	1	3
Apr	2	7	9	6	18
May	11	9	6	12	19
Jun	2	11	12	13	14
July	10	2	10	20	11
Aug	8	6	9	8	11
Sep	4	6	6	10	12
Oct	9	11	9	13	10
Nov	11	11	6	13	15
Dec	3	9	6	9	4
	83	96	102	117	148

- Small but steady annual increase in Weddings

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