Perfecting the Law: Legal Reform and Literary Forms in the 1590s and 1600s

by

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Graduate Department of English
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Abstract

This dissertation examines early modern literary engagements with the rhetorical and ethical dimensions of law reform. One of the most important mechanisms of social regulation in late-Elizabethan and early-Jacobean England, law reform was a matter of, first, the “perfection” of the organization and expression of existing laws, legal instruments, and legal processes. However counter-intuitively, these officially-sponsored reforms were calculated to prevent more radical innovations that would generate “inconveniences,” systemic contradictions and uncertainties that threatened the law’s ability to produce just results. Second, law reformers generated a discourse on “execution” that targeted the character of legal representatives. This tradition of character criticism, delivered directly from the Lord Keeper’s mouth or circulated through other legal-political, literary, theatrical, didactic, and religious works, encouraged officers’ conscientious execution of their duties and alerted the English public to the signs of the abuse of authority. Law reform created a distinct critical orientation toward legal and governing activities that was reproduced throughout a system of justice in which an extraordinary number of subjects participated. It was a critical orientation, moreover, that
was refracted in literature sensitive to the implications of the socio-political dominance of legal language, traditions, and officers. The principles and practices of law reform—along with the conflicts and anxieties that inspired and sprang from them—were appropriated by amateur and professional writers alike. Close readings reveal that Inns-of-Court revellers, Francis Bacon, John Donne and Shakespeare all engaged deeply with the potential, as well as the ethical and practical limitations, of law reform’s central role in local and national governance. In the *Gesta Grayorum* and Donne’s “Satyre V,” the reveller and the satiric speaker improvise on legal forms to compensate for the law’s imperfections that threaten the security and prosperity of the English subject. In Shakespeare’s *Measure for Measure* and *The Winter’s Tale*, the character of the legal-political officer and reformer is tested as he attempts to put policies and principles into practice.
Acknowledgments

Everything started with my dad’s grade nine English teacher. Without Grant Huffman’s guidance, dad would not have read the right books and certainly would never have waited for the right woman. My older brother and I would never have been born, a catastrophe (much like birth) that few recover from. In 15 Stories, one of the anthologies Grant edited in the ’60s and ’70s for secondary school students, the introduction starts with a baseball analogy:

Baseball is a spectator sport, but no self-respecting spectator would go into the stadium without knowing at least (a) the language of the game and (b) some of its basic rules.

Story-writing is a spectator sport, too, and, as a spectator reader, you owe it to yourself, and to the writer, to know some of the language of his game and a few of its basic rules….

You may never turn professional, but you should come to respect yourself as a reliable amateur critic.¹

Grant was the best friend that the Strain family ever had, and his memory inspires my own desire to speak with the dead. I wish I could tell Grant that I’ve mastered more than a few of the “basic rules” of the reading and writing game by now; that I’ve turned pro, so to speak; and that I have a number of remarkable coaches to thank for that.

Foremost among those coaches are my committee members, of course. I am most grateful for my supervisor, Lynne Magnusson, who taught me (however unwilling a student I was) not to lose hope every time I lost heart, not to despair every time I lost direction. Only my admiration for Lynne can keep pace with my debt to her: both defy reckoning. The “Inerrant Oracle” of early modern studies, Elizabeth Harvey, ushered me into the world of historical scholarship (again, however unwilling a student I was) and

¹ Grant Huffman, 15 Stories: An Anthology for Secondary Schools (Toronto: McClelland & Stewart, 1960)
first encouraged me in the direction of the law. Here, as in everything, her instincts were infallible. With impossibly buoyant good humour, Holger Schott Syme coached me through one tough inning after another and supported me through numerous mid-season injuries, proving time and again that he is in a league of his own.

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Table of Contents

Chapter 1 Introduction: Perfection and Execution ..............................................................1

Part One: Perfection

Chapter 2 Pardon and Exception in the *Gesta Grayorum* ..............................................32
Chapter 3 “To know and weed out”: John Donne’s “Satyre V” .........................................65

Part Two: Execution

Chapter 4 The Court of Assize, Local Justice, and *Measure for Measure* ......................101
Chapter 5 *The Winter’s Tale* and the Oracle of the Law ................................................142

Conclusion The Lines and Veins of Unperfect History......................................................175

Works Consulted.............................................................................................................179
| Figure 1 | “Ragione di stato,” from Henry Peacham, *Minerva Britanna; or, A Garden of Heroical Deuises, Furnished, and Adorned with Emblemes and Impresa’s of Sundry Natures* (London: 1612) 22. Reproduced with permission from the Huntington Library. | 94 |
Chapter 1
Introduction: Perfection and Execution

This dissertation recovers a history of law reform from early modern legal, literary, and political writings. The study of law reform reveals a concern for form and character that was common to legal-political authorities and writers alike. The broad participatory structure of early modern justice helped produce writers (not to mention readers and audiences) who were especially sensitive to the contribution of legal language, institutions, practices, and officers to the regulation of the commonwealth. The dominance of the law in everyday life made it a popular focus of criticism, and the law’s reform was of widespread concern. The principles and practices of law reform, together with the conflicts and anxieties that inspired and sprang from them, were appropriated by both amateur and professional writers. Close readings reveal that the Gray’s Inn Christmas revels of 1594-5, Donne’s “Satyre V,” Measure for Measure, and The Winter’s Tale all engage deeply with the potential, as well as the ethical and practical limitations, of law reform’s central role in local and national governance. In the chapters that follow, I bring the techniques and texts of literary history to bear on legal and political writings and practices, and my analyses of literary texts are animated, in turn, by a reintegrated account of legal and political culture at the turn of the seventeenth century.

Apart from legal professionals like lawyers and law clerks, an extraordinary number of subjects participated in the English justice system—as plaintiffs and defendants in civil and criminal cases, witnesses, jury members, and as the legion of unsalaried and unsupervised volunteer officers culled from nearly every social level. Property and marriage laws mediated family relations, and secular and ecclesiastical courts and officers arbitrated among neighbours. Nearly all relationships were inflected by legal definitions, processes, and institutions. The rhetorical education provided by sixteenth- and seventeenth-century grammar schools incorporated the treatises of Cicero and Quintilian, who originally wrote for an audience of legal practitioners. Forensic or judicial rhetoric and ideas about probability and proof were thereby widely disseminated.
in Elizabethan and Jacobean culture.\textsuperscript{1} This dissertation, however, focuses on the law’s central role in governance, or its function as the interface between the subject and the state. As Julian Martin explains,

‘Law’ was not simply a structure of rules and institutions for coercion and punishment; the term encompassed not only the ways by which disputes were settled, but the institutional structure of governance in the realm, and the intellectual world of the lawyers’ guild as well. To become ‘learned in the law’ was simultaneously to become learned in the practical minutiae of governance in England.\textsuperscript{2}

At the turn of the seventeenth century, England was governed by the judiciary and legal officers. The state was administered through legal institutions, processes, instruments, concepts, and language.\textsuperscript{3} The connection between law and governance was most apparent, however, when it was under stress. The terms and techniques of law reform developed in response to ongoing, periodic, and emergent tensions between the law, the


\textsuperscript{2} Julian Martin, \textit{Francis Bacon, the State, and the Reform of Natural Philosophy} (Cambridge: Cambridge UP, 1992) 103-104.

needs of governance, and the principles of justice. Law reform gave expression to pervasive anxieties over the weaknesses of the legal system that could foment disorder in the commonwealth.

One of the most important instruments in the regulation of the commonwealth, law reform entailed, in Nicholas Bacon’s words, the “perfection” and “execution” of the law. The law was perfected through improvisations on existing laws, legal instruments, and legal processes that contributed to “the experimental nature of early modern governance.”\(^4\) However counter-intuitively, these officially-sponsored, institutionalized improvisations accommodated evolving social, economic, and political conditions within a system that was ideologically and pragmatically committed to tradition and continuity. These reforms were calculated to prevent more radical innovations that would in turn generate “inconveniences,” systemic contradictions and uncertainties that threatened the law’s ability to produce just results.\(^5\) The perfection of the law, however, was wasted effort unless the law was then effectively executed. A widely circulated discourse on duty and character targeted the unsalaried, unsupervised legal-political officers entrusted with the justice and governance of the realm. This tradition of character criticism, delivered directly from the Lord Keeper’s mouth or circulated through other legal-political, literary, theatrical, didactic, and religious writings, encouraged self-surveillance in officers and a more conscientious execution of their responsibilities. At the same time, it educated the English public in the signs of abuses of authority; it provided a rubric for evaluating the job performance of members of parliament, magistrates, judges, justices, constables, and others. These two aspects of law reform generated a distinct critical orientation toward

\(^4\) Hindle 9.

\(^5\) Bradin Cormack has recently described English law as “fundamentally improvisational, unfolding into doctrine only as and through practice” (A Power to Do Justice: Jurisdiction, English Literature, and the Rise of Common Law [Chicago: University of Chicago, 2007] 1). While this is an eloquent characterization of the long-term development of the law, through which legal theory and principles developed from common law practice, my focus on legal improvisation has a very different effect. The institutionalized improvisations I describe were calculated to compensate for the law’s weaknesses while inhibiting innovation or the creation of new or erroneous precedents or principles.
legal and governing activities that was reproduced throughout the justice system and the socio-political hierarchy. The legal-political techniques of formal improvisation and character criticism were thus accessible to early modern writers and inspired literary representations of law and order.

While law reform’s role in Tudor governing was established earlier in the sixteenth century, efforts were reenergized by legal-political authorities and reexamined by writers in late sixteenth- and early seventeenth-century England. The period was beleaguered by crises on all fronts—social, economic, religious, political, local, national, and international. The demands on all government institutions and processes increased as a result. Works by Inns-of-Court revellers, Donne, and Shakespeare responded to the “intensification” and “conflation” of political and legal measures as much as, or more than, they responded to the crises themselves. In entertainments, satire, tragicomedy, and romance, these writers explored the structure of legal-political forms and authority—their application, abuse, and reform. As legal-political representatives (in the cases of the Inns-of-Court revellers and Donne) and as English subjects with a responsibility to the common-weal or the common good, these writers recognized the overlapping legal and literary concerns with formal expression and character integrity.

The rest of this introduction enlarges this initial account of law reform and literature by unpacking the connotations of “reform” in early modern England and by situating my argument in the context of recent legal, literary, and political studies. I then examine in detail the discourse on law reform within Nicholas Bacon’s opening and

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7 Hindle 15, 3.
closing parliamentary speeches. As Elizabeth’s Lord Keeper for twenty years, Bacon emphasized the importance of the law’s perfection through the reform of its form and content and the surveillance and correction of legal officers in charge of the law’s execution. While Bacon’s speeches illuminate the proper targets of reform, the literary works I go on to examine engage deeply with the structure of the legal system and the complexities of law reform in practice, as the concluding descriptions of individual chapters make clear.

1 Law Reform in History and Criticism

A “spirit of reform” has long been attributed to the sixteenth century. Julian Martin cautions, however, that the senses of the verb “to reform” did not convey “the idea of sweeping changes for the better which we now automatically associate with the verb.” Instead, the senses “to renew,” “to restore,” “to amend or improve by alteration of form, arrangement, or composition,” “to revise, edit,” and “to correct errors or remove defects” resonated with Tudor populations. Martin Ingram explains that these connotations were in play when “reform” was used to describe the routine repair work of early modern governance:

These meanings of the word were a commonplace of parliamentary bills and debates, of proclamations, of petitions to the courts of equity, and of the work of county and borough magistrates. Likewise they were part of the stock-in-trade of constables and presentment juries in quarter sessions and in manorial courts, and of churchwardens and other local officers when they were called upon to make their regular reports.

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8 Martin 8.
<http://dictionary.oed.com/cgi/entry/50200886>.
At the same time, Ingram maintains, a “sense of urgency” attached to the mundane, quotidian work of reform when it was intended to address pressing social concerns. Moral and social anxieties that focused on the “reformation of manners” increased dramatically by the end of the sixteenth century, and they were expressed in numerous acts of parliament that attempted to redress dangers to the commonwealth by seeking social and economic reform. While Tudor humanist and religious writings may have “sensitised a gentleman to the worldly ills and evils that surrounded him,” writes Julian Martin, “the instrument[!] by which he might achieve the restoration of an earthly goodness or even the elimination of a specific ill… was legislation.” At the same time that legislation and other legal-political instruments, processes, and officers were significant means of social reform, however, they were also the focus of reforming efforts.

Legal, literary, political, and social historians are well aware of the late Elizabethan and early Jacobean “burst of regulatory activity” which resulted from the legislation and local enforcement of “the reformation of manners,” though its causes are still debated. What has gone nearly universally unnoticed, however, is the degree to which the law itself was the focus of reform for legislators, the judiciary, preachers, and writers alike. More shades of the verb’s meaning come into effect when “reform” is used to refer to the law’s housekeeping: “to revise and amend (a judgement)”; “to correct (an instrument) according to the original intention when an error has been introduced; to construe (a legal document, etc.) in this way”; “to put a stop to or remedy (an abuse, malpractice, etc.) by enforcing a better procedure or course of conduct.” The law’s

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11 Martin 9.

12 Hindle 177.

amendment of its own forms and composition was accompanied by a concern over the character of the officers in charge of bringing those forms to life through practice. While statute and common law contributed—along with the church and the church courts—to the reform or regulation of personal conduct, they also targeted the conduct of justices of the peace, constables, “Excheaters,” the “Clarke of the Market,” the “Purveyor,” the “Salt-peter man,” and others. The amendment of the law and its officers was the precondition for the Elizabethan reformation of manners which, as Steve Hindle writes, was “pursued as part of a larger project of good governance.”

The state of the law and the virtue of its officers were both professionally and popularly understood to have serious ramifications for the commonwealth. Yet, Wilfrid Prest explains, legal historians “have long tended to discount evidence of popular dissatisfaction with the ethical standards of early modern lawyers and law courts, as stemming from a combination of ignorance, antiprofessional animus, and moralistic naïveté.” Prest argues instead that a continuity existed between professional and popular critiques when legal errors and abuses stemmed from “human weaknesses.” In William Lambarde’s 1590s law reform tracts and the Archeion, or, A Discourse Vpon the High Courts of Justice in England, Prest uncovers a “[l]egally literate appraisal” of the legal system that mirrors the popular opinions dismissed by historians: “Lambarde’s surviving discussions of the law and its institutions are frequently concerned to identify, condemn, and propound remedies for the moral failings of individual legal practitioners


15 Hindle 178.

and functionaries.” In his account of “The offences of publike persons” from the Archeion, for instance, Lambarde identifies “the misdemeanours of publike men, and Officers, that [are] forged out of fraud, and wilinesse.” Lambarde was “a qualified barrister… unusually well placed to evaluate the operational strengths and weaknesses of the common law.” At the same time that his critique signals his extensive experience and expertise, however, it also echoes popular sentiment that, I argue, was a function of widespread participation in the justice system. The ability and responsibility to critique law and governance was a feature of early modern culture that cut across professional and social distinctions. While the coterie and elite works of the Inns writers featured in Part One of this dissertation may emphasize aspects of legal culture that would have been of particular interest to the upper ranks of the legal-political system, nevertheless, the plays by Shakespeare analyzed in Part Two testify to the broad appeal of the topic of law reform: both Measure for Measure and The Winter’s Tale were played on the popular stage and at court.

Early modern legal historians are not only guilty of ignoring the abundance of professional and popular critiques of the law; more dramatically, Elizabethan law reform has hardly been accounted for at all. As Prest further explains, the influential work of G. R. Elton derailed the scholarly investigation into law reform in the second half of the sixteenth century by averring that “there was only idle talk and failed bills.” In contrast with the earlier reform measures carried out under Thomas Cromwell’s direction, Elton writes, “Elizabeth’s chief purpose throughout her reign was to make time stand still.” The 1580 moratorium on aging portraits of the Queen is simply one extreme expression of a wide-ranging policy of political consolidation that inhibited change and progress.

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18 William Lambarde, Archeion, or, A Discovrse Vpon the High Courts of Ivtice in England (London: 1635) 82-83.


21 G. R. Elton, English Law in The Sixteenth Century, 12.
Indeed, law reform in the period was not intended to precipitate vast cultural and historical shifts; however, law reform, understood historically as the revision, refinement, or restoration of the correct form and execution of the law, was an integral part of the Elizabethan governing mentality. Rather than standing out as a special measure or response, law reform regularly motivated parliamentary bills, royal and judicial speeches, as well as the daily activities of legal-political officers at every level. Contrary to the implications of Elton’s vision of the Elizabethan status quo, an enormous amount of creativity was expended in attempts to protect the legal-political system from radical innovation or deterioration. Much more revealing than Elton’s portrait example is the dominant Elizabethan legal-political analogy of gardening. The government and the law’s representatives were hardly standing still; rather, they imagined themselves engaged in the back-breaking labour of “weeding” the entire commonwealth. Unlike a standstill, and (at the other extreme) unlike utopian proposals for radical change, the gardening analogy bespeaks a widespread concentration on the needs of the present and the practical nature of the work to be done in social and political maintenance.

Law reform in early modern England has also been overlooked because of modern disciplinary boundaries. As it is reconstructed in this dissertation—as it was envisioned by legal-political authorities, articulated in parliamentary sessions, and executed by legal officers—the topic necessarily straddles legal and political history. The fact that the law was a “hallmark of politics in the early modern period,” however, is “virtually ignored by those who profess an interest in early modern government.”22 The chasm that exists between these two fields means that law reform has gained a footing in neither. The division between legal and political history has been duplicated in interdisciplinary studies by literary historians. For instance, literary historians focusing on early modern politics have ignored lawmakers and lawmaking in parliament. Oliver Arnold has recently taken new historicists to task for marginalizing parliamentary

history: “the new historicist map of early modern political culture has very seldom stretched beyond crown and court,” with the result that the field has “discovered the crackle of art and psychic complexity in Elizabeth’s speeches and James’s many writings, but this ocean of parliamentary discourse remains unexplored.” The neglect of parliamentary speeches means that a substantial source of political rhetoric rests unparsed, as Brian Vickers, Kevin Sharpe, and Peter Mack have all complained. It also means that the discourse on law reform contained in these speeches has gone unnoticed. The next section of this chapter modestly amends this picture through a close reading of the extensive comments on law reform in the numerous eloquent and influential parliamentary speeches of Sir Nicholas Bacon. The rhetoric and focus of Lord Keeper Bacon’s speeches set a precedent for his Elizabethan and Jacobean successors. According to Julian Martin, “[t]he exhortations of Lord Chancellors to successive parliaments about the need for [the] disciplined, uniform and equitable exercise of justice throughout the country [was] a clear example of the Privy Councillors’ attention to the practical difficulties of governance.” I have adopted Bacon’s division of law reform into the


26 Martin 105.
“perfection” and “execution” of the law for the structure of this dissertation. These two dimensions of law reform were reworked through individual writers’ perspectives and purposes. While Bacon’s speeches analyze the need for and nature of law reform, the literary works studied in subsequent chapters carefully consider the law’s weaknesses and law reform in practice.

2 Perfection

In The Arte of English Poesie, published in 1589, ten years after Nicholas Bacon’s death, George Puttenham defends the use of rhetorical figures in public speeches by referring the case to “them that knew Sir Nicholas Bacon Lord keeper of the great Seale… and haue bene conuersant with [his] speaches made in the Parliament house & Starrechamber. From whose lippes I haue seene to proceede more graue and naturall eloquence, then from all the Oratours of Oxford or Cambridge.” That “naturall eloquence” turns out to be the product of study. Puttenham goes on to paint a quaint tableau in which the Lord Keeper is spied in the solitary act of self-improvement, consulting his rhetoric textbooks:

I haue come to the Lord Keeper Sir Nicholas Bacon, & found him sitting in his gallery alone with the works of Quintilian before him, in deede he was a most eloquent man, and of rare learning and wisedome, as euer I knew England to breed, and one that ioyed as much in learned men and men of good witts.

Francis Bacon would later write that “A mans nature is best perceiued in priuatnesse, for there is no affectation.” Puttenham’s sketch of the Lord Keeper derives its effect from the same premise. This method of revealing character, moreover, is employed to confirm


28 Puttenham 117.

29 Francis Bacon, “Of Nature in Men,” The Essaies of S’ Francis Bacon Knight, the Kings Solliciter Generall (London: 1612) 155.
the reliability of another. A grammar school textbook in early modern England, Quintilian’s *Institutio Oratoria* popularized the argument that only good men speak well and that good speakers must thus be good men. In Puttenham’s anecdote, Nicholas Bacon’s reputation as a rhetorician is proven to be a reliable sign of his good character: the vignette of “priuatnesse” without “affectation” corresponds with public impression. His studiousness proves his eloquence is “naturall,” the refined or perfected expression of excellent inner virtue. By devoting his contemplative time to Quintilian, the Lord Keeper commits himself to improving his efficacy in public life. His contemplative life is justified by its application to public service/speaking, and his active life is virtuously directed by the wisdom of classical authority.

Puttenham’s anecdote provides an introduction not only to the Elizabethan reputation and legacy of Nicholas Bacon as a rhetorician and statesman, but also to the rhetorically-trained mentality that was sensitive to the relationship between form and character. In his opening and closing parliamentary speeches, the Lord Keeper divided the work of law reform into the evaluation and revision of the law’s form and content, on the one hand, and the monitoring and correction of the officers in charge of the law’s execution, on the other. From his speeches, we can extract the historical terms for a discussion of law reform as well as historical anxieties about the relationship between the law and its execution. Bacon’s remarks, consistent throughout his long career, provide a frame of reference through which we can interpret literary works that focus on the problematics of law reform. Parliamentary speeches and practice have yet to receive sustained scrutiny within the field of early modern law and literature. T. E. Hartley reminds us, however, that the work of parliament was law reform: “when we speak of Parliament as a legislative body we should define its task as one of legislative review,” a process that entailed “the rejection of bills, or existing acts, as well as the acceptance of

\[30\] See Quintilian, *Institutio Oratoria*, Book 12.

\[31\] On the relationship between rhetoric and public life, see R. S. White, *Natural Law in English Renaissance Literature* (Cambridge: Cambridge UP, 1996) 81-82. See also the rest of Puttenham’s chapter on “How our writing and speaches publike ought to be figuratiue, and if they be not doe greatly disgrace the cause and purpose of the speaker and writer” (Book 3, Chapter 2).
newly proposed laws. It could also involve the confirmation, or rejection, of current statutes.”

To recover “the working principles” of parliamentary law reform, moreover, Hartley suggests studying the formulaic ceremonies and speeches that took place at the beginning of each session.

In his opening speech to the very first Elizabethan parliament, Nicholas Bacon enumerated the “matters and causes” upon which the Houses should “consulte.” Among the members’ primary functions were “the well making of lawes” and “the reforming and removing of all enormities and mischeifes that doe, or might, hurte or hinder the civill orders or policies of this realme.” He went on to provide a checklist for parliamentarians to be used, much like the topics of rhetorical invention, to generate a comprehensive inquiry into the condition of the laws. The Houses were to ascertain where new laws were required: “what thinges by private wealthe’s devise have bene practized and put in ure within this realme, contrary or hurtefull to the common wealthe of the same, for which noe lawes be yet provided.” Members were to review the current laws’ performance: whether they were “sufficient to redresse the enormityes they were mente to remove.” They were to consider further the ethical, equitable character of the laws: “whether any

32 T. E. Hartley, Elizabeth’s Parliaments: Queen, Lords, and Commons, 1559-1601 (Manchester: Manchester UP, 1992) 19. In the sixteenth century, Sir Thomas Smith explained the function of parliament by detailing the activities of legislation and law reform:

The Parliament abrogateth olde lawes, maketh newe, giueth orders for thinges past, and for thinges héereafter to be followed, changeth rightes, and possessions of priuate men, legitimateth bastards, establisheth formes of religion, altereth weightes and measures, giueth formes of succession to the crowne, defineth of doubtfull rightes, whereof is no lawe alreadie mads, appointeth subsidies, tailes, taxes, and impositions, giueth most frée pardons and absolutions, restoreth in bloud and name as the highest court, condemneth or absolueth them whom the Prince will put to that triall. (De Repvblica Anglorvm [London: 1583] 35)


33 Hartley, Elizabeth’s Parliaments 19.
lawes be to severe and to sharpe or to softe and to gentle.” Does the law suit the crime, and does it provide an example or caution to others? Finally, they were to consider whether the laws suited the times: “whether any lawes made but for a tyme be meete to be continued for ever, or any made to be perpetuall and yet meete to be continued but for a tyme or presently to cease.” Notwithstanding his careful division of the legislator’s function, Bacon ensures comprehensiveness by extending this section of his remarks to provide for the unknown or unforeseen. “To be short,” he summarized, “you are to consider all other imperfections of lawes made and all the wantes of lawes to be made, and thereupon to provide their meetest remedyes respecting the nature and qualitie of the disorder and offence, the inclination and disposition of the people, and the manner of the tyme.”

As Peter Mack observes, Nicholas Bacon’s opening remarks provided “a general pattern for formal speeches on the government side,” not only throughout his own career in parliament, but also for successive Lord Keepers and Lord Chancellors. Most notably, Sir John Puckering, Sir Thomas Egerton, and Sir Francis Bacon would reenergize the first Elizabethan Lord Keeper’s emphasis on law reform at the end of the sixteenth century and into the seventeenth. They would extend its principles and its terms beyond parliamentary sessions and throughout their legal-political work. While Egerton would encourage parliament to “prune”—that is, amend and abridge—the laws rather than make new ones, he would also direct his reforming energies toward the officers, the organization, and the fees of the courts of Chancery and Star Chamber. Francis Bacon was a consistent advocate for reform throughout his legal-political career, explaining in “A Proposition to His Majesty… Touching the Compiling and Amendment of the Laws of England” (1616/17),


35 Mack 229.

I speak only by way of perfiting [the laws]... what I shall propound is not to the matter of the laws, but to the manner of their registry, expression, and tradition: so that it giveth them rather light than any new nature.  

Bacon’s focus on the “manner” of the common law—its accurate and consistent recording (“registry”), its unambiguous wording (“expression”), and its organized transmission to succeeding generations of legal professionals (“tradition”)—reflects his orderly and rhetorical approach to reform. Here, as in his father’s opening speeches to parliament, perfecting the law is rather “a matter of order and explanation than of alteration.”

While Nicholas Bacon’s parliamentary speeches emphasize the role of the legal-political elite in law reform, his son Francis would emphasize the importance of the sovereign’s leadership in systematic law reform. Law reform needed royal backing if it were to succeed, just as his schemes for the advancement of knowledge, including the establishment of libraries and gardens, were imagined as royal works. Francis would

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37 Francis Bacon, “A Proposition to His Majesty by Sir Francis Bacon… Touching the Compiling and Amendment of the Laws of England,” The Works of Francis Bacon, ed. James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, vol. 13 (London: 1872) 63. Elsewhere, notably in the Preface to his Maximes of the Common Law, Bacon articulates a more complex relationship between form and content. Perfecting the form of the law does result in changes in the substance and practice of the law, presumably another stage of the law’s perfection or refinement. He writes that a professional repays the gains derived from his profession by adding to the discipline: “thereby not onely gracing it in reputation and dignity, but also amplifying it in perfection and substance.” Clearing uncertainties in the law will result in “the amendment in some measure of the very nature and complection of the whole law.” Nevertheless, even in the Maximes, Bacon still insists, “you have here a worke without any glory of affected noveltie” (The Elements of the Common Lawes of England [London, 1630] sig. B2², C1¹). This text is hereafter cited by Maximes.

38 Bacon, “A Proposition” 66.

39 See, for example, the speech of “The Second Counsellor, Advising the Study of Philosophy,” in his device for the Gray’s Inn Christmas revels of 1594-5 (Gesta Grayorum: or, The History of the High and Mighty Prince, Henry Prince of Purpoole... Who Reigned and Died, A.D. 1594 [London: 1688]); The Advancement of Learning, Francis Bacon: A Critical Edition of the Major Works, ed. Brian Vickers
write numerous commendatory passages praising Elizabeth and James for their improvements to the law and governance in the texts in which he advanced schemes for greater reform. In *Maximes of the Common Lawes*, a work which “create[s] new and better rules under the guise of restatement,” he praises the Queen for using her authority to “give unto your lawes force and vigour” and being “carefull of their amendment and reforming.” In “An Offer to King James of a Digest to be Made of the Laws of England,” Bacon not only flatters his prince but also cautions him about the dangers of neglecting the state of the law. He likens the making of good laws to a father’s testament that provides for the future of his children, and he likens the neglect of laws to a father’s neglect of the future: “Princes that govern well are fathers of the people: but if a father breed his son well, or allow him well while he liveth, but leave him nothing at his death, whereby both he and his children, and his childrens children, may be the better, surely the care and piety of a father is not in him complete.” Moving from the microcosm to the macrocosm, Bacon presents law reform as the proper inheritance of the English people: “I have commended [the laws of England] before for the matter, but surely they ask much amendment for the form; which to reduce and perfect, I hold to be one of the greatest dowries that can be conferred upon this kingdom.” The writer’s choice of analogy is bitterly ironic: Nicholas Bacon died unexpectedly before making provisions for his last child, reversing Francis’s financial circumstances and redirecting the course of his career. Francis expected his sovereign to read personal experience into the political analogy—

(Oxford: Oxford UP, 1996) 174; the essays “Of Building” and “Of Gardens” in *The Essayes or Covnsels, Civill and Morall, of Francis Lo. Vervlam, Viscovnt S. Alban* (London: 1625); and Martin 163. On Bacon’s ideas on the royal authorization of the law, see also Helgerson 75.


that of James himself, whom “God hath blessed… with posterity,”\(^{43}\) as well as his own well-known family history.

While Nicholas and Francis Bacon focused on the future perfection of the law as the goal of the present sovereign, statesmen, legislators, and magistrates, Sir Edward Coke (Francis’s great professional and socio-political rival) would defend his own legal opinions (however innovative they may in fact have been) by inscribing them within a common law tradition that “hath been refined and perfected by all the wisest men in former succession of ages.”\(^{44}\) Law reform, in this line of thought, was envisioned as the restoration of the law’s historic perfection from which it had deteriorated. A key feature of Coke’s common law ideology, the law’s restoration also underwrote literary comparisons of Elizabeth I to the goddess of justice, Astraea. The Queen’s reign was compared to Astraea’s return to earth which inaugurated a new Golden Age by restoring justice to mankind.\(^{45}\) Perfection and restoration were the bywords of a discourse that helped regulate the so-called living law. This discourse was actively circulated through legal-political treatises, speeches, and other communications in an attempt to protect the commonwealth, the common peace, or the legal-political \textit{status quo}, and to authorize legal opinions and practices as traditional.

Even though the “nature” (the matter or substance) of the law was supposed to remain unaffected by reform efforts, the law’s perfection was still urgently advanced by legal-political authorities for the very reason that the system’s potential for justice was at stake. Condensing the number of laws through amendment and abridgement, for instance, was repeatedly promoted for the sake of English subjects and legal professionals alike. In his opening remarks to the third Elizabethan parliament, Nicholas Bacon instructed the

\(^{43}\) Bacon, \textit{Digest} 380.


\(^{45}\) On the Astraea/Elizabeth I connection, see Francis Yates, \textit{Astraea: The Imperial Theme in the Sixteenth Century} (London: Routledge & Kegan Paul, 1975) 29-87. See also Donne’s use of the parallel in “Satyre V,” discussed in Chapter 3 below.
members, “yow are to looke whether there be too many lawes for any thinge, which breedeth soe many doubtes that the subiect somtime is to seeke howe to observe them and the counsellor howe to give advise concerninge them” (PPE 1:137-39). In the eighth parliament (1593), Lord Keeper Puckering cautioned members, “not to spend the tyme in devising of new lawes and statutes; wherof there is already so great store… that… it were more convenient by abridgment and explanacion to make them lesse difficill for the practise of them, then by addicion of newe, to increase the danger of the quiet subiect” (PPE 3:18). In the same session Francis Bacon sat for Middlesex. In the earliest surviving fragment from his parliamentary speeches, he finds an opportunity to support Puckering’s opening remarks and to echo his own father’s: “scarce a whole year would suffice, to purge the statute-book [or] lessen the volume of laws;—being so many in number that neither common people can half practice them, nor the lawyer sufficiently understand them.”46 In this parliamentary mantra, reiterated by legal authorities and statesmen understandably concerned with the integrity of governance and the maintenance of the common weal, justice is contingent upon the system’s power to represent and communicate itself accurately, efficiently, and effectively to professionals and non-professionals alike.

The rhetoric of Nicholas Bacon and subsequent lord keepers provided key terms for early modern evaluations of the law and for a discourse on law reform. At the same time, the repetitive concerns expressed in the opening speeches to successive Elizabethan parliaments also testified to the law’s continuing imperfection. On its own, legislative review was insufficient to the task of reform. The first part of this dissertation focuses on the institutional improvisations that developed to compensate for the law’s ongoing imperfections. In chapters on the 1594-5 Gray’s Inn Christmas revels and on Donne’s satire, I examine the statute proviso that built exceptions directly into new law; the general pardon statute that relieved subjects of so-called “snaring” laws and excessive fines; the equitable extension of the reason or spirit of the law that provided justice in novel or exceptional cases; and the structure of legal-political representation that overcame the limitations of a centralized government and the absence of regular

46 Quoted in Coquillette 29.
oversight for the innumerable officeholders throughout the country. These activities entailed ongoing efforts to reform, revise, restore, or correct the law in response to the exigencies of legal-political practice. They also required a high degree of initiative and competence on the part of legal-political agents. In the literary representations of these institutional improvisations, therefore, the question of reform inevitably comes around to the question of the character—the integrity and skill—of the officers in charge of executing the law.

3 Execution

The law’s perfection was a key feature of the Elizabethan Lord Keeper’s parliamentary script that reminded members of their duties and of their sovereign’s conditional sanction of the Houses’ activities. In his speech at the close of parliament, however, Nicholas Bacon’s focus shifted from the reform of the law to the reform of those in charge of its execution, or from rhetorical to ethical criticism. “[T]he good governaunce of the subiecte at home, the lackes and defaultes whereof,” the Lord Keeper explained, “standes altogether eyther in the imperfeccion of lawes or els in the fearefullnes, sloughtfullnes or corrupcion of temporall officers that ought to see to the due execucion of them” (PPE 1:82-83). As Hartley points out, the effective administration or enforcement of the law was a “constant preoccupation” of the Lord Keepers and Lord Chancellors of Elizabeth’s reign, and Nicholas Bacon’s most eloquent parliamentary rhetoric was inspired by this topic.47 In his closing remarks, Bacon addressed parliament not as the country’s political representatives, but as a gathering of the magnates and magnates with the individual responsibility of disseminating law and order at the local level. Still speaking in his capacity as the Queen’s voice in parliament, he nevertheless resumed—conspicuously, self-consciously—the Lord Keeper’s timbre and his supervisory relation to subordinate officers. His tone dramatically shifted to address this new audience that his own speech effectively summoned. Rhetorical questions, analogies, and colloquial interjections of

47 T. E. Hartley, Elizabeth’s Parliaments: Queen, Lords, and Commons, 1559-1601 (Manchester: Manchester UP, 1992) 33-34.
“trowe you” and “Surely, surely” (absent from his opening speeches) bespeak his familiarity with this version of his audience as well as the vehemence of his remarks. The ceremonious appeal to duty in the opening speeches gave way to an appeal to reason and common sense, an inclusive strategy designed to placate listeners he was about to criticize scathingly. While he would go on to enlarge the scandals typical of local officers, at the same time he implicitly and explicitly suggested that he was preaching to the choir: “And like as this is not saide to those that bee good, so is this and much more to bee saide and done against those that bee ill” (PPE 1:192).

Nicholas Bacon’s comments on the “due execucion” or the “due administracion of justice” (PPE 1:50) were, in fact, much more extensive than those on legislative reform or review. The reason for this is straightforward enough. The making and reforming of laws is an enormous waste of time and resources if they are not afterwards enforced: “all theise labours, travailes and paines taken… all the charge susteined by the realme about the making of [laws] is all in vaine and labor lost without the due execucion of them” (PPE 1:191). His closing speeches entered a heightened analogical mode when he considered this waste: “it hath bynn saide, a law without execucion it is but a bodie without life, cause without an effect, a countenance of a thinge and in deed nothinge” (PPE 1:191). He repeatedly developed comparisons with unused implements, including an unlit torch, unused garden tools, and unread books.48 These analogies would be repeated in speeches by succeeding Lord Keepers and Chancellors. Such waste was a subject that Sir Thomas Egerton would stress in his own parliamentary remarks in the 1590s, and it was a subject that his secretary John Donne would enlarge in his fifth satire on law reform.

Legal authorities—real and fictional alike—depicted the lack of execution and law enforcement as the ultimate sin of omission, or the most offensive form of negligence, because of the socially destructive consequences. “[T]he making of lawes without execucion doe verie much harme,” explained Nicholas Bacon, “for yt breedes and bringes forth contempt of lawes and lawe-makeres and all magistrates, which is the 

48 See, for example, PPE 1:49.
vere foundacion of all misgovernance.” Bad justices are thus “the very occasioners of all injuries and inuiice and of all disorders and unquietnes in the common-wealth” (PPE 1:191). In the third scene of Measure for Measure, Shakespeare’s Duke of Vienna makes the same argument in proverbial terms. Echoing Bacon’s comparison of “a law without execucion” to “a bodie without life,” the Duke explains, “our decrees,/ Dead to infliction, to themselves are dead,” with the result that, “Liberty plucks Justice by the nose,/ The baby beats the nurse, and quite athwart/ Goes all decorum.” “[W]e bid this be done,” he argues, “When evil deeds have their permissive pass,/ And not their punishment.” 49 In a more eloquent and finally more ominous argument for the need for law enforcement, Spenser writes in Book V of The Faerie Queene, “The Legend of Artegall, or of Justice,”

Who so vpon him selfe will take the skill
True Iustice vnto people to diuide,
Had needed haue mightie hands, for to fulfill
That, which he doth with righteous doome decide,
And for to maister wrong and puissant pride.
For vaine it is to deeme of things aright,
And makes wrong doers iustice to deride,
Vnlesse it be perform’d with dreadlesse might.
For powre is the right hand of Iustice truly hight. 50

Legislative reform was an act of legal-political decorum or prudence in which lawmakers measured the form, content, and expression of the law against current public need and common and legal definitions of justice: MPs were asked “to consider… the nature and qualitie of the disorder and offence, the inclination and disposition of the people, and the manner of the tyme” (PPE 1:34-35). The reform of officers, on the other hand, measured the corrosive effects of human action or inaction on the forms and force of the system.


In his closing speeches to parliament, Nicholas Bacon’s remarks progressed from a general account of the problem of execution to a detailed description of the types of offending officers. In the process, he evoked figures who would be right at home in the collections of character essays that multiplied at the end of the century and that typified and satirized empirical observations of human nature and social conduct. He divided his subject matter into slothful, uncareful, and finally hypocritical justices, moving from bad to worse, from characters who offended by omission to those who offended by commission, for the same reason he outlined the needs of law reform earlier, “the better to provide a remedie against this mischeife” (PPE 1:191). He began his ethical or character criticism by attacking the “slougthfull” justices who “will never creepe out of their dores to any courte… for the due administracion thereof, excepte they be drawne thereto by some matters of their owne, nor cannot endure to have their eares troubled with hearinge of controversies of their neighbours for the good appeasinge of the same.”

The “uncareful” justice is equally to blame. “[H]ow,” asks the Lord Keeper, “can the uncareful man that maketh noe account of any of the common causes of his countrie but respecteth onely his private matters and commoditie become a diligent searcher out, follower and corrector of felons, murderers, and such like common enemyes to the common wealthe?” Only motivated to perform their official, statutory duties as Justices of the Peace when it is in their self-interest, these figures make a virtue out of their vice by adopting the guise of quiet men: “such careles and slouthful men doe dayly… cloke these their faultes with the title of quietnes… where in very deed they seeke only ease, profitt and pleasure to them selves, and that to be sustayned and borne by other men’s cares and labours as drones doe among bees” (PPE 1:50).

These justices, however, pale in comparison to the “monsterous disguisinge” of the ultimate hypocrite who deliberately breaks the very laws he was meant to enforce. Bacon concludes his legal homily with an emphatic denunciation of local officers who twist the legal system into an instrument of personal profit:

Is it not (trowe you) a monstorous disguisinge… to have hym that should by his othe and dutie set forthe iustice and righte, againste his othe and dutie offer iniurye and wronge… sweyinge of juryes accordinge to his will, acquiteinge some for gayne, inditeinge other for mallice, bearing
with him as his servante, overthrowinge the other as his enemye, procureinge all questmongers to be of his liverye or otherwise in his daunger, that his winkes, frowninges and countenances may direct all inquestes? Surely, surelye, it is true that these be theye that be subverters and perverters of all lawes and orders, yea, that make dayly the lawes that of their owne nature be good to become instrumentes of all injurye and mischiefe… theas be those whom, if yee cannot reforme for their greatnes, yee ought heere to complayne of for their evillnes.\footnote{51}{PPE 1:50. See the same comments made in the Lord Keeper’s speech at the close of the third parliament (PPE 1:192).}

The Lord Keeper’s comments reveal the anxieties of central government over local officeholders’ unsupervised exercise of authority and influence. At the same time that this vivid account suggests that no illicit practices pass unobserved, the “winkes” and “frowninges” of justices were precisely the kinds of signs that the Queen and her chief statesmen and legal ministers could not personally witness. This limitation of central government inspired Bacon’s most ambitious proposal for law reform, a system of regular provincial visitations to evaluate the performance of local officers (\textit{PPE} 1:83). As an advisor to James I and his favourites and as Lord Chancellor, his son Francis would take pains to advocate and institute the regular reconnaissance of local officers as a vital function of the Assize judges who were already responsible for holding court throughout the country during law term vacations. These authorities, if put to the task, could be “the best intelligencers of the true state of the Kingdom, and the surest means to prevent or remove all growing mischiefs within the body of the Realm.”\footnote{52}{Francis Bacon, “A Letter of Advice, Written by Sir Francis Bacon to the Duke of Buckingham, when He Became Favourite to King James,” \textit{The Works of Francis Bacon}, ed. James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, vol. 13 (London: 1872) 19.} In Chapter Four, I examine the Assize judges’ surveillance of local officers in relation to the plot of \textit{Measure for Measure}. 
Lorna Hutson has brought to the attention of literary scholars the unique participatory structure of the English legal system which relied on officers and jury members drawn from nearly every level of society to fulfill their sworn duties without much legal expertise and without much intervention from the authorities at Westminster. This historical insight overturns earlier Foucauldian and new historicist interpretations of socio-political subversion-containment processes that were premised on a division between the identities and interests of the state or the law from those of the people.\textsuperscript{53} As the above speeches suggest, however, the structure of the English system inevitably heightened anxieties (from above and below) over the integrity and character of legal representatives. Character criticism disseminated through the tiers of the justice system in charges to parliament, judges, juries, officers, courtrooms of public spectators, and refracted in sermons, encouraged self-awareness in officers and a more conscientious attention to their duties. At the same time, it educated an English public—the participants and spectators of the justice system—of potential abuses by members of parliament, magistrates, judges, justices, constables, and others. Because titles came not only with official responsibilities but also with a ready audience, moreover, legal and political representatives had the further obligation to portray the ideal subject while executing the law. “The due \textit{observation} of the said Lawes doth generally without any limitation or exception concern all,” Edward Coke explained in the Preface to the fourth volume of his \textit{Reports} (1602), “[b]ut principally Princes, Nobles, Judges, and Magistrates, to whose custody & charge the due execution (the life and the soule of the Laws) is committed; for that they in respect of their places are more eminent & conspicuous then other men.”\textsuperscript{54}

The analysis of law reform thus easily bifurcates into the perfection of the organization, expression, and content of the law and its ethical execution by motivated officers. The semantic range of “perfection,” however, forestalls any absolute division. In his 1612 essay “Of Dispatch,” Francis Bacon equates perfection with execution in his analysis of business—the business of parliamentary committee work in particular,

\begin{footnotes}
\textsuperscript{54} Coke, \textit{Selected Writings} 1:99.
\end{footnotes}
according to Karl R. Wallace: “There bee three parts of businesse; the preparation, the debate, or examination, and the perfection. Whereof, if you looke for dispatch, let the midle onely be the worke of many, and the first and last the worke of few.” The *Dictionary L"inguae Latinae et Anglicanae* and *A World of Words* both define perfection as “a full dispatching and attechieuing of a matter,” while in his *Glossographia*, Thomas Blount defines achievement as “the performance or accomplishment of any gallant exploit, a bringing to perfection.”

Perfection, then, most commonly denoted the most complete realization of something: in the case of business or gallant exploits, it meant the successful execution of an intention or plan; in the case of a skill, language, art, or memorized play text, complete proficiency; in the case of plants or bodies, complete ripeness or maturity. Execution turns out to be the empirical expression or evidence of perfection. Thus to construe reform as a matter of perfecting the law is to continually tie form, language, ideals, and ideology to execution, dispatch, practice, and performance. And thus, while this project breaks down into two sections on perfection and execution, they inevitably interpenetrate—in sometimes direct and sometimes troublingly tenuous ways. The following chapters on literary representations of law reform chart several unsettling points of friction and disjunction along these two axes of the law, and in the process, define and redefine the familiar binaries of early modern legal, literary, political, and social history: theory and practice; central and local powers, values, and interests; superior-subordinate, master-servant, patron-client, and crown-subject relations; and the Tudor and Stuart, the Elizabethan and Jacobean, periods.

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Part One focuses on literary representations of the law’s imperfections from writers on the inside of the legal profession and close to court culture. Chapter Two examines the *Gesta Grayorum*, an account of the 1594-5 Christmas revels at Gray’s Inn, one of the English common-law societies and education institutions. The Christmas revellers mounted a large mock court, and the elaborate entertainments for their fictional Prince of Purpoole were performed by and before a community of Inn members and associates that included common-law students, legal professionals, courtiers, parliamentarians, and statesmen. Close readings of their mock parliament and trial attest to the participants’ legal-political expertise as well as their insight into the instrumentality of legal and political forms, processes, and language. In parodying the terms and structure of the Elizabethan general pardon statute, the revellers target a significant legal-political device that publically forgave select statutory infractions and broadcasted the sovereign’s merciful character. The revellers’ proceedings deliberately compromise the corrective powers of the legislative and trial processes in order, ultimately, to display the performers’ talents for the principal governing task of socio-political maintenance that was accomplished through reforming operations. They use a subversion-containment structure to showcase the skills and self-discipline demanded by a participatory justice system that relied on the largely independent workings of officers. Francis Bacon’s subsequent orations on government redirect the course of the entertainments away from the comical errors of lawmakers and legal representatives toward the industrious, systematic reform of the fictional state. Bacon’s writings on law reform were remarkably consistent, not to mention copious, throughout his long legal-political career. But they began to take shape in the late 1580s and 1590s, when his position and influence as a parliamentarian and as a legal authority solidified. He would not write “A Proposition… Touching the Compiling and Amendment of the Laws of England,” which systematically reimagined the organization of English law, until 1616/17; nevertheless, his early works, such as his orations for the Gray’s Inn revels, demonstrate a similar commitment to the perfection of the law.

Chapter Three examines John Donne’s “Satyre V,” which applies the social and ethical reforming energy of the satiric genre to the need for system-wide law reform in England. The piece is a tribute to his employer, Lord Keeper Sir Thomas Egerton, who
was lauded for his integrity and commitment to reforming the financially exploitive aspects of legal process, particularly in the Court of Chancery. Central to Donne’s satiric critique of the law is his attack on the excesses within the legal-political system, on individual “mischiefs” or offences that have grown into systemic “inconveniences.”

Throughout the poem, greedy officers who abuse their power are equated with bodily extremities and excrement and with the destructive surplus of flood waters. Grown into a major threat to the health and order of the commonwealth, this excess needs to be checked through the processes that the speaker characterizes as “knowing” and “weeding.” The weeding or expunging of abuses of power, we are to understand, depends on the knowledge of its existence first circulating through the legal-political hierarchy. That circulation of knowledge, in turn, is dependent upon an extensive network of the queen’s legal counselors, representatives, and servants who, in common political idiom, were also characterized as a type of excess, as the numerous eyes and ears of the body politic. These representatives are themselves the source of the problem and impede the flow of information and justice that they were initially created to facilitate. Donne exploits traditional legal-political analogies to illuminate the tensions in a system that both functioned and was forestalled by over-reaching strategies. I argue that he employs a self-conscious analogical style in imitation of the statute interpretation strategies and principles outlined in Egerton’s own treatise, A Discourse upon the Exposicion [and] Understandinge of Statutes, the earliest known English treatise on the topic. Analogy was at the heart of sixteenth-century methods of statute interpretation, according to which judges were to extend the sense or spirit of the law to cover novel cases on the grounds of likeness. In this way the exception was reabsorbed within the rule. Analogical extension, the discovery or generation of similitude and agreement, was thus pivotal to equitable justice. Equity, however, could also be overextended, and the law stretched beyond recognition. While identifying the system’s weaknesses, therefore, Donne’s analogical style also invites suspicion; the reader’s literary scrutiny is thereby engaged in the same legal-political surveillance needed “to know and weed out.”

Both chapters of Part One are concerned with statute form and interpretation strategies. Passed over by the recent generation of early modern law and literature studies, statute law was nevertheless of great professional and socio-political interest to
all Inns-of-Court students (including Bacon and Donne) who would have attended the formal lecture series on statutes delivered by senior Inn members. Through these “readings,” statute interpretation skills were associated with professional advancement and authority. The literary works in Chapters Two and Three are even more closely linked by the creative identification and correction of the law’s imperfections which showcased the refined legal-political skills of writers in pursuit of office and favor. The ambitions of these wits required the careful negotiation of encomium and critique within dramatic and literary performances that mimicked legal-political practice. In the mock general pardon statute of the Gray’s Inn revels and in the analogical style of Donne’s “Satyre V,” a mastery of legal and literary forms asserts a real and phantom professional and socio-political power. In multiple ways, then, the representation of law reform in these works intentionally draws attention to the writer or speaker: reform proves inseparable from the character and competence of the reformer.

Part Two of this project examines dramatizations of legal duty put into social practice. More specifically, it examines the centrality of legal officers and legal execution to Shakespeare’s Measure for Measure and The Winter’s Tale. Performed at court and on the public stage before a broad social spectrum, these plays bridged the elite/popular divide through the representation of law and justice. Given the extensive participatory nature of the English justice system, most London playgoers would have had a relationship to the law regardless of their relation to the central powers and politics that preoccupied the writers and audiences or readers of the Gray’s Inn revels and “Satyre V.” “If we accept that Shakespeare’s public audience comprised a fairly broad cross section of London’s population,” Victoria Hayne writes, “then a substantial proportion of the audience must themselves have been actual or eligible participants in the law-enforcement process, serving their turns as members of the watch, headboroughs, constables, members of a jury, justices of the peace, etc.”58 Those who weren’t eligible for office-holding still may have been a plaintiff, defendant, or witness in a civil or criminal case. Shakespeare’s plays were written with not only officeholders in mind, but

also the English public, which held common beliefs about the responsibility of subjects and officeholders to the common good and the common peace. The execution of the law also offered unique opportunities for Shakespeare’s particular love of “unmetaphoring,” to use Rosalie L. Colie’s term.59 By dramatizing the practices of officers, Shakespeare literalized the early modern figures of speech in which the execution of the law was called the life or body of the law.

Like Donne’s satire, Measure for Measure is vitally concerned with the circulation of information and justice. In Chapter Four, I argue that this tragicomedy is patterned on the cyclical structure of the Assize sessions, the itinerant tribunal through which Westminster officials brought legal expertise, the voice of the sovereign and the privy council, and ceremonial grandeur to their sessions in local counties throughout England. Convening twice a year, the court produced a repeating representation of central authority that shaped the countryside’s legal and social calendar until the late twentieth century. The first scene of Measure for Measure, in which the Duke departs from Vienna, leaving it in the hands of his substitute Angelo, parallels the Assizes’ dissolution and withdrawal from county life. Likewise, the last scenes of the play, which chart the Duke’s return to Vienna and resumption of power, correspond with the court’s grand return to the counties. The extraordinary circumstances that ignite the play plot, then, the duke’s sudden and mysterious departure, made sense in relation to a regular feature and experience of the national legal system. Between these two coordinates of the Duke’s departure and return, or during the invisible part of the Assize system, the strengths and weaknesses of the local officers are exposed and finally officially recognized in the open-air hearing that concludes the play. The structure of the play thus frames a process of local intelligence-gathering and surveillance that was specifically associated with Assize judges. We watch as Angelo and Escalus, acting like justices of the peace for their county, attempt to put the Duke’s commission into execution, to put policy into local practice. But it is the Provost whose example of professional discretion presents a via media between Angelo’s inflexible legalism and Escalus’s mercy-turned-leniency.

Without compromising the authority, certainty, or force of the law, the Provost executes his function with consideration for the social pressures that have triggered the legal action at hand. His professional decorum or prudence, especially in his treatment of Pompey, is the immediate model for the Duke’s rearrangement of relationships and dispersal of socio-legal tensions in the final scene. I argue that the cynical slant of the play is at least partially offset as Shakespeare’s Duke Vincentio reforms his governing strategy and resets his public image by adopting the methods of English legal practice and tradition that are shown to be fully functioning at the ground level of law enforcement. This treatment of Measure for Measure emphasizes the play’s relationship to a native, longstanding institution of the English common law whose cyclical process achieved a flexibility and responsiveness to social conditions that was increasingly exploited at the end of Elizabeth’s reign and the beginning of James’s.

Chapters Four and Five are linked not only through a concern for the administration of justice, but also through a perspective that resisted royal inroads in the law in favour of local justice (in the case of Measure for Measure) and common-law authorities (in the case of The Winter’s Tale). The last chapter examines the character of the “oracle of the law” within legal and literary writings contemporaneous with Shakespeare’s The Winter’s Tale. The epithet signified a legal expert and wise counselor who cultivated authority through deliberative and self-fashioning practices similar to the rhetorical and performance style of the oracles of antiquity. While the judiciary advanced its own oracular image through professional practices, this same kind of oracle was repeatedly depicted as a recognizable social type in the character essay collections that were increasingly published in the early seventeenth century. The legal-political connotation of “oracle” facilitates a new reading of The Winter’s Tale in which Apollo’s supernatural oracle evokes human judicial figures. While Apollo’s oracle makes only a brief appearance in the trial scene, nevertheless its influence pulses throughout the play via its representatives, Camillo and Paulina, whose strategies and counsel ultimately ensure that the oracular prophecy is fulfilled. Through these human oracles, I argue, the play is infused with the explosive tensions between the sovereign and the judiciary in early seventeenth-century England that challenged the power of the King’s prerogative and the jurisdictions of courts. The arguments between King Leontes and his oracular
counselors dramatize the competing claims to legal authority and execution expressed by proponents of absolute monarchy and of the common law. While the historical conflict resulted in Sir Edward Coke’s removal from the bench and the Privy Council in 1616, Shakespeare’s play concludes by accommodating royal and common-law ideology in a final scene that cleanly divides the function of the sovereign from that of the legal authority. This last chapter begins to sketch out a historical end point in legal-political culture. It registers the stress lines within relations between the crown, the bench, and parliament that would ultimately result in major reorganizations of the system as the seventeenth century progressed. The Elizabethan culture that advocated moderate legal-political improvisations for the preservation of tradition and continuity would give way to revolution.
Chapter 2
Pardon and Exception in the *Gesta Grayorum*

“Misrule can have its own rigour and can also decipher king and state.”\(^1\)

The Inns of Court provide a natural starting point for a study that reintegrates literary, legal, and political history in early modern England. The four Inns evolved in the Medieval period into the educational institutions and societies of the English legal profession. At the turn of the seventeenth century, Inns-of-Court members resided, studied, dined, conducted business, cultivated literary tastes and talents, and reveled in these communities that provided easy access to the central legal courts, the entertainments of London, and the Royal Court. In addition to the formal training they received in the law, gentlemen’s sons used their time at the Inns to cultivate the knowledge, skills, and manners necessary for movement within elite social spheres. Arthur Marotti’s study of the “socioliterary environment” of the Inns emphasizes the competition among members who vied for the limited opportunities for advancement that emanated outward from Elizabeth’s Court.\(^2\) Such aspirations resulted in literary productions and performances, like those within the Gray’s Inn Christmas revels of 1594-5, which “reinforced the connections between the Inns and the Royal Court, the participants demonstrating their interest in and knowledge of their culture’s central political institution,” and “highlight[ed] the intentions of Gray’s Inn revellers as aspiring Courtiers who looked to the monarch and to her officers for preferment.”\(^3\) At the same time, however, lack of preferment also contributed to the self-fashioning of Inns “wits” who funneled their frustrated socio-political ambitions into literary forms like satire and elegy and into a plainspeaking rhetorical style that contrasted with Courtly poetry and

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3 Marotti 32.
The oppositional verse and values incubated at the Inns made the continuing pursuit of socio-political ambitions—or worse, actual advancement—a self-splitting activity for these wits. Their literary products thus “reflect… their ambivalent attraction/aversion to the Establishment of which they were so conscious.”

The close readings in this chapter suggest a much greater continuity between what Marotti divides into complimentary and critical Inns literary products, between the “self-satirization” of the revels and the satire of Court in coterie verse. Both enable the Inns member (the performer in the revels, the speaker in the satire) to present himself in the role of governing or reforming agent, concerned with the perfection and the execution of law and with the regulation of self and other. In reference to the early verse letters and the first three satires of John Donne, Marotti argues that the poet’s “point of view was that of the Inns-of-Court wit who could self-critically and ironically examine the social institutions and environments with which he was involved as well as his own ambivalent feelings about them.” I argue that the idea of what constitutes the “point of view of the Inns-of-Court wit” must be widened. His self-critical and ironical powers are a function not only of his affective negotiation of expectation and frustration, but also of his emergent (in the case of Donne) or mature (in the case of Bacon) identity as a legal-political representative, a figure who was expected to critically scrutinize the efficacy of legal-political “institutions and environments” as well as the execution of office.

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5 Marotti 31.

6 Marotti 32.

7 Marotti 35.
writers, performers, and audience members of the Gray’s Inn revels included common law authorities and parliamentarians, men of diverse ages whose participation within the legal-political hierarchy was varied and extensive.

The Gray’s Inn Christmas revels of 1594-5 are preserved in an anonymous text published in 1688. Presumably narrated by one of the participants, the *Gesta Grayorum* recounts the elaborate festivities that lasted from December to February and that involved a mock coronation, almost certainly a play by Shakespeare, processions through London, orations, masques, dances, and other devices. The traditional Inns revels were an opportunity for the organizers to employ the theatrical economy between performer and audience for socio-political gain. References are made throughout the *Gesta Grayorum* to the “promise,” “reputation,” and “honour” of the performers that rested on the increased, satisfied, or thwarted “expectations” of distinguished audiences. A pattern of “credit” won, lost, and regained functions as an overarching plot that incorporates error into the performance to highlight the revellers’ improvisational flair for correcting it. It is a subversion-containment structure in which disorder enabled the display of the skills in self-regulation and self-governance demanded by a participatory justice system that relied on the largely independent workings of officers. The entertainments for the fictional Prince of Purpoole thus constituted a complex mode of self-fashioning in which the Gray’s Inn revellers ultimately presented themselves as England’s future legal authorities, statesmen, and Courtiers through representations of the crucial governing processes of identifying and reforming legal, political, and social errors.

Close readings of the mock parliament’s general pardon statute and of the mock trial attest to the revellers’ legal-political expertise. The proceedings target the potential for these mechanisms of social correction themselves to morph into instruments of disorder, arguing implicitly through negative examples for the law’s perfection and for vigilance in legal-political office. Francis Bacon’s subsequent orations on government strategically redirect the course of the entertainments away from the comical errors of lawmakers and legal-political representatives to outline a plan of systematic reform for the fictional state. While the comical, carnivalesque, and subversive have been well-examined in relation to medieval and early modern feasts and holidays of misrule, the
degree to which disorder enables the governing practices and an ethos of reform within the *Gesta Grayorum* has been overlooked.

### 1 The General Pardon

The Gray’s Inn revels are best known to literary historians for what was almost certainly the first performance of *The Comedy of Errors*.\(^8\) According to the report in the *Gesta Grayorum*, the large crowd that had assembled for one of the evenings of entertainments would not make room for the professional actors onstage. The play could not be performed until the numbers were thinned by the departure of the contingent from the Inner Temple and not until dancing had exhausted some of the revellers’ energies. The evening thus earned the nickname “The Night of Errors.” The “pattern of error and reform” that Andrew Zurcher identifies as a structural principle behind the revels\(^9\), however, began before this famous debacle. Though the Prince of Purpoole’s rule was ostentatiously established with more than 140 followers in attendance on the very first “grand night,” the plans to hold a mock parliament, too, fell by the wayside as “some special Officers” were missing “without whose Presence it could not be performed.”\(^10\)

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\(^9\) Zurcher 33.

\(^10\) *Gesta Grayorum*: or, The History of the High and Mighty Prince, Henry Prince of Purpoole... *Who Reigned and Died, A.D. 1594* (London: 1688) 14. This text is cited parenthetically hereafter.
This excuse may in fact be pretense and may signal dramatic elision or compression that is intentionally or unavoidably clothed as disorganization or error. Had the parliament gone forward a more detailed account of domestic issues might have complimented the later business on foreign affairs that is recorded in detail. In any case, the organizers proceeded by enacting the two bills that every parliament ratified: “The one was, a Subsidy of His Highness’s Port and Sports. The other was […] his gracious, general and free Pardon” (14). In actual parliaments these bills were drafted under the supervision of the Queen’s learned counsel based on previous examples. The subsidy, the government’s major source of tax revenue, was the primary reason for calling a parliament. After it was formally accepted at the end of a session, the general pardon was declared and operated most immediately as a kind of royal thanks. The pardon’s tribute to the “love” and “affection” of the Queen’s subjects was a decorous nod to their financial generosity. This is the last we hear of the subsidy in the Gesta Grayorum, but the general pardon, including its formulaic preamble and conventional content, was studiously replicated by the revellers. Its lengthy provisions were read out by the Prince’s Sollicitor and enclosed the subsequent enactments and entertainments within a parody of the statute’s regulatory intention and language. In mocking this statute, the revellers (some of whom, like Bacon, would have already served as MPs) targeted a measure that publically compensated for

11 Zurcher reads error during the revels as strategic and only as a pretense. No parliament was ever really intended; the “Night of Errors” was more or less scripted. On theatrical confusion, see also William N. West, “‘But this will be a mere confusion’: Real and Represented Confusions on the Elizabethan Stage,” Theatre Journal 60 (2008): 217-33. On the script and the rhetoric of interruptions and Inns of Court revels, see Ann Hurley, “ Interruption: The Transformation of a Critical Feature of Ritual from Revel to Lyric in John Donne’s Inns of Court Poetry of the 1590s,” Ceremony and Text in the Renaissance, ed. Douglas F. Rutledge (Cranbury: Associated UPs, 1996) 103-121.

the law’s imperfections through the politically strategic extension of the Queen’s clemency.

The preamble of the Elizabethan general pardon statute referred to the sovereign’s “m[er]cifull Disposicyon” toward her subjects, but this image of the queen was predicated on an unsettling universal characterization of her subjects as not only “lovinge” (loyal, dutiful), but also as legal offenders in need of a reprieve from legal punishment. The character of these legal offenders was mitigated, however, not only by their love for their sovereign but by the misfortune that triggered their entanglement with the law. They are presented as accidental offenders, devoid of criminal intention, stumbling into trouble: “Subject[es] have many and sundry waies by the Lawes and Statut[es] of this Realme, fallen into the danger of div[er]se greate Penaltyes and Forfeytures… wherewith her sayde Subject[es] stande now burthened and chargd.” The Queen’s mercy, it is expected, will inspire not the reform of conscience so much as a more attentive consideration of the law’s extensive stipulations: she is “most graciouslie inclyned… to dischardge some [part] of those greate Paynes Forfeytures and Penalties… trustinge [her subjects] wilbe thereby the rather moved & induced from henceforthe more carefully to observe her Highnes Lawes and Statut[es], and to contynewe in theire loyall and due Obedience to her Ma[jesty].” Speakers of the House traditionally thanked the Queen in return for her pardon during their closing speeches, assuring her that her subjects were “most graciouslie incited (by this your Majestie’s clemencie) to a more dilligent and carefull observacion of your Highnes’ lawes then heretofore wee have accustomed.” “[C]arefully to observe” the law is of course synonymous with obeying the law, but the phrasing of the statute preamble and the speaker’s remarks implicate a legal system that required the subject’s active (“dilligent and carefull”) endeavour to keep clear of its punitive grasp. The general pardon statute’s itemization of pardonable offenses thus discovered the system’s failings over and above the offender’s. It was a


Francis Bacon’s numerous parliamentary speeches and legal reform writings shed light on the reality of the “swaruing [snaring] penalties that lye vpon many subiects” implicated in the general pardon preamble.\textsuperscript{15} The sheer volume of statutes that had accumulated by the end of the sixteenth century was a problem in itself, confusing both subjects and legal representatives alike, and signaling (by the end of Elizabeth’s reign) an increasingly restrictive social policy.\textsuperscript{16} In a House of Commons speech from 1601, Bacon urged “for the repeal of divers statutes, and of divers superfluous branches of statutes… The more laws we make the more snares we lay to trap ourselves.”\textsuperscript{17} And again, in 1607, he complained that “this continual heaping up of laws without digesting them maketh but a chaos and confusion, and turneth the laws many times to become but snares for the people.”\textsuperscript{18} Anxieties of this nature derived from the state of the penal laws in particular. It was a topic that would inspire a powerful rhetorical response from Bacon throughout his legal-political career. In cautioning judges against “hard constructions and strained inferences” in legal interpretations, he warned that “there is no worse torture then the torture of lawes; specially in case of Lawes penall”:

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[Judges] ought to haue care that that which was meant for terrour, be not turned into rigour; and that they bring not vpon the people that shower
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\textsuperscript{15} Francis Bacon, \textit{The Elements of the Common Lawes of England} (London, 1630) sig. A4\textsuperscript{v}. Henceforth this work is cited as \textit{Maximes}.
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\textsuperscript{16} “By 1603, no fewer than 309 statutes imposed responsibilities on justices: and 176 (57 per cent) of these had been passed since 1485” (Steve Hindle, \textit{The State and Social Change in Early Modern England, c. 1550-1640} [Houndmills, Basingstoke, Hampshire: St. Martin’s P, 2000] 10). On the increasing number of exceptions to the general pardon and the increasingly restrictive nature of Elizabethan governance, see K. J. Kesselring, \textit{Mercy and Authority in the Tudor State} (Cambridge: Cambridge UP, 2003) 69.
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\textsuperscript{17} Francis Bacon, \textit{The Letters and Life of Francis Bacon}, ed. James Spedding, vol. 3 (London: 1868) 19.
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\textsuperscript{18} Francis Bacon, \textit{The Letters and Life of Francis Bacon} 3:336.
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whereof the Scripture speake\th; \textit{Pluet super eos laqueos}: For penall lawes pressed, are a showre of snares vpon the people.\textsuperscript{19}

And later, in “A Proposition to His Majesty... Touching the Compiling and Amendment of the Laws of England”: “there are a number of ensnaring penal laws, which lie upon the subject; and if in bad times they should be awaked and put in execution, would grind them to powder.”\textsuperscript{20} Nor was Bacon alone in his concern with the state of these laws. His professional and socio-political rival, Sir Edward Coke, similarly worried that “certaine of our penall statutes... time hath antiquated as unprofitable, and remaine but as snares to intangle the subjects withall.”\textsuperscript{21} Barbara Shapiro and Julian Martin both report that “[s]peeches which deplored the confusion produced by the tangle of penal laws” were made throughout the 1590s and 1601 parliaments.\textsuperscript{22}

Popular and coterie literature of the period similarly registers widespread anxieties over the ensnaring potential of statutes. In The Comedy of Errors, Shakespeare encloses the Roman new comedy plot derived from Pla\tus’\textit{Menae\chmi} within a frame narrative in which Egeon of Syracuse arrives in Ephesus only to be arrested and condemned to death because of newly awakened or established statutes.\textsuperscript{23} In the Duke of

\textsuperscript{19} Francis Bacon, “Of Judicature,” \textit{The Essaies of S’ Francis Bacon Knight, the Kings Solliciter Generall} (London: 1612) 213-214. Hereafter, this edition is cited as \textit{Essays 1612}.


Ephesus’s opening speech we learn that the Duke of Syracuse recently “sealed his rigorous statutes” with the “bloods” of Ephesian merchants, “our well-dealing countrymen” who “want[ed] gilders to redeem their lives.” Consequently, “It hath in solemn synods been decreed” on both sides to stop all trade, and anyone discovered in the other’s territory is to be put to death “Unless a thousand marks be levied / To quit the penalty and ransom him.” The frame narrative establishes the unusually tight timeline for a Shakespearean plot: the conflicts and confusions introduced by the presence of two pairs of identical twins in Ephesus must be resolved before the end of day, when Egeon will be executed unless his lost sons are discovered and pay the statute’s fine. Written a decade after the Gray’s Inn revels, the plot twist that turns Measure for Measure into a tragicomedy involves the awakening of an “antiquated” penal law that targets fornicators (one of the “strict statutes and most biting laws… Which for this fourteen years we have let slip”) and raises questions about the ethical and efficacious use of “terrou” and “rigour” in the execution of the law (1.3.19-21).

In John Donne’s Satyres, composed in the 1590s and influenced by the socioliterary subculture of Lincoln’s Inn, ensnaring statutes ominously shadow the speaker. “Satyre II” concludes with the speaker’s complaint that, “my words none drawes / Within the vast reach of th’huge statute lawes,” suggesting that the splenetic and detailed description of human foibles and legal abuses found in the satire has generic similarities with the statute form. Both satirist and legislator enjoyed a liberty of speech and a “vast reach” when it came to the scrutiny of social, economic, and political conditions and the morality of personal conduct. The “reformation of manners” was the preoccupation of each. That the satirist’s words are not statutes is one last refraction of

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26 On the traditions of “free” speech and criticism within the Inns of court and within parliament, see Marotti 33-34. Marotti notes Finkelpearl’s argument that “this license in speech lay behind some of the Parliamentary opposition that developed to the policies of James I.”
the social, economic, and finally political ascendency of his satiric butt, the lawyer Coscus, whose interests are presumably protected by a House of Commons of similar characters. Studies on the Inns of Court have depicted social and class tensions between gentlemen’s sons who treated these institutions as finishing schools that would prepare them for a life at Court and serious law students who were pursuing advancement in a profession. These tensions among Inns students, which palpably shape “Satyre II,” are projected onto an arena of national political consequence in the last two lines.

In “Satyre II,” the speaker’s skill as a satirist underpins his claim to legislative rights that he belatedly discovers have been displaced. The results of his legal-political disenfranchisement are writ large in the fourth poem of the sequence, in which statutes now target the speaker and his fellow wits. Initially, the statutes’ regulation of personal conduct merely ruins a highly questionable joke. We hear of “Glaze” or “Glare,” who went

To’a Masse in jest, catch’d, was faine to disburse
The hundred markes, which is the Statutes curse,
Before he scapt…. (ll. 8-11)

The statute, we are to understand, ignores the spiritual difference between an occasional and a committed Catholic; it ignores the decorous distinction between jest and earnestness or seriousness that satire wittily negotiates. The satirist’s judgment is thus more equitable, and more refined, than statute law. Glaze’s case is then compared to that of the speaker, whose “destinic” finds him guilty of the “sin of going” to Court: “To thinke me… As vaine, as witlesse, and as false as they / Which dwell at Court, for going once that way” (ll. 11-16). Going to Court—through which one willingly risks corruption—is presented as a statutory offence for which the speaker must pay a penalty. That penalty arrives in the form of a Court gossip or parasite whose defamatory speech is a form of social and legal entrapment:

… mee thought I saw
One of our Giant Statutes ope his jaw
To sucke me in; for hearing him, I found
That as burnt venome Leachers do grow sound
By giving others their soares, I might growe
Guilty, and he free…. (ll. 131-136)

The speaker can only escape the Court parasite—and thus the jaws of “Giant Statutes”—through a “Ransome” (l. 145). At the turn of the seventeenth century, a “ransom” was an “action or means of freeing oneself from a penalty; a sum of money paid to obtain pardon for an offence or imposed as a penalty… a fine.” A “ransom” was also, as it is today, a “sum or price paid or demanded for the release of a prisoner or hostage.”28 In The Comedy of Errors and Donne’s “Satyre IV,” both senses of the word resonate to suggest that the subject’s danger from ensnaring statute law shuttles easily between the financial and the physical variety. In The Comedy of Errors, Egeon needs a thousand marks “To quit the penalty and ransom him” (1.1.21-22) after breaking a law unintentionally and finding himself in short order arrested and sentenced to death. In “Satyre IV,” the speaker’s “Ransome” is paid by “the prerogative of my Crowne” (l. 150), playing on the name of the currency and comparing his release from the human leech’s conversation to the Queen’s mercy that was extended to forgive statutory infractions.

At the same time that the Queen’s mercy ostensibly ransomed her subjects en masse through the general pardon, the same statute also defined the unpardonable through a list of exceptions, primarily serious felonies including rape, murder, counterfeiting, and treason, through which the statute punished the deliberate transgressions of subjects and officers.29 When statute law wasn’t ensnaring subjects, corrupt officers were preying on them. In 1589 undersheriffs involved in extortion, and in

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28 “ransom, n.,” OED Online, March 2010, Oxford UP, 8 June 2010

<http://dictionary.oed.com/cgi/entry/50197274>.

29 Dean 34-5; See also the later Elizabethan acts of general pardon in SR 4.758-62, 834-39, 883-88, 952-57, 1010-14.
1601 officers in charge of collecting customs and subsidies, were exempted from the
general pardon. That is, they were explicitly included in the statute’s list of offenses
which were to receive the full persecution and rigor of the law. Items were added to and
dropped from the otherwise conventional list of unpardonable offences to reflect pressing
social concerns identified by the crown or in parliament. David Dean explains that the
issues raised in failed bills initiated by MPs could resurface in this statute that was drawn up by government officials. He argues that this strategy allowed the government to inhibit
debate on sensitive topics while still responding to MPs’ (and by extension, public)
concerns. So-called sensitive topics often threatened to alter the jurisdiction or powers
of parliament, for example, or the Queen’s prerogative. Proposals for new laws could
threaten to transform the legal system inadvertently or subversively. They could produce
innovations that threatened the continuity that overt or official law reform strategies
sought to safeguard. As we saw in chapter one, Elizabeth’s Lord Keepers and
Chancellors regularly advised parliaments not to make new laws but to amend and
abridge the old, because the subject and the magistrate alike were overburdened by the
body of statute law. Most of the time, the trick to governing was to make existing law
work for the commonwealth. Government policy and administration was largely a matter
of selecting and emphasizing particular statutes to construct a pattern for society to be
disseminated via tiers of officials to localities throughout the country. The general pardon
was one part of this gene therapy for the commonwealth that regulated the expression or
suppression of aspects of the law to achieve the greatest possible justice.

If the average subject could benefit from a pardon, the Gray’s Inn revellers, who
mounted an entire mock Court to mirror the actual English one and who would constantly
negotiate the fine line between impressive display and ignominious conduct, could
certainly use a little wiggle room. Done right, the festivities would showcase a mastery of

30 Dean 58, 59; SR 4.1010-14.
31 Kesselring 62, 63.
32 Dean 61.
33 See Kesselring 72-3.
legal-political forms and discourse that the revellers were able to wield for their sport—a grand, collaborative embodiment of *sprezzatura*. As a Court within the English Court, structured like a play within a play and like nested Matryoshka dolls, the festivities advertised the revellers’ ability to fit themselves into the system and roles of central power relations in a blatantly literal way. As substitutes for legal-political substitutes, as representations of representatives, they advertised quite directly their finesse as officials in a culture “predispos[ed] to delegate authority.” Done wrong, the festivities would insult officials and the Queen’s Court, cause disorder at the Inns and in affiliated London communities, and damage the Inn’s reputation in a particularly memorable fashion. A regulatory device to impose parameters for the revelry, to manage and monitor the performances, seems a matter of self-interest. As it migrates to Gray’s Inn Hall, however, the form of the general pardon explodes with excesses that invert and subvert its socio-political and regulatory utility. The parodic version exaggerates the inherently contradictory and silly aspects of a legal instrument twisted for prerogative and political ends, for improvised uses that the statute form was not originally designed to accommodate. The revels thus dramatize a formal or structural threshold within the system, illuminating the limits of the law’s flexibility and the problematics of the law’s instrumentality.

If the rhetoric of the real statute expressed the hope that the Queen’s clemency would inspire the better observance of and obedience to her laws, the substantially enlarged list of pardonable offences and the tone of linguistic and conceptual playfulness in the Prince of Purpoole’s statute seemingly establishes a culture of permissiveness. Organized by alliteration and rhyme more frequently than by categories of offence, the expanded list parodies the rhetorical flare-ups evident in the speeches of statesmen as well-respected as Nicholas Bacon who, in his first closing speech to parliament, enlarged the role of magistrates in the following terms: “ye are to forsee the avoyding of all manner of frayes, forces, ryottes and rowtes, and the discoveringe and revealeinge in tyme

34 Hindle 5.
of all manner of conspiracies, confederacies and conventicles.”

As Philip J. Finkelpearl writes, the revellers’ pardon was “a gigantic, self-defeating ‘amplificatio,’ a parody of the attempt of legal documents to embrace all categories and possibilities.” Thus, alongside real and serious crimes are placed near-crimes and non-crimes: “Frauds” are grouped with “Fictions, Fractions, Fashions,” and “Fancies”; “Conspiracies” with “Concavities” (15). “Suppositions” are forgiven alongside “Suppositaries” (15), recalling a very old joke from George Gascoigne’s *Supposes*, played at the Gray’s Inn Candlemas revels some thirty years earlier. The lack of differentiation or the linguistic similarity among major, minor, and imagined infractions suggests minor offences (of decorum and of law) are on a continuum with major crimes. It is a slippery slope from the one to the other greased by excesses of legal rhetoric or by a law structured by wordplay. The linguistic ordering principle of the Prince’s law is itself exposed as an instrument that enables the state’s aggressive sprawl into the subject’s life. At the same time that the statute’s rhetorical excesses apparently establish a radical degree of permissiveness, that is, they also implicate the pardon’s far-reaching application to “All, and all manner of” subjects and their activities. No aspect of public or personal behaviour—including one’s “Washings” and “Clippings”—was conceivably or actually beyond the reach of legal and government regulation. The extensive guilt of the general public is thus a function of the extensive

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35 *PPE* 1:49.

36 Francis Bacon was quite articulate about the self-defeating work of legal verbosity: “The loquacity and prolixity used in the drawing up of laws I do not approve. For it does not at all secure its intention and purpose; but rather the reverse. For while it tries to enumerate and express every particular case in apposite and appropriate words, expecting greater certainty thereby; it does in fact raise a number of questions about words; so that, by reason of the noise and strife of words, the interpretation which proceeds according to the meaning of the law (which is juster and sounder kind of interpretation) is rendered more difficult” (quoted in Donald Veall, *The Popular Movement for Law Reform, 1640-1660*, [Oxford: Clarendon P, 1970] 64).

37 Finkelpearl 42.
penetration of the law. The mock statute overwrites the law only to strategically illuminate its comprehensive jurisdiction over social life and personal conduct.

This list of pardonable offences is then followed by a number of satiric exceptions that brings into focus the complexities of statute lawmaking in general and the distinct structural contradictions of a statute of general pardon in particular. In his (serious, technical) Reading of the Statute of Uses, presented to the same community of Gray’s Inn in 1600, Francis Bacon divided statutes into three parts:

The statute consisteth… upon a preamble, the body of the law, and certain savings and provisos. The preamble setteth forth the inconvenience; the body of the law giveth the remedy; and the savings and provisos take away the inconveniences of the remedy.  

Reform in the shape of “provisoes” was built into the lawmaking process to avert foreseeable disruptions attendant upon necessary innovations:

For new laws are like the apothecaries’ drugs; though they remedy the disease, yet they trouble the body: and therefore they use to correct them with spices. So it is not possible to find a remedy for any mischief in the commonwealth, but it will beget some new mischief; and therefore they spice their laws with provisos to correct and qualify them.

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39 Bacon, Reading 417-418.
Bacon’s elaboration on “provisoes” is a product of his concern with legal reform and with method—legal, rhetorical, philosophical, and scientific. In the Preface to *The Maximes of the Law* (contemporaneous with the revels) he would explain that his novel method for the “cleere and perspicuous exposition” of legal rules entailed “opening them with distinctions.” 40 A few years later in *The Advancement of Learning*, he would criticize the traditional form of rhetorical induction, “For to conclude upon an enumeration of particulars without instance contradictory is no conclusion, but a conjecture.” 41 As Daniel Coquillette writes, the “final step of ‘negation’ or ‘definition by exception’ [that] was to become an important part of Bacon’s philosophical method” was already present in his early legal works. 42 In fact, here we find a legal source for it within the reforming and refining mechanism of the statute proviso. The statutes are larded with hypothetical clauses beginning with “Provided that” and “Provided alwaies…” These conditional statements can be found in the general pardon as well, but they are overshadowed there by the list of “exceptions” through which synonym the statutory proviso functions expressly as negative definition. In the 1594-5 revels, the imaginary statute multiplies exceptions until the form collapses upon itself, inverting and reversing its apparent intention and exposing the problematics of the crown’s improvisation on a legal form that cannot accommodate a general pardon without contraction.

The doubly corrective method of normal statute form—of remedy and proviso—was compounded in the general pardon. To begin with, the statute was an assertion of the sovereign’s prerogative power, that is, of her authority to designate the exception through clemency; and the pardon was one enormous exception, ostensibly a universal liberation from the rule of law. Thus, the statute’s provisos constituted exceptions to an exception.

40 *Maximes* sig. B4v.


42 Coquillette 41. On the relationship between Bacon’s legal practice, statecraft, and natural philosophy, see Martin and Coquillette. By contrast, see the work of Markku Peltonen who argues that the various projects that captured Bacon’s attention cannot be synthesized, as recent studies have sought to do: “Politics and Science: Francis Bacon and the True Greatness of States,” *The Historical Journal* 35.2 (1992): 279-305.
This form is extra silly in the imaginary pardon when the parodic exceptions are further qualified: “Except, All such Persons as shall shoot in any Hand-Gun, Demy-Hag, or Hag-Butt, either Half-shot, or Bullet, at any Fowl, Bird, or Beast; either at any Deer, Red or Fallow, or any other thing or things, except it be a Butt set, laid, or raised in some convenient place, fit for the same purpose” (18). Taken in a general sense, the provision amounts to a caution not to shoot unless you have a good shot. Taken in a technical or legal sense, the provision warns subjects that they are prohibited from hunting, unless of course it is legal. The multiplying legal reversals participate in the same principle of comic complication that propels Shakespeare’s cross-dressing heroines who are men playing women playing men. While Shakespeare’s cross-dressings illuminate and exploit an initial reversal necessitated by the laws of the theatre, the Gray’s Inn revellers illuminate and exploit the reversals that structure the statute. They expose and mock its inversion of a basic legal intuition about the nature of rules inherent in the very idea of a general pardon from the rule of law. They expose and mock, too, the inversion of a legal and commonplace intuition about the nature of clemency effected by a general pardon that was, in reality, heavily restrictive.

Though the real provisos were supposed to qualify and refine new or amended legislation, the fictive exceptions ultimately undo the apparent magnanimity of Purpoole’s statute. This is vividly evident in the last exception. While “all, and all manner of Treasons, Contempts, [and] Offences” are initially forgiven, the Prince’s Solicitor concludes with a bald negation in which, “All, and all manner of Offences, Pains, Penalties, Mulets, Fines, Amerciaments and Punishments, Corporal and Pecuniary, whatsoever” are finally excluded from the pardon (19). Once the reader gets past this blatant about face in the statute’s intention and function, a more technical sleight of hand becomes evident. Whereas the beginning of the statute emphasizes the pardon of offences, the final exception emphasizes the enforcement of punishments, particularly (though not exclusively) the pecuniary kind. If the real statute is presented as a generous release from the “burthen” of “greate Penaltyes and Forfeytures” inflicted for inadvertent infractions, here in the Prince of Purpoole’s general pardon the penalties for those infractions still apply and with them—and this is the joke—the crown’s income from the judicial process. K. J. Kesselring explains that Henry VIII’s first general pardon
proclamation was intended to allay public resentment inspired by the perception that Henry VII and his chief financial officers had exploited legal processes for profit at the expense of his subjects. They “freed people of the fines that potentially attended a host of business transactions and from the costs of often protracted litigation on these matters.” They “provided appropriate expressions of gratitude for taxation because the king willingly forfeited the financial proceeds of his justice.”

While all the Tudor monarchs enhanced their public image as merciful and magnanimous rulers through the general pardon, Elizabeth turned what had been an occasional measure into a regular feature of parliament and thus into a constituent component of the spectacle of her royal justice. In legal writings and in his first masque-like device, Bacon links the Queen’s virtue as a sovereign to the protection she provided subjects from snaring statutes and extortionate penalties. In “Of Tribute; or, Giving That Which Is Due (1592), the speaker in “Praise of His Sovereign” addresses, among many other matters of state, the Queen’s moderate methods of raising revenue: “[t]here shall you find… no extremities taken of forfeitures and penal laws, a means used by some kings for the gathering of great treasures…. Yea further, there have been… a course taken by her own direction for the repeal of all heavy and snaring laws.” In his Dedication to the Queen in The Maximes of the Law, he lauds the “purpose for these many yeares, infused into your Maiesties breast, to enter into a generall amendment of the states of your lawes,” including the removal of “the swaruing penalties that lye vpon many subiects.” This project is especially admirable, “of highest merit and beneficence towards the subiect, that euer entred into the minde of any King, greater than wee can imagine, because the imperfections and dangers of the lawes are couered vnder the

43 Kesselring 60.
44 Kesselring 61.
45 Kesselring 67.
clemency and excellent temper of your Maisties gournment.”\cite{Bacon:1627}

In the absence of systemic reform, the Queen’s mercy provided a necessary supplement to the law.

The real general pardon embodied “an act of grace, a gift from the royal prerogative”\cite{Dean:1576} for the benefit of her subjects whose welfare was threatened by the postlapsarian system of man’s laws. The fictional statute instead accentuates and extends the exploitative potential of state or crown manipulations of legal forms and processes. It uncovers institutional opportunities for extorting subjects in the very device used to publicly compensate for the law’s imperfections. The revellers’ reconstruction of the general pardon parodies the rhetoric, complications, and contradictions of an accepted improvisation of power by which the traditional statute form was manipulated to accommodate political ends and royal self-fashioning. Their critique of the legal-political form was palatable because in the first instance it rebounded upon the performers themselves and only subsequently upon their audiences of state and legal dignitaries. Their deforming representation of the legislative process was tempered not only by the festive context but by the self-parody effected through the law students’ ambitious assumption of the offices of the state and the law. If the Prince’s legal forms were faulty, that is, the performers were to blame as the law’s inventors; if the Prince’s law was badly executed, the performers were to blame as mock officeholders. By mocking the forms of a system they personally helped fictionalize—by deliberately emphasizing error in their performance—the Gray’s Inn members effectively highlight the unavoidable creative dimension of legal-political administration that resulted from the contribution of individuals interpreting, reproducing, reforming, and executing legal forms. The compressed mock parliament also allowed the revellers to showcase a sophisticated capacity to isolate (through targeted jokes) the problematics of lawmaking which, in the case of their imitative spectacle, was an act of law remaking or re-formation. Underlying their recreation and performance of the general pardon statute was the revellers’ skill in statute interpretation, presumably polished through attendance at (or delivery of) the

\begin{thebibliography}{99}
\bibitem{Bacon:1627} Bacon, \textit{Maximes} sig. A4\textsuperscript{f}.
\bibitem{Dean:1576} Dean 56.
\end{thebibliography}
Inn’s readings, the lecture series on statutes given by members advancing in the legal profession and in the governance of the Inn itself.

2 Vile Confederates in a Culture of Errors

The general pardon crowned an evening that, we are told, “increased the Expectation of those things that were to ensue; insomuch that the common Report amongst all Strangers was so great, and the Expectation of our Proceedings so extraordinary, that it urged us to take upon us a greater State than was at the first intended” (20). On the very next “grand night,” however, those increased expectations were dashed when overcrowding in Gray’s Inn Hall disrupted the revellers’ plans, causing the delegation from the Inner Temple to leave in a huff and delaying the performance of *The Comedy of Errors*. The mock trial that ensued opened the Prince’s Court up to further criticism: instead of discovering the culprit responsible for The Night of Errors, the trial shines a light on the universal incompetence of Purpoole’s servants. While the general pardon had emphasized the problematics of lawmaking, the mock trial brings the execution of the law and the character of its officers into question. The general pardon statute, the Shakespeare play, and the mock trial that follows it are all preoccupied with a legal culture of error that comes into view when legal forms and practices are manipulated to perform functions they were not originally designed for, or when legal resources are misapplied. Following the revealing antics of the trial, Francis Bacon’s orations on council promise to put the revellers back on track by directly engaging with the question of good government. While the Prince demands the reform of officeholders by the end of the trial, Bacon’s fifth orator demands that reform begin with the Prince himself, who must institute policies to “redress all” ills in the commonwealth through the operations of state and legal reform.

Compared to “Plautus his Menechmus” by the narrator of the *Gesta Grayorum*, *The Comedy of Errors* constitutes Shakespeare’s nearest imitation of Roman New Comedy’s intrigue plot. Unlike its New Comedy model, however, *The Comedy of Errors* lacks an intriguer or intriguers whose scheming ignites and sustains the action of the play. Instead, characters’ probable but mistaken inferences contribute to the plot’s comic complications. This adaptation is central to Lorna Hutson’s reading of the play and the
“association between judicial process and dramatic mimesis or dramatic illusion” that she locates in late sixteenth-century drama.⁴⁹ Using the “processes of suspicious imagination and detection” derived from the forensic rhetorical tradition firmly embedded in Elizabethan legal and popular culture, Shakespeare’s characters go about reconstructing the most probable—the most believably realistic and therefore mimetic—versions of events, motives, and characters.⁵⁰ The intrigue plot, that is, “provokes the work of detection which in turn constitutes character as its effect.”⁵¹ Without a scheming villain, however, Shakespeare’s characters’ forensic efforts to evaluate evidence and to reconstruct past events and personal motives create a form of “paranoia”: the “conspiracies and plots imagined by the ‘victim’… can be understood as the turning inward of intrigue.”⁵² Put another way, characters are both constituted and deceived by their own means of establishing facts, intentions, and identities. The airing of accusations and evidence that concludes the play, then, brings into question the integrity and trustworthiness of speakers as narrators and the reliability of forensic enquiry as a mode of discovery.

While Hutson’s argument focuses on the representation of individuals through forensic rhetoric, here I would like to examine the way in which the fictional uses of legal processes in both The Comedy of Errors and in the revellers’ mock trial expose a general culture of error. The figure of the individual intriguer—the basis of the New Comedy plot and of the mock trial—is supplanted by conspiracy. Like the general pardon, the legal inquiries and processes help universalize guilt. Unlike the general pardon, however, the guilt is not expunged: its revelation is a source of communal shame.

The absence of an arch villain does not prevent Shakespeare’s characters from channeling the violent energies generated by the plot’s confusions through the judicial

⁴⁹ Hutson 165.
⁵⁰ Hutson 157.
⁵¹ Hutson 155.
⁵² Hutson 156.
and forensic processes intended to discover individual culpability. In the absence of an arch villain to confront, Antipholus of Ephesus directs the rage sparked by his confusion and mistreatment toward a minor character who is unequivocally an unsuccessful scam artist. Dr. Pinch is introduced as a conjuror, and at Adriana’s request he attempts to exorcise the demons of her supposedly possessed husband. Pinch may not be the villain masterminding the plot, but he is the pathetic scoundrel within reach. Antipholus is excited enough to accuse him in the Duke’s presence, even if most of the fault seems to lie in Pinch’s face. Recounting his version of the street scene in which he and Dromio were captured and bound by family and friends, Antipholus explains:

By the way, we met my wife, her sister, and a rabble more
Of vile confederates. Along with them
They brought one Pinch, a hungry lean-faced villain,
A mere anatomy, a mountebank,
A threadbare juggler, and a fortune-teller,
A needy, hollow-eyed, sharp-looking wretch,
A living dead man. This pernicious slave,
Forsooth, took on him as a conjuror,
And gazing in mine eyes, feeling my pulse,
And with no face, as ‘twere, outfacing me,
Cries out I was possessed. Then all together
They fell upon me, bound me, bore me thence. (5.1.236-247)

The description of “vile confederates” widens the connotations of “conjure” to include not only supernatural invocation, deceptive illusion, and (by extension, metaphorically) stagecraft, but also to conspire. Many of the medieval and early-modern examples offered in the OED refer to rebellions, insurrections, and usurpations. Thus the activity of conjuring not only has parallels with dramatic mimesis in which absent things are

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made present, \textsuperscript{54} but also with plotting. Pinch’s conjuring takes place in the context of the conspiracy to capture and cure the mad Antipholus and Dromio—perhaps the only conscious act of plotting in the play. Antipholus’s own description of the “threadbare juggler,” however, reveals Pinch to be manifestly, absurdly inadequate to play the part of the masterful intriguer or plotter. His unsuccessful supernatural conjuring and the ludicrous charge against his face exonerate Pinch at the same time that they put the greater communal guilt of his “vile confederates” into relief, who “all together… fell upon me, bound me, bore me thence.”

Pinch’s extraordinary role as the accused here, in comparison with his marginal role in conjuring anything, is a scenario repeated in the revellers’ prosecution of a “Sorcerer or Conjurer” charged with the “confused Inconvenience” of “The Night of Errors.” The judicial processes for identifying individual fault are, in Shakespeare’s play and in the parodic revels, harnessed and inverted to expose a general culture of erroneous practices. What comes to light in the mock trial in Gray’s Inn Hall is an overabundance of conjuring and plotting, of conjurors and schemers whose incompetent execution of office threatens the honour of the King’s Court and the legitimacy of his legal system. Like \textit{The Comedy of Errors}, there is no single intriguer to be discovered despite the fact that a sorcerer is formally charged. By the end of the trial, everyone \textit{except the defendant} is charged with misconduct in office.

The accusations laid against the revellers’ prisoner immediately became a vehicle for highlighting the incompetent job performance of the Prince’s officeholders. “Under Colour of these Proceedings,” the narrator explains,

\begin{quote}
were laid open to the View, all the Causes of note that were committed by our chiefest States-men in the Government of our principality; and every Officer in any great Place, that had not performed his Duty in that Service, was taxed hereby, from the highest to the lowest, not sparing the Guard
\end{quote}

The prisoner’s defense involved a counter-accusation against his prosecutors that further implicated the Prince’s legal servants and law enforcers. His petition for justice “was a Disclosure of all the Knavery and Juggling of the Attorney and Sollicitor” used in their case against the so-called sorcerer. It compared the artifice of the revels and the play performance to legal conjuring, or technical and rhetorical sleights of hand: the Night of Errors was nothing compared to “all this Law-stuff” of the professionals who set out to “blind the Eyes of his Excellency, and all the honourable Court” (23-4). In the counter-charges the Courtroom itself thus becomes the scene of new theatrical and rhetorical crimes that displace the charges laid against the prisoner who was, in his own defense, “a poor harmless Wretch” (24). The “very Fault,” the prisoner’s petition boldly claims, “was in the Negligence of the Prince’s Council, Lords and Officers of his State, that had the Rule of the Roast, and by whose Advice the Commonwealth was so soundly mis-governed” (24). In both the prosecution and the defense, then, “the Prince and states-men” were “pinched on both sides, by both the Parties” (24). The Prince, “not a little offended at the great Liberty that they had taken, in censuring so far of His Highnes’s Government,” released the prisoner and condemned to the Tower (i.e. the stocks) the Attorney, the Sollicitor, the Master of the Requests, and, on the defense’s side, “those that were acquainted with the Draught of the Petition” (24).

The trial allowed the role-players to display their facility for legal “Knavery and Juggling” as well as their ability to identify and reform such corruptions in themselves and others. It failed, however, in its objective of restoring lost honour to the revels. Instead, its illumination of a general culture of error shifted the focus of the proceedings from the issue of the facts of the case to the issue of the execution of law and government. When the revellers were finally “wearied with mocking thus at our own Follies” through law sports, the Prince’s Council was “reformed” and replaced by “some graver Concepts” (24). These new wits, presumably, took center-stage in the device on statecraft prepared by Francis Bacon, a member of Gray’s Inn since 1579. The implicit question of good government that had shadowed the entire progress of the mock Royal Court was finally directly addressed in orations that showcased the rhetorical and
political talents of the Prince’s new top advisors. In the speech of his fifth counselor, Bacon succinctly articulates his vision of legal and social reform that was informed not only by his legal training but by his experience as a member of parliament.

3  “Virtue and a Gracious Government”

Bacon’s contribution of orations to the revels dramatized a traditional subject for and exercise in political debate. As the lawyer and publisher John Rastell wrote some eighty years earlier in *Le livre des assises et pleas del’ corone*, a text published multiple times throughout the sixteenth and seventeenth centuries, “wherein the Common-weal standeth, and what thing it should be, there is, and hath been ever, as well among Philosophers, Orators, Poets, as other learned men great alteration, debate and argument.” In his own version of the debate, Rastell compares the respective merits of policies to increase riches, power, honour, or good laws. He defines the “Common-weal” or the common good as “that thing that is of it self meerly [entirely] good.” Neither “Riches, Power, nor Honour,” however, “be very perfect good things only of themselves: because… they cannot be attained without causing of evil things to other persons.” “[G]ood and reasonable Ordinances and Laws,” on the other hand, “lead and direct men to use good manners and conditions… and vertuously to live among their neighbours in continual peace and tranquility; in firm concord and agreement, in an unity of will and mind; and in sincere and pure love and charity.” Rastell thus concludes that “because Laws of themselves be good, and so great good cometh by them: The common-weal by all reason must rather stand in augmenting and preferring of Laws.” This perspective naturally augments, too, the prestige of legal authorities and officers in the state: “so they that exercise and busie themselves in making Laws, in ordering or writing of Laws, in learning of Laws, or teaching Laws; or in just and true executing of Laws, be those persons that greatly increase and multiply the Common-weal.”

Bacon’s device similarly makes the strongest case for the law and for law reform as the central focus of government, but his route to this conclusion departs from tradition. He leaves Rastell’s logical derivation of the law’s goodness behind. Instead, the law’s supremacy is arrived at through a form of induction and a process of elimination. Two characteristic features of Bacon’s later thinking about scientific method can be found here in embryo in this early rhetorical exercise.\(^{56}\) The entire debate is framed as a response to the Prince’s inquiry into the best direction for the state. Inviting his new Privy Counselors to speak, he explains,

we mean not to do as many Princes use, which conclude of their Ends out of their own Honours\(^ {57}\) and take Counsel only of the Means (abusing, for the most part, the Wisdom of their Counsellors) [to] set them the right way to the wrong place. But We, desirous to leave as little to Chance or Humour as may be, do now give you liberty and warrant to set before Us, to what Port, as it were, the Ship of Our Government should be bounden.\(^ {32}\)\(^ {58}\)

Deliberately setting himself apart from ethically and intellectually shallow rulers, the Prince announces a sincere intent to be informed and to generate new insight through the exercise. He is not, he says, asking for advice on “any particular Action of Our State, but in general, of the Scope and End whereunto you think it most for our Honour and the Happiness of Our State that Our Government [should] be rightly bent and directed” (32). The speeches are arranged to represent a process of elimination as each orator criticizes and displaces the last. As we saw earlier in reference to the statute form, elimination or exclusion was an important part of Bacon’s method. In his Reading on the Statute of Uses, Bacon begins by “considering, first, what [a use] is not; and then what it is; for it is

\(^{56}\)“Early” is a relative term: Bacon was in his thirties when he wrote this device.

\(^{57}\)“Humours” according to Vickers’ edition of the device in Francis Bacon: A Critical Edition of the Major Works (52).

\(^{58}\)Bacon would repeat part of this sentiment in “Of Empire,” Essays 1612: “For it is the Solecism of power, to thinke to command the ende, and yet not to endure the meane” (55).
the nature of all human science and knowledge to proceed most safely by negative and exclusion, to what is affirmative and inclusive."

Here in the Christmas revels, the six speeches that follow the Prince’s invitation defend “the Exercise of War;” “the Study of Philosophy;” “Eternizement and Fame by Buildings and Foundations;” “Absoluteness of State and Treasure;” “Virtue and a gracious Government;” and finally, “Pastimes and Sports.” The policies advocated by the first four speakers are subordinated to or completely discounted by what are presented as the distinctly virtuous priorities of the fifth, while all serious plans for the state are brushed aside in response to the sixth speaker’s plea for dancing, which indeed follows the orations.

The fifth counselor’s speech on good government is a sustained plea for the amendment of royal servants and for the reform and intensification of the existing machinery of the law and the state: this is “the making of golden times” and the “only [fit] and worthy ends of your Grace’s virtuous reign” (39). The Prince is to start with a self-scan, though the language can be taken to mean the mental life of the monarch himself or the condition of the country: “assure your self of an inward Peace, that the Storms without do not disturb any of your Repairers of State within” (39). The counselor then instructs the Prince to turn his gaze outward (if it is his mental life that has been scrutinized) to examine the politic operations of the statesmen and Courtiers closest to him:

Beginning with your Seat of State, take order that the Fault of your Greatness [great ones] do not rebound upon yourself; have care that your Intelligence, which is the Light of your State, do not go out or burn dim or obscure; advance Men of Virtue and not of Mercenary Minds; repress all Faction, be it either malign or violent. (39)

An effective intelligence system is here a precondition for the reform and execution of justice. Once he has confirmed the integrity and prudence of those servants who present
the most direct threat to sovereign and state, the Prince is then to extend his gaze farther, toward the law and order of the realm. Much of the advice of this oration overlaps with the parliamentary speeches examined in chapter one, and it is arranged in the same order. The prince must first perfect the laws and then scrutinize the execution of justice:

Then look into the State of your Laws and Justice of your Land; purge out multiplicity of Laws, clear the incertainty of them, repeal those that are snaring, and prize [press] the execution of those that are wholesome and necessary; define the Jurisdiction of your Courts, reprise [repress] all suits and Vexations, all causeless Delays and fraudulent Shifts and Devices, and reform all such Abuses of Right and Justice; assist the Ministers thereof, punish severely all Extortions and Exactions of Officers, all Corruptions in Trials and Sentences of Judgment. (39-40)

Whereas the third counselor advises the creation of “new Institutions of Orders, Ordinances and Societies” (36) that could result in “Innovation and Alteration” and a “very turbulent and unsettled” reign (37), and whereas the fourth counselor had advised the Prince to “conquer here at home… the great Reverence and Formalities given to your Laws and Customs, in derogation of your absolute Prerogatives” (38), the fifth counselor argues instead for a comprehensive reform of the law that would then be “press[ed]” into just execution. This policy alone will make “a good and virtuous Prince” (39). As James Spedding explains, the fifth counselor’s speech consists in “an enumeration of those very reforms in state and government which throughout his life [Bacon] was most anxious to see realized.”61 The thoughts on law reform that Bacon would begin to articulate in works and speeches from the 1590s he would expand on throughout the rest of his career.

In Rastell’s argument, the “good and reasonable Ordinances and Laws” that “lead and direct men to use good manners and conditions” are compared to “the bridle and spur [that] directeth and constraineth the Horse swiftly and well to perform his journey.” Laws put constraints on nature that enable man to live socially, “in continual peace and

tranquility… which thing duely to perform is not so given to mankind immediately and only by nature, as it is given to all other creatures.”  

In *Measure for Measure*, the Duke of Vienna’s use of the same horse metaphor implicates the coercive or oppressive work of the law in controlling man’s unruly nature, a sense that is only latent in Rastell’s depiction of social “peace and tranquility”: “strict statutes and most biting laws” are “The needful bits and curbs to headstrong weeds” (1.3.19-20). In either example, however, the “bridle and spur” suggest intermittent measures, responses taken once the horse has strayed; they are not permanent blinkers that act continually and preventatively. In addition to the direction and coercion provided by the law, “continual peace and tranquility” also require the subject’s ongoing cooperation which had to be self-motivated. Bacon, the parliamentarian, understood social harmony or order as a practice enabled by social, economic, and political conditions that produced such a subject.

“Yet when you have done all this,” the fifth counselor continues, after describing the extensive work of systemic law reform, “think not that the Bridle and Spur will make the Horse to go alone without Time and Custom” (40). Time and custom are the conditions for creating habitual behaviour; they are essential to effective self-disciplining.

In his essay “Of custom and Education,” Bacon explains that deeds are the result of the way men have been accustomed to acting; men’s thoughts and speeches are only an imperfect guide to what they will actually do. Custom “is the principal Magistrate of mans life” because it is an internalized one. It is, moreover, “most perfect when it beginneth in young yeeres This wee call Education: which is nothing but an early custome.” While the law may provide direction and correction, the subject still requires a self-regulating habit of mind that, the fifth counselor from the Gray’s Inn device

62 Rastell, “Prologus.”

63 As the Norton editor notes, “[s]ince ‘bits and curbs’ are parts of bridles, many editions emend ‘weeds’ to ‘jades’ or ‘steeds,’ but the *Oxford English Dictionary* records several instances of ‘weed’ as a slang term for a worthless horse” (2035).

explains, is encouraged by good education and the social and economic conditions and institutions traditionally supported by acts of parliament:

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Trust not to your laws for correcting the times, but give all strength to
good education…. Then when you have confirmed the noble and vital
parts of your realm of state, proceed to take care of the blood and flesh and
good habit of the body. Remedy all decays of population, make provision
for the poor, remove all stops in traffic… redress all. (40)
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Bacon would repeatedly discuss schemes to improve the state’s surveillance system through the efforts of legal-political officers (from informers to Assize judges), but here in the fifth oration he admits law and order’s dependence on a willing subject, coaxed into royal and government support through policies that addressed broadly held, inclusive notions of the common good.  

The fifth counselor’s analysis of the ills of the commonwealth comes to a screeching halt after the excited imperative, “redress all”:

“But whither do I run, exceeding the bounds of that perhaps I am now demanded?” The speaker recalls his place in the Presence and returns to a more restrained and epideictic mode before his argument for government action can reignite the revellers’ culture of error once again. The speaker, in other words, dramatizes rhetorical self-restraint that mimics the kind of self-regulating subject, officer, and counselor that the state requires.

4 Lawyers’ Labour’s Lost and Won

The third counselor in the Gray’s Inn orations advises the Prince’s “Eternizement and Fame by Buildings and Foundations.” Bacon raises and rejects this argument a second time in the later tract, “An Offer to King James of A Digest to be Made of the Laws of England.” In so doing, he collapses the distinction made above between the socio-political contribution of the law’s correction and the education in virtuous action:

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65 Nicholas Bacon would comment in a speech from Elizabeth’s second parliament, “yt is infallible that a thinge don unconstrayned ys much better then when they be constrayned thereunto” (PPE 1:111). Voluntary service is examined in the next chapter on John Donne’s “Satyre V.”
Surely the better works of perpetuity in Princes are those, that wash the inside of the cup; such as are foundations of colleges and lectures for learning and education of youth; likewise foundations and institutions of orders and fraternities, for nobleness, enterprise, and obedience, and the like. But yet these also are but like plantations of orchards and gardens, in plots and spots of ground here and there; they do not till over the whole kingdom, and make it fruitful, as doth the establishing of good laws and ordinances; which makes a whole nation to be as a well-ordered college or foundation.66

Or Inn of Court. Paul Raffield describes the Inns as “self-governing legal communit[ies] [that] gave physical expression to a Utopian ideal: an autonomous state governed by the equitable principles of common law ideology.”67 The analogy between college and kingdom was literalized and dramatized during their seasonal or holiday revels, the grand productions in which a mock king and Court were established and all offices of state were played by law students and other inn members. Through the revels and other exercises, generations of Englishmen were trained in legal-political practice and the regulatory, reforming operations of governance. Members developed an internal magistrate that was externalized through their revels, exhibited to the legal-political elite. If the primary function of the state was social, political, and legal repair work, epitomized by Bacon’s directive to “redress all,” then the revellers’ ability to overcome disorders in their entertainments illustrated their ability to be effective legal officers and statesmen. Their performance of critique and self-correction demonstrated the independence


67 Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558-1660* (Cambridge: Cambridge UP, 2004) 1. Raffield reads the revels as a political statement at the end of Elizabeth’s reign that pits common law ideology against absolutist royal ideology. For an account that examines the political use of revels at the beginning of Elizabeth’s reign to debate matters including the Queen’s marriage and the succession question, see Marie Axton, *The Queen’s Two Bodies: Drama and the Elizabethan Succession* (London: Royal Historical Society, 1977).
required for the effective execution of office and the skills in perfecting or reforming that were required for governing others.

Performed before “a most honourable Presence of Great and Noble Personages” including “the Right Honourable the Lord Keeper,” Francis Bacon’s eloquent orations contributed to an evening that restored credit to the Gray’s Inn revellers. As the narrator relates,

The Performance of which Nights work being very carefully and orderly handled, did so delight and please the Nobles, and the other Auditory, that thereby *Grays-Inn* did not only recover their lost Credit, and quite take away all the Disgrace that the former Night of Errors had incurred; but got instead thereof, so great Honour and Applause, as either the good Reports of our honourable Friends that were present could yield, or we our selves desire. (42)

The narrator charts the reception of the revellers’ devices—estimations of credit won and lost—throughout the *Gesta Grayorum*. We have already seen how the first grand night that presented the mock parliament “increased the Expectation of those things that were to ensue,” such that the revellers were encouraged “to take upon us a greater State than was at the first intended” (20). This becomes a fault in the mock trial. The prisoner is accused of, among other things, having “caused the Stage to be built, and Scaffolds to be reared to the top of the House, to increase Expectation” (23). While Bacon’s orations help restore and augment the honour of Gray’s Inn after the “mischanceful accident” of the Night of Errors that “was a great Discouragement and Disparagement to our whole State” (22), it is the explanation offered before the concluding masque presented at Queen Elizabeth’s Court that suggests a calculated shift in the participants’ approach to their entertainments: “the things that were then performed before Her Majesty, were rather to discharge our own Promise, than to satisfie the Expectation of others” (57). Having regained their honour the revellers now play it safe by checking their theatrical and political *ambitions* and concentrating instead on the execution of *duty*:

In that regard, the Plot of those Sports were but small; the rather, that Tediumness might be avoided, and confused Disorder, a thing which
might easily happen in a multitude of Actions; the Sports therefore consisted of a Mask, and some Speeches, that were as Introductions to it.

(57)

The extended pattern of performance error and correction over the course of the Christmas revels culminates in this final expression of theatrical and political decorum. From the narrator’s perspective, the perfect, uneventful execution of the masque functions as evidence of the reformation of the state of Purpoole.
Chapter 3
“To know and weed out”: John Donne’s “Satyre V”

Despite his reputation as the exemplary Inns-of-Court wit, few studies have been devoted to John Donne and the law, and even fewer to his fifth and final satire on law reform.\(^1\) Critical tradition has largely followed Wesley Milgate’s lead in dismissing “Satyre V” as “the weakest” in the series, as it has “the air of a rather hastily-put-together occasional piece.”\(^2\) The occasional nature of the poem, however, should attract rather than repel contemporary critical interest. Composed while Donne was a legal secretary for Sir Thomas Egerton in the late 1590s, “Satyre V” reverberates with the complex legal, political, and literary cultures that circulated ceaselessly through the halls and chambers of York House, the Lord Keeper’s residence. The poem not only directly addresses Egerton, but its theme of legal abuse is an appeal to the sensibility of the Lord Keeper who was well-known for his judicial integrity and his commitment to law reform.\(^3\) Both

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\(^3\) In an early seventeenth-century manuscript entitled “Memorialles for Judicature,” Egerton outlines four major areas of the law in need of reform: “the mischievous growth of litigation in society, the increased costs of the courts, the excessive fees of serjeants and attorneys, and the proliferation of dishonest and inexpert men in the law profession” (Louis A. Knafla, *Law and Politics in Jacobean England: The Tracts of Lord Chancellor Ellesmere* [Cambridge: Cambridge UP, 1977] 108). All of these developments in late Elizabethan and early Jacobean legal culture are alluded to in Donne’s final satire. For an extensive account
M. Thomas Hester and Annabel Patterson place “Satyre V” in the tradition of advice literature and argue that Donne equates his role as satirist with his role as legal advisor or counselor. While he praises Egerton, however, Donne does not directly advise him in the poem. Nor historically was Donne a legal counselor to the Lord Keeper: Egerton had much more learned and experienced men at his disposal—men like Francis Bacon—for that service. “Employed as one of the Lord Keeper’s three working secretaries,” Louis A. Knafla explains, “[Donne’s] duties would have included scheduling, meeting and greeting guests, legal research, and drafting memoranda for the wide range of the Lord Keeper’s public, rather than private, businesses.” While these activities may seem humble in comparison with his ambition, they nevertheless would have tested Donne’s ability to negotiate multiple legal-political spheres as he attempted to keep pace with the highest legal-political minister in the country. The following chapter unpacks the content, style, and logic of “Satyre V” by exploring the influence of legal thought and practice, parliamentary thought and practice, and secretarial service, all of which mediated Donne’s relationship with Egerton.

In “Satyre V,” the law’s imperfections are a source of legal-political excess—both unjust and just. Donne reworks conventional political tropes to portray officers and suitors who exploit the law for illicit gain as the excremental extremities of the law. Their unjust excesses contrast with the just excesses of legal equity through which the reason or spirit of the law was extended through likeness to address novel cases. The unjust excremental extremities of the law likewise contrast with the just excesses of legal-

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5 Knafla, “Mr. Secretary” 44.
political representatives who were frequently imagined as the extra eyes and ears of the commonwealth, circulating information between local and central authorities, and between subject and sovereign. Instead of eyes and ears, in Donne’s poem legal-political intermediaries have grown into great weeds that the new Lord Keeper must remove or reform. The satirist’s critique of the legal system is expressed through a self-conscious analogical style that evokes the interpretative practices of legal authorities and the institutional improvisations that compensated for the law’s imperfections. His style, however, comes close to reproducing the unjust excesses that he targets. In order to differentiate himself from greedy officeholders and suitors, the speaker introduces the discourse on service and the relationship between secretary and superior. I argue that Donne resorts to the courteous terms for employee-employer relations that would have been familiar to readers of texts like Angel Day’s late sixteenth-century letter-writing manual, *The English Secretary*. The culture or economy service that structures Donne’s relationship with Egerton, and Egerton’s with the Queen, is founded on the servant’s voluntary obedience. Reworking and fusing the popular discourse on service and Aristotle’s discussion of justice in *The Nicomachean Ethics*, the satirist ultimately presents perfect justice as the virtuous, voluntary execution of service to another. The legal secretary becomes the model of the just legal-political intermediary who contrasts with the extremes of corrupt officeholders and suitors. Through this model of the legal secretary, I argue that a new, more ethical version of the elusive “in-between” position of the Donnean speaker emerges.

1 Extreme Justice

“Satyre V” begins by invoking a principle of satiric decorum derived from Castiglione: “He which did lay/ Rules to make Courtiers… Frees from the sting of jests all who in extreme/ Are wretched or wicked” (ll. 2–6). These two types, we are told, will be the

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speaker’s “theame,” though they are not a source of “jest” (ll.6–9). Although the opening allusion to Castiglione seems to suggest that “Satyre V” will pick up where “Satyre IV” left off, it is instead a point of departure. The speaker soon shifts his attention from the Royal Court to the law courts: his “theame” turns out to be, specifically, “Officers rage” and “Suiters misery” (l. 8). The speaker’s concern for decorum is likewise transferred to legal culture, in which the extreme conditions of officers and suitors derive from their own corrupt participation in the justice system. By drawing our attention to their “extreme” wretchedness and wickedness, Donne activates the Aristotelian conceptions of virtue and justice that were widely disseminated in early modern England. *The Nicomachean Ethics* was a core part of the university curriculum, while Aristotle’s ideas about virtue and justice were disseminated at the grammar school level through texts such as Cicero’s *De Officiis.*\(^7\) In the *Ethics*, “moderation, the pursuit of the mean, [is] equated generally with virtue and specifically with justice.”\(^8\) The virtuous mean is defined as that which is free of excesses and deficiencies. The virtuous mean of “just action” is defined as the “intermediate between acting unjustly and being unjustly treated.”\(^9\) In “Satyre V,” Donne represents these two extremes of injustice as “Officers rage” and “Suiters misery,” or as officers’ abuse of authority and legal technicalities and suitors’ financially ruinous exploitation of legal process. In order to represent the destabilizing influence of their machinations on the entire justice system, however, Donne couches his description of these two extremes within Plato’s doctrine of likeness which emphasizes the interconnection of all things.

In his discussion of Donne’s paradoxical “desperate coward” in “Satyre III,” Joshua Scodal explains that men exhibiting extreme defects or excesses on the Aristotelian scale could appear, or actually be, very similar. “Although Aristotle contrasts

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rashness and cowardice as excess and defect on either side of courage,” Scodal writes, “his detailed analysis of the rash man breaks down the distinction between these extremes by arguing that rash men are generally ‘rash cowards’… The rash man ‘pretends to courage which he does not possess.” 10 In “Satyre V,” the distinction between the extremes of officer and suitor likewise break down as Donne illuminates their correspondence within the legal system and their equal culpability in the system’s corruption. To do so, he begins by appealing to another ancient tradition. The doctrine of likeness is asserted as the premise for all that follows:

If all things be in all,
   As I thinke, since all, which were, are, and shall
   Bee, be made of the same elements:
   Each thing, each thing implyes or represents.

As Hester observes, the argument derives from Plato’s Timaeus and the works of Paracelsus. 11 Plato’s Timaeus is the starting point for both Leonard Barkan and David George Hale’s classic studies on the body politic analogy. 12 In this dialogue, Plato insists that the universe “by unquestionable necessity… is an image of something.” 13 It is “a copy in the transitory world of ‘becoming’ of a divine original which exists in the world of ‘being.’” This “doctrine of likeness,” Barkan asserts, “gives rise to the notion of an infinite regress of likenesses beginning with man and proceeding all the way to the eternal principle.” 14 Similitude is thereby joined with the idea of correspondence in a vision of a universal hierarchy. In the early modern era, “men idealized a divinely

11 Hester 109.
14 Barkan 9-10.
ordained system” in which, Kevin Sharpe explains, “from the highest sphere of the planets, through the arrangements of societies, the composition of the individual and the hierarchy of beasts, a naturally appointed order was replicated.” The result was the politicization of all aspects of life, and the naturalization of political identities, relationships, and institutions: “The language of treatises on the body, on the family, on riding, on music, on the government of cattle, was highly political because each of these analogues (and others) corresponded in some way to the commonweal, as it related to them.” Though this system was “never descriptive of the world,” it “nevertheless presented a powerful normative depiction of it.”

Within this interconnected universal hierarchy, Donne depicts the officer and suitor working in tandem to produce systemic injustice. Through methods that ultimately backfire, the legal representative exploits authority and technicalities while the litigant exploits legal process in the ruthless, unethical pursuit of their own interests. If “Each thing, each thing impylyes or represents,”

Then man is a world; in which, Officers
Are the vast ravishing seas; and Suiters,
Springs; now full, now shallow, now drye; which, to
That which drownes them, run. (ll. 13–16)

In striving to obtain more than their legal right or in asserting rights regardless of the damage and cost to others (where the “equitable man,” according to Aristotle, often settles for less than his rights allow16), greedy suitors employ legal representatives in groundless, false, or malicious suits. Lawyers, in turn, exploit suitor greed, charging exorbitant fees and engaging in duplicitous practices. In “Satyre II,” the speaker claims that the lawyer Coscus, “when he sells or changes land, he’impaires/ His writings, and (unwatch’d) leaved out, ses heires” (ll. 97–98). The result of such practices can be seen in “Satyre V,” in which the speaker chastises a suitor for doffing his hat to “yon Officer,”

15 Sharpe 43-44.

16 Aristotle 134.
who has “Got those goods, for which erst men bared to thee” (ll. 79–80). Grasping at what is not his through legal gambles, the suitor loses what he has to legal fraud and fees. For his unscrupulous efforts, he is left with mountains of worthless papers.\textsuperscript{17} The roles of officer and suitor are not only interconnected through the relationship between victimizer and victim; their situations are also parallel. Legal representative and litigant alike compromise the integrity of the entire legal system in which “Each thing, each thing implyes or represents.” In so doing, they compromise their personal gains from the system. Neither the officer nor the suitor’s possessions are secure since all their practices contribute to an economy of “controverted lands” which “Scape… the strivers hands” (ll. 41–42). If the speaker of “Satyre II” fears the redistribution of land and wealth through the professional machinations of lawyers like Coscus, “Satyre V” is a lamentation not for a new order, but rather for the ultimate instability of any order in which legal certainty has disappeared.\textsuperscript{18} The officer’s unethical legal practice and the suitor’s exploitation of legal process threaten the law’s perfection or its ability to generate justice. By beginning his argument with reference to the doctrine of likeness, Donne posits a continuum between individual mischiefs and systemic inconveniences.

In his depiction of the suitor’s shortsighted complicity in his own ruin, the satiric speaker also provides a novel response to related questions posed in Aristotle’s discussion of justice in \textit{The Nicomachean Ethics}: “Can a man be voluntarily treated unjustly?” and “Can a man treat himself unjustly?” The philosopher’s test case for this

\textsuperscript{17} In both “Satyre II” and “Satyre V,” Donne mentions the excessive length of legal documents, through which legal practitioners could charge excessive fees to suitors. In “Satyre II,” the lawyer Coscus,

\begin{quote}
In parchment then, large as his fields, hee drawes
Assurances, bigge, as gloss’d civill lawes,
So huge, that men (in our times forwardnesse)
Are Fathers of the Church for writing lesse. (ll.88-90)
\end{quote}

The results are seen in “Satyre V,” in which the litigant is left with nothing but papers for all his time spent in frivolous suits: “and for all hast paper/ Enough to cloath all the great Carricks Pepper” (ll.84-85).

second question is suicide. To commit an unjust act one must act “voluntarily,” but “no one is voluntarily treated unjustly.”\textsuperscript{19} Hence, a man cannot voluntarily treat himself unjustly: “no one can commit adultery with his own wife or housebreaking on his own house.” An unjust action must perforce “always involve more than one person.” Suicide is illegal, therefore, and “a certain loss of civil rights attaches to the man who destroys himself, on the ground that he is treating the state unjustly.”\textsuperscript{20} In the case of suicide, the man who stabs himself performs a voluntary unjust action to the state by violating “the right rule of life” with his own body; he does an injustice to the state by physically harming himself. In “Satyre V,” however, the suitor is presented as an Aristotelian or ethical paradox: he treats himself unjustly by being voluntarily treated unjustly by legal officers and practitioners. Donne’s use of direct address emphasizes the suitor’s role in his own destruction: the suitor, rather than the officer, is the subject of the speaker’s accusations.

[Officers] are the mills which grinde you, yet you are
The winde which drives them; and a wastefull warre
Is fought against you, and you fight it; they
Adulterate Lawe, and you prepare their way
Like wittals, th’issue your owne ruine is. (ll. 23–27)

While a man cannot commit adultery with his own wife, he can “prepare [the] way” for another. The suitor is compared to a wittol who, unlike the cuckold, is voluntarily treated unjustly: a wittol is “a man who is aware of and complaisant about the infidelity of his wife.”\textsuperscript{21} While Aristotle condemns “acting unjustly” more than “being unjustly treated,” he nevertheless cautions that “there is nothing to prevent [the latter] being incidentally a

\textsuperscript{19} Aristotle 129, 134. Aristotle defines “voluntarily” in a way that combines the senses of knowingly and willingly: “‘voluntarily’ means ‘knowing the person acted on, the instrument, and the manner of one’s acting’ (129).

\textsuperscript{20} Aristotle 134-5.

greater evil.” In the course of the satire, Donne presents the “Suiters misery” or “being unjustly treated” as worse than “Officers rage” for the very reason that suitors willingly bring it upon themselves. They are worse than “wormes meat” since they are willingly eaten by those “whose selves wormes shall eate” (ll. 21–22). Far from sympathizing, the speaker presents the suitor’s condition as a form of self-victimization. Both officer and suitor, however, perform unjust actions against the legal-political system which finally precipitate harm to themselves. Their greedy exploitation and manipulation of legal resources disable the certainty and force of the law and they thereby enable their own unjust treatment. To perform acts of vicious self-interest which harm the state is, in Donne’s schema of universal connectedness, tantamount to suicide.

Aristotle’s definitions of justice as a mean and injustice as an extreme worked their way into English legal thought and arguments through a commonplace that derived from Cicero’s De Officiis: “summum jus, summa injuria” was regularly translated into English as, “extreme justice is extreme injury” or “extreme injustice.” The commonplace was typically evoked in equitable arguments over the disagreement between offence and legal response, and over the wrongs that could be perpetrated through the enactment of legal rights. “Extreme justice” resulted from the overly general character of the law which could not be stated in such a way as to provide for every conceivable case or set of human circumstances that might come to light. Echoing Christopher St. German’s influential early sixteenth-century treatment of equity in Doctor and Student, Egerton would explain in the early seventeenth century that, “Mens Actions are so divers and infinite, That it is impossible to make any general Law which may aptly meet with every particular Act, and not fail in some Circumstances.” Because of this inherent

22 Aristotle 135.

23 The Earl of Oxford’s Case in Chancery, The Third Part of Reports of Cases, Taken and Adjudged in the Court of Chancery, in the Reigns of King Charles II. King William, and Queen Anne, vol. 3 (London: 1716) 6. See also Christopher Saint German, Here after foloweth a Dialoge in Englisshe bytwyxe a Doctour of Duynnyte and a Student in the Lawes of Englande (London: 1531) sig. D2v. See Mark Fortier’s discussion of The Earl of Oxford’s Case in The Culture of Equity in Early Modern England (Aldershot: Ashgate, 2005) 76-81.
imperfection in the law, the normal legal process did not always produce a proportionate response or just outcome. The jurisdiction of the court of Chancery had developed to compensate for this imperfection and to investigate and decide the extreme or “exceptional case.” In designating “all who in extreme/ Are wreched or wicked” as his satiric butt, Donne addresses the poem to the attention of the Lord Keeper and equates the jurisdiction of his satire with that of the principal court of equity.

As Elizabeth’s last Lord Keeper and subsequently as Lord Chancellor under James I, Egerton presided over the court of Chancery. The court’s purpose, he explained, was “to soften and mollifie the Extremity of the Law, which is called Summum Jus.” Chancery offered relief when the common law tradition—restricted by procedure, forms, jury trial, and rules of evidence—would produce unjust or “extreme” determinations that unfairly benefited one litigant and harmed another. The classic Chancery case, according to J. H. Baker, was that of the debtor who failed to have his sealed bond cancelled once payment was made: “[t]he law regarded the bond as incontrovertible evidence of the debt, and so payment was no defence. Here the debtor suffered the obvious hardship of being driven to pay a second time; but the mischief was a result of his own foolishness, and the law did not bend to assist fools.” The Lord Keeper or Chancellor, however, could freely evaluate any relevant evidence and circumstances surrounding a case in his own court. Unlike a common law judge, the Lord Keeper or Chancellor could proceed in this way without compromising the force and certainty of the law because his decrees bound only the parties involved; that is, his decisions could not be used as precedents that made or unmade law. Chancery’s procedural latitude enabled the Lord Keeper or Chancellor, in Egerton’s words, “to correct Mens Consciences for Frauds, breach of Trusts, Wrongs and Oppressions of what Nature soever they be.” In practice, this meant that “Chancery more than anything else was concerned to see that legal intentions were not perverted.”

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27 Earl of Oxford’s Case 6-7.
Its jurisdiction “proceeded from a basic understanding that legal rights were a liberty that must not be misused to take advantage of another person.”

The general pardon statute improved the common good by disabling select “snaring” statutes and curbing the law’s regulatory encroachment of the subject. Equitable process, by contrast, extended the reach of the law to embrace individual, exceptional cases and to identify and remedy abuses of legal right. In Donne’s satire, however, extreme justice is no longer the result of an exceptional case at law. Instead, it is the natural byproduct of a system of injustice in which even victims of legal abuses are at fault. The poem projects a world in which Chancery’s jurisdiction as a “court of conscience” must be universally extended to reform “all who in extreme/ Are wretched or wicked” (ll. 5–6).

By adopting the object of the Lord Keeper’s correction as his satiric butt, Donne identifies the reform project of the satirist with that of the Lord Keeper. His satiric style underscores this identification: the speaker uses analogical reasoning to deliberately evoke the equitable interpretative strategies that Egerton advocated.

2 Analogical Justice

In order to illuminate the extent and kind of legal reform needed, the speaker transforms analogies that traditionally emphasized national and political cohesion to express instead

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29 Hester argues that the occasional nature of the poem enables Donne to construct a role for satire within the real world: “Egerton becomes the activating principle of the satiric process, the means by which satire-as-idea becomes satire-in-action.” Because the poem is “framed as an oration to the lord keeper,” as “a formal piece of legal counsel,” the speaker equates the roles of satirist and legal advisor. As satiric legal advisor, then, it is the speaker’s job to counsel the Lord Keeper on how to be a Christian satirist in order for the Lord Keeper in turn “to force the suitor to realize the same kind of ethical education.” Hester concludes that, “[t]he figure of Egerton […] provides the satirist with the capacity to realize on a national scale, to actualize in the fallen world, that reform that has been central to all his poems” (102-104).
the extreme injustice that has overwhelmed the system. These analogies—the stuff of poetry as well as legal and political rhetoric—provided a set of concrete images and a ready vocabulary for the representation of order and disorder. The speaker innovates on the conventions repeatedly, extending the imagery to illuminate the ways in which the structure and the operations of the justice system itself could become vehicles for injustice. He portrays the unscrupulous officers and suitors who abuse the law’s intentions as the incremental extremities of the law. At the same time, the speaker’s extension of conventional political analogies mimics the equitable method of statute interpretation that provided another means within common law to counteract injustices generated by the law’s overly general character. The speaker’s analogical style demonstrates a thorough knowledge of the practices for exploiting and correcting the legal-political system’s imperfections. In “Satyre V,” illicit extensions and excesses are analyzed through, and in uncomfortably close proximity to, accepted forms of legal-political extension and excess. This close proximity between legitimate and illegitimate practices puts both the reader and speaker on alert for the speaker’s own slippage from the one to the other. The fine distinction between legitimate and illegitimate practices necessitates and generates the self-consciousness of the legal-political reformer who must be able to check the conduct of others as well as himself. Like the Gray’s Inn Christmas revellers, Donne fashions his own legal-political maturity as a sophisticated ability to identify and correct disorders within the law.

In his final satire, Donne transforms the body politic analogy that conventionally defended social and political relationships and institutions by naturalizing them. According to classical, medieval, and early modern tradition, officers, magistrates, counselors, and judges corresponded to various body parts (most frequently the eyes, ears, hands, heart, or stomach) based on their function within the system or their

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30 John T. Shawcross observes that “[t]here is a higher percentage of hypermetric lines in Satire 5 than in the others” (“All Attest His Writs Canonical,” Just So Much Honor: Essays Commemorating the Four-Hundredth Anniversary of the Birth of John Donne, ed. Peter Amadeus Fiore [University Park: The Pennsylvania State UP, 1972] 264). This is another formal expression of the poem’s obsession with extension.
proximity to the prince (the head). Labourers, meanwhile, who supported the country with the most physical effort, were frequently compared to the body’s feet.\textsuperscript{31} Within Elizabethan parliamentary speeches, disorder in the commonweal was frequently compared to the disorder or malfunctioning of the body. In the parliament of 1601, Sir George More, Donne’s future father-in-law, would use the body politic analogy to argue that members infringed upon the prerogative by proposing a bill against monopolies granted by royal patent:

There be Three Persons; Her Majesty, the Patentee, and the Subject: Her Majesty the Head, the Patentee the Hand, and the Subject the Foot. Now, here is our Case; the Head gives Power to the Hand, the Hand Oppresseth the Foot, the Foot Riseth against the Head.\textsuperscript{32}

More imagines disorder and injustice in terms of dysfunctional bodily members who trespass upon the proper operations of other parts. In Donne’s satire, by contrast, the structure and source of disorder and injustice within the legal-political system is reimagined as the result of bodily excess. After his depiction of a corrupt “Pursivant” who deliberately misidentifies and confiscates (“mistakes”) items as related to Catholic practice, the speaker compares the officer who abuses his authority for personal gain to the law’s excremental nails:

Oh, ne’r may
Faire lawes white reverend name be strumpeted,
To warrant thefts….
Shee is all faire, but yet hath foule long nailes,
With which she scracheth Suiters; In bodies
Of men, so in law, nailes are th’extremities,

\textsuperscript{31} Barkan 72.

\textsuperscript{32} Heywood Townshend, \textit{Historical Collections: or, An Exact Account of the Proceedings of the Four Last Parliaments of Q. Elizabeth of Famous Memory. Wherein is Contained the Compleat Journals Both of the Lords [and] Commons, Taken from the Original Records of Their Houses} (London: 1680) 234.
So Officers stretch to more then Law can doe,
As our nailes reach what no else part comes to. (ll. 68–78)

Here Donne joins two groups traditionally identified with the hands of the body politic: officers and thieves. In the intricate version of the analogy found in John of Salisbury’s twelfth-century *Policraticus*, Leonard Barkan explains, officials and soldiers are compared to hands because these subjects put into action the instructions received from the head (the prince), the heart (the senate), or the tongue (the judges and governors). At the same time, however, Salisbury goes on to compare dishonest magistrates with thieves, who were likewise notorious for their handiwork.\(^3\) Donne’s speaker characteristically stretches or extends the analogy and the traditional associations to focus on the excremental nails instead of the hands, the fingers’ ends turned into dangerous outgrowths. Officers’ abuse of legal authority is represented as the excess excremental byproduct of the body’s extremities. The satirist thereby depicts corrupt officers as a form “extreme justice” through the body politic imagery.

The satirist similarly transforms “the fable of the belly,” an anecdote that was developed from the body politic analogy to demonstrate the interdependence of political estates through comparison with the vital collaboration among all members or parts of the body. The earliest account of the fable of the belly appears in the second book of Livy’s *History of Rome*, translated into English by Philemon Holland in 1600. In an episode that ultimately explains how the “Tribunes of the common people [were] first created,” Menenius Agrippa appeases a rebellious gathering with a parable that compares the body’s belly to Rome’s senators and the other organs and members to the commons. Disgruntled with the amount of labour they appeared to perform in comparison with the belly, who “did nothing else but enioy the delightsome pleasures brought unto her,” the other body parts decide to starve her: “they mutined & conspired altogether in this wise, That neither the hands should reach & convey food into the mouth, nor the mouth receive it as it came, neyet the teeth grind & chew the same.” The result was that “the whole bodie […] pined, wasted, & fel into anextreme consumption,” since it was the belly’s job

\(^3\) Barkan 72, 86.
to feed the rest of the body “as it received food it selfe.”

In Nicholas Cusanus’s *De Concordantia Catholica*, the fable was reframed to compare the process of lawmaking to eating, “including biting, tasting, chewing, and digesting.” As Barkan points out, the text “stop[s] short of the final stages of the process beyond the stomach.”

Donne’s speaker, however, follows the digestive analogy to its natural conclusion: “the world [is] a man,” he argues, “in which, officers/ Are the devouring stomacke, and Suiters/ The excrements, which they voyd” (ll.17–19). Instead of mutually sustaining each other as collaborative members within the legal system, officers exploit suitors until they are worthless.

While the fable of the belly constitutes one anatomical development of the state-body analogy, another version of the tradition portrays the commonwealth or the legal-political system as diseased, needing the cure of social, political, or legal reform. In Samuel Daniel’s poem “To Sir Thomas Egerton,” for instance, the speaker explains in quite commonplace terms, “whenas Justice shal be ill dispos’d/ It sickens the whole body of the State.”

In a vivid example from the 1601 parliament, a Mr. Martin portrayed monopolists as a direct attack on the health of the country:

> The Principal Commodities both of my Town and Country, are ingrossed into the Hands of these Blood-Suckers of the Common-Wealth.
> If a Body, Mr. Speaker, being Let Blood, be left still Languishing without any Remedy, How can the Good Estate of that Body long remain?

The speaker of “Satyre V” skips right over the poetic and rhetorical potential of the diseased body to intimate the commonwealth’s or the legal-political system’s

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34 Livy, *The Romane Historie Written by T. Livivs of Padua… Translated out of Latine into English, by Philemon Holland* (London: 1600) 65. See also Hale 26ff.

35 Barkan 74.


37 Townshend 234.
decomposition, taking the analogy as far as it can possibly go. “[A]ll men are dust,” we are told. Suitors, however, are “worse then dust, or wormes meat / For [officers] do eate you now, whose selves wormes shall eate” (ll.21–22).

In a self-conscious, analogical style, Donne repeatedly extends conventional legal-political tropes to satirically depict abuses of the law’s intentions as unjust extremes. As a result, the speaker’s own analogical reasoning and extensions become the focus of this satire as much as the offences of greedy officers and suitors. At the turn of the seventeenth century, analogy was defined as the “[p]roportion, agreement, or likeness of one thing to another.”38 The early moderns inherited and developed an analogical mentality that elided similitude, correspondence, harmony, and justice.39 An analogy was an apt comparison, a balanced equation, a harmonious agreement between two terms. The comparison’s success was the result of an equilibrium produced in the absence of deficiencies or excesses in either term. Analogy, on the microscopic level of language, thus mirrored Aristotle’s definition of the virtuous mean and justice. In contrast with analogy’s assertion of the “similitude” and “correspondence” between two terms, metaphor was defined as, “the putting ouer of a word from his proper and naturall signification, to a forraine or vnproper signification.”40 Metaphor was thus on a continuum with the metaphysical conceit in which, as Samuel Jonson wrote in the later eighteenth century, “[t]he most heterogeneous ideas are yoked by violence together.”41 While Donne would become the most famous exponent of the metaphysical style, his fifth satire is saturated with the analogical reasoning that informed the principles,


39 Sharpe 51-52.

40 Robert Cawdrey, A Table Alphabeticall, Conteyning and Teaching the True Writing, and Vnderstanding of Hard Vsuall English Wordes, Borrowed from the Hebrew, Greeke, Latine, or French (London: 1604) sig. F5r-F6r.

organization, and operations of justice, and that structured the relationships between subjects, legal-political representatives, and the sovereign.

To understand Donne’s stylistic choices in “Satyre V,” it is necessary to understand the centrality of analogical reasoning in statute interpretation and the centrality of statute interpretation within legal practice. As a student at Lincoln’s Inn, Donne would have attended the formal lecture series on statutes delivered by “readers” during the Lent and summer vacations, when the courts were in recess. One of only two formal learning exercises at the Inns, the readings “initiated the student in the intricacies of legal analysis and debate.”42 At the same time, these lectures heralded the reader’s advancement in the profession. The barrister who was elected to reader was chosen in recognition of his legal acumen and experience, which would be on display throughout his lecture series. During this time, he was also afforded a special status in the Inn community: “[t]hese Readers,” writes William Dugdale, “do enjoy divers priviledges above the rest of the Society.”43 After he fulfilled all the traditional responsibilities of a reader, a barrister became a senior member of his Inn, taking a role in its governance. The occasion was celebrated by a tiresomely formal but also excessively sumptuous feast.44 Along with disputation or pleading techniques, therefore, statute interpretation skills were recognized as a constitutive aspect and as a demonstration of legal authority.

It was only in the sixteenth century, however, that practitioners began to employ and articulate standard principles of interpretation, after “the great outburst of legislation that marks the reign of Henry VIII had been concluded.” Samuel E. Thorne explains:

42 Baker, An Introduction 139.


It was only then… that judges first became conscious that in restricting the words of an act, in the interests of justice, or in extending them to include equally deserving but unmentioned cases, they were performing something more than an incidental, routine function of judicial administration…. [T]he increased necessity for reconciling the words of acts of Parliament and the simple administration of justice between party and party that faced the judges of the later period sets their practice off sharply from that which had preceded it.45

The earliest treatise we have on statute interpretation has been attributed to Sir Thomas Egerton. Two copies of *A Discourse upon the Exposicion [and] Understandinge of Statutes*, written in Egerton’s own hand, one in English and one in law French, exist in two commonplace books dating from the 1550s to the 1570s. In *A Discourse*, the practices of Inns readers are repeatedly referenced. More importantly, however, Egerton’s treatise lays out rules for the equitable interpretation of statutes, practices that enabled the extension of the law’s sense, spirit, or reason through the identification of likeness or similitude.46 I argue that the satirist employed a self-conscious analogical style in “Satyre V” that evoked statute interpretation practices and principles in order to appropriate authority for his writing and to appeal to his new employer. As a legal secretary to the Lord Keeper, Donne would have had access to Egerton’s collection of legal resources (by then of more use to the secretary-student than the superior) and would have known of Egerton’s own interest in the topic of interpretation. As an Inns student, Donne would have associated statute interpretation skills with legal-political clout. Finally, methods of statute interpretation may have also been of interest to Donne in preparation for his own election to the House of Commons in the last Elizabethan parliament.


46 In addition to Thorne’s thorough introduction to *A Discourse*, see also Louis A. Knafla’s comments on Egerton’s interest in statute interpretation in the context of late sixteenth-century England in *Law and Politics* 46-48.
Through the equitable interpretation of statutes, common law judges compensated for, again, the general character of the law that could not explicitly provide for every case that would arise in the courts. Statutes are construed equitably when their “sence & meanynge” are extended or applied beyond the words of the text to cover novel, unanticipated cases. In *A Discourse*, Egerton stresses that statutes “taken by equytie” may be extended because of their “reasonableness”: “you muste not take everye thinge by equytie, as thynges farre unlyke, but such thinges as are in the lyke reason, for the reason of the lawe is the soule & pythe of the lawe, yea, the verie lawe itselxe.” From this principle arises the rule that “those that are in lyke myschiefe are in lyke lawe.”

Through this comparative, analogical reasoning the particular exception was reabsorbed within the general rule.

According to Egerton’s treatise, the equitable interpretation of statutes extends the law, first, through a consideration of the law’s reason (sense and meaning). Second, statutes are equitably construed according to the intentions of the lawmakers—a principle derived from Aristotle’s discussion of equity in *The Nicomachean Ethics*. The intention of the lawmakers can be gathered from their own voices in parliament; from the statute’s previous application; or, most safely and easily, from “the wordes of the statute either goynge before or folowinge.” These words should be read as if they automatically included a provision for like cases, “as yf those wordes *et similibus* be in”:

\[
\text{thys openethe a gappe to all equytye, shewethe that theire myndes were that it shulde extende to lyke cases.\ldots And this is a sure rule, as may be, to knowe… where they shalbe taken by equytye… and, to be short, it availethe to the understandinge of every rule that is given upon statutes.}
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47 *A Discourse* 140. In his speech *Touching the Post-Nati*, Egerton writes that “words are taken and construed sometimes by Extension…. sometimes by equity out of the reach of the wordes” (Knafla, *Law and Politics* 224).

48 *A Discourse* 147.

49 *A Discourse* 153-154.
In the medieval period, judges decided cases using “equity de lestatute,” which, as Thorne explains, “reflects nothing more than the familiar medieval definition of equity, and rests wholly upon the maxim de similibus idem est iudicium”: there is like judgment about like things.\(^50\) In *A Discourse*, Egerton preserves the role of judicial discretion authorized by “equity de lestatute” and accommodates Aristotelian equity in his rules for statute interpretation. Aristotle’s construction of equity banished judicial discretion from decision-making, deferring instead to the authority of the lawmakers. In Egerton’s version of equitable statute interpretation, the judge, trained in Inns readings and court practice, uses his powers of legal reasoning in an analogical process to identify like cases that the lawmakers are understood to have always already intended by their preambles. In “Satyre V," Donne turns equitable analogical analysis upon the sources of unjust excesses or extreme justice, identifying consciences and operations of the legal system in need of reform.

In practice, judges freely extended, restricted, or ignored altogether the direct wording of statutes. The overextension of the law through interpretative practices, however, shifted away from analogic toward metaphoric comparison, in which the differences between two terms are more pronounced than their similarities. Like other illicit extensions, these “strained inferences,” as Bacon called them, threatened the internal coherence, certainty, and force of the law. Those opposed to equitable interventions in the law stressed the potential for equity to turn into “the arbitrary exercise of an individual judge’s conscience.”\(^51\) Donne’s analogical style, more than his direct praise of the Lord Keeper, refracts the strategies, reasoning, and processes of legal equity that Egerton was engaged in and thought about throughout his long career. At the same time, however, the satiric style also conveys the identical potential for unjust, arbitrary judicial overextension, for excessive analogical reasoning that mars rather than improves the law. How fair, for example, is the speaker’s characterization of all suitors

\(^50\) *A Discourse* 45.

and officers as corrupt and the extension of his criticism to the entire system? At what point does analogical “railing” become another overly general (and thus imperfect, inadequate) law? Donne’s motive for writing (the satire is a tribute to his new boss) also renders his use of analogical extension and reasoning a resource for personal gain. The speaker thus risks being identified with his targets, those who bend legal resources out of shape for profit. While identifying the system’s weaknesses, Donne’s style also invites suspicion. The reader’s literary scrutiny is thereby engaged in the same surveillance of excesses that the Lord Keeper and the legal reformer were expected to perform.

3 Justice Returns

In “Satyre V,” excesses are also the result of legal-political representation. And like the excesses or extensions already examined, those within legal-political representation could both enable and disable the workings of justice. Donne depicts the progress of corruption within the legal system as the result of a breakdown in the relationship between subject and sovereign caused by the illicit intervention of legal-political representatives. In order to restore justice, the Lord Keeper must reform the officers in charge of circulating information throughout the system. Through an examination of analogies for legal-political representation, we can begin to understand Donne’s characterization of the Lord Keeper’s knowledge and the Queen’s ignorance, and the role of knowledge and ignorance in the order and disorder of the commonwealth.

During Donne’s service to Egerton, the last two Elizabethan parliaments were called. As Lord Keeper, Egerton presided over parliament, speaking for the Queen and delivering opening and closing speeches. As his secretary, Donne surely at least heard about Egerton’s parliamentary activities in 1597. In the parliament of 1601, however, he had a more involved role as an MP for Brackley, a seat over which Egerton effectively had control.\(^{52}\) Donne’s “Satyre V” reflects an interest in the parliamentary side of his employer’s office and echoes his parliamentary speeches. As the new Lord Keeper and

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the mouthpiece for the Queen, Egerton coached members of parliament on their duty, using terms reminiscent of the Nicholas Bacon speeches examined in Chapter One. During his opening speech in the session of 1597 he instructed,

[W]hereas the number of the Laws already made are very great, some also of them being obsolete and worn out of use; others idle and vain, serving to no purpose; some again overheavy and too severe for the offence; others too loose and slack for the faults they are to punish; and many of them so full of difficulties to be understood, that they cause many controversies and much trouble amongst the Subjects.53

His opening speech in 1601 reiterates the same message: “His advice was, that Laws in force might be revised and explained, and no new Lawes made.”54 Egerton goes on to explain the work of legal reform and of parliamentarians through the metaphor of the garden state, as a process of “pruning” the “superfluities”:

You are to enter into a due consideration of the said Laws; and where you finde superfluity, to prune and cut off; where defect, to supply; and w[h]ere ambiguity, to explain; that they be not burthensome, but profitable to the Common-wealth: Which [is] a service of importance, and very needful to be required.55

Parliamentary weeding of the law is a matter of nipping small mischiefs in the bud before they blossom into inconveniences and larger threats to the commonwealth. Such routine maintenance entails a regular practice of searching and expunging. In “Satyre V,” Donne likewise applies the horticultural metaphor to the activities of law reform in his direct address to the Lord Keeper: “You Sir… now beginne / To know and weed out this enormous sinne” (ll.31–34). The state, we are to understand, is overgrown with legal

53 Townshend 80.
54 Townshend 130.
55 Townshend 80.
abuses which have overwhelmed the justice system and produced instead a system of injustice. The tool that the Lord Keeper is to use for weeding the commonwealth’s superfluities is, rather surprisingly, knowledge.\textsuperscript{56} The odd pairing of weeding and knowing, however, can be explained through an examination of the body-politic analogy used in early modern descriptions of members of parliament and legal officers. Members of parliament themselves were especially fond of the state-body analogy which effected real political action through their debates. It was a dominant mode of imagining and articulating the relationships among the parts of government and the relationships between monarch, government, and subject.

As we have seen, the state-body analogy represented the commonwealth and its legal-political system as a unified body, one that included all subjects and institutions as parts that coordinated within a natural, hierarchical order. The working order or maintenance of the political body was the work of political representatives in parliament and legal representatives throughout the country. These representatives were commonly imagined as surplus bodily members and sense organs that enabled a super body politic that far surpassed the normal human capacity for perception. In \textit{The Order and Vsage of Keeping of the Parlements in England}, John Hooker explains the structure and advantages of the parliamentary system in these terms:

\begin{quote}
And albeit the King or prince be neuer so wise, learned and expert: yet is it impossible for any one to be exact and perfit in all things, but a Senate of wise, graue, learned and expert men, beeing assembled in councel to gither: they are as it were one body, hauing many eyes to se, many feet to go, and many hands to labour withall, and so sircum spect they are for the
\end{quote}

\textsuperscript{56} Nicholas Bacon also used the gardening metaphor to describe the work needed to be done by magistrates in charge of executing justice at the local level:

\begin{quote}
Weare yt not a meer maddnes… for one to provide faire and handsome tooles to pruine and reforme his orchard or garden and lay them upp without use? And what a thing else is yt to make wholesome and provident lawes to guide our goinge in the common wealth and to pruine and reforme our manners and then to close those lawes in faire bookes or rowles and to lay them upp safe without seeing them executed? (\textit{PPE} 1:190-191) 
\end{quote}
This version of a political body emphasizes the system’s superhuman capacity for obtaining, processing, and using knowledge for the maintenance of the commonwealth: “hauing many eyes to se, many feet to go, and many hands to labour withall,” the parliament “se[es] all things, nothing is hid or secret, nothing is straunge or new.” Here the state’s excess of political extremities, outgrowths, and sensory organs is a positive expression of its power, its national reach, and its justice. Depictions of legal officers or representatives followed a similar pattern. In a speech to Assize judges who held sessions throughout England and to justices of the peace in charge of local government, James I would depict legal representatives as likewise essential to obtaining and circulating information about the condition of the commonwealth:

And this you shall finde, that euen as a King, (let him be neuer so godly, wise, righteous, and iust) yet if the subalterne Magistrates doe not their parts vnder him, the Kingdome must needes suffer: So let the Iudges bee neuer so carefull and industrious, if the Iustices of Peace vnder them, put not to their helping hands, in vain is all your labour: For they are the King’s eyes and eares in the countrey.

James’s speech emphasizes the way in which legal-political representatives were an essential link between local and central government, and the potential for breakdown within the hierarchy—for disorder—if local officers did not do their job as the “eyes and ears in the country.”

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Extra legal-political eyes and ears overcame the physical, geographical limitations of the central government and courts, just as sight and hearing perceive and process the world that lays beyond the body’s immediate physical reach. The proliferation of legal-political representatives was meant to overcome the very absence that necessitated legal-political representation in the first place. It enabled the “presence” of every Englishman in parliament:

For everie Englishman is entended to bee there present, either in person or by procuration and attornies, of what preheminence, state, dignitie, or qualitie soeuer he be, from the Prince (be he King or Queene) to the lowest person of Englande. And the consent of the Parliament is taken to be everie mans consent.59

Political intermediaries were also intended to foreclose the distance between sovereign and subject. Thanks to the eyes and ears of her legal officers and the members of parliament, the Queen was in intimate contact with her subjects. They were a part of her mystical body, after all. The activity and responsibility of these representatives, projected as apprehension-cum-comprehension, in turn, encouraged fictions of political contiguity, absorption, and interiority. For instance, reporting on a meeting with the Queen to discuss the issue of monopolies during the parliament of 1601, the Speaker of the House protested on her behalf, “that if the least of Her Subjects were Grieved, and Her self not Touched, She appealed to the Throne of Almighty God; how careful She hath been, and will be to defend Her People from all Oppression.”60 The Queen’s sympathy is activated by a knowledge of “the least of Her Subjects” that is obtained through the intervention of her political representatives. Through these intermediaries, her subjects’ complaints reach her, and the grief she feels in turn reflects the uninterrupted connection or continuum between the Queen and her people: being touched sympathetically is the result of and confirms the fiction of being in touch personally, physically. The distance and absence presupposed by legal-political representation dissolves as the knowledge revealed

59 Smith 35.

60 Townshend 248.
through this system becomes evidence of the perfect connection between monarch and subject. According to this logic, the body politic is capable of absorbing its excess legal-political eyes and ears, not to mention the commonwealth’s subjects, into a unified, harmonious whole. Enwrapped in the folds of the Queen’s mystical body, this monstrous version of the legal-political system satisfies “the need to reconcile the desire for physical or ideological unity with the obvious diversity of man and of society.”

The link between legal-political eyes and ears, receiving and circulating information, and the maintenance of justice and order in the commonwealth is made more emphatically in Henry Peacham’s *Minerva Britanna*. The emblem on “Ragione di stato” (“Reason of State”) is dedicated to Sir Julius Caesar, a judge of several courts in his long career, a member of parliament in the later Elizabethan period and in most of James I’s reign, and appointed by Sir Thomas Egerton to the position of Master of the Rolls in 1614 (see fig. 1). Accompanying the emblem are verses that explain, he “Who sits at sterne of Common wealth, and state” must “Be seru’d with eies, and listening eares of those, / Who from all partes can giue intelligence.” The emblem itself depicts a figure in a robe covered with eyes and ears who sweeps a wand, decapitating a cluster of poppies:

That wand is signe of high Authoritie,
The Poppie heads, that wisdome would betime,
Cut of ranke weedes, by might, or pollicie,
As mought molest, or over-proudly clime.

Peacham’s emblem elaborates visually and poetically on the early modern concept of legal-political eyes and ears that enable the surveillance, identification, and weeding or reforming of the commonwealth. It illuminates the logic underlying Egerton’s parliamentary remarks as well as Donne’s characterization of the Lord Keeper as authorized to “To know and weed out this enormous sinne” (ll. 31–34).

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61 Barkan 89.

In Donne’s satire, the excess legal-political representatives who are supposed to facilitate the circulation of information and justice have instead overwhelmed the system with corruption. The speaker depicts the individual suitor’s fatal progress through the corrupt legal process in terms of the river analogy that was introduced in “Satyre III” to describe the circulation of legal-political power:

If Law be the Judges heart, and hee
Have no heart to resist letter, or fee,
Where wilt thou appeale? powre of the Courts below
Flow from the first maine head, and these can throw
Thee, if they sucke thee in, to misery,
To fetters, halters; But if the injury
Steele thee to dare complaine, Alas, thou goest
Against the stream, when upwards: when thou art most
Heavy and most faint; and in these labours they,
‘Gainst whom thou should’st complaine, will in the way
Become great seas, o’r which, when thou shalt bee
Forc’d to make golden bridges, thou shalt see
That all thy gold was drown’d in them before. (ll. 43–55)

This flood of corruption impairs the flow of information to the Queen and of justice to the subject. Donne’s direct address to the Queen takes the form of a rhetorical question to dramatize the disconnection between sovereign and subject: “Greatest and fairest Empresse,” the speaker asks, “know you this?/ Alas, no more then Thames calme head doth know/ Whose meades her armes drowne, or whose corne o’rflow” (l. 28–30). In Donne’s satire, the Queen’s ignorance is just as destructive as the judicial “great seas,” though she lacks malicious intention and does not voluntarily treat her people unjustly.

Lynne Magnusson observes that the poem’s address to the Queen “replicates the strategy of Robert Southwell’s *An Humble Supplication to Her Maiestie*, playing the dangerous game of postulating the Queen’s non-complicity based on her ignorance in
areas where she should be knowledgeable.\textsuperscript{63} The \textit{Supplication} was written in response to a proclamation of 1591 that linked Catholicism with treason and established commissions to investigate and regulate Catholic activities. In his opening passages, Southwell explains to the Queen that, “the due respect that every one carrieth to your gratious person, acquiteth you in their knowledge, from any meaning to haue falsehood masked vnder the veile of your Maiestie.” The unjust proclamation, therefore, must be the work of “the Magistrates of the vvole realme,” who are thereby transformed into “the loathed figure of the treacherous intermediary in state oppression,” who Magnusson identifies in many of Donne’s works, especially the \textit{Elegies} and \textit{Satyres}.\textsuperscript{64} In “Satyre V,” the extremes of sovereign ignorance and judicial viciousness are contrasted with Egerton’s “righteousness,” which has inspired the Queen to “authoriz[e]” him as Lord Keeper “To know and weed out.”

The Queen’s ignorance of the injustices perpetrated against her lowliest subjects is represented in a second way in the poem, as the result of absence. The satiric speaker asserts that turn-of-the-century England has outdone the Iron Age, the last of the four ages described in Book I of Ovid’s \textit{Metamorphoses}, when the virgin goddess of justice, Astraea, fled from the world:

\begin{quote}
O Age of rusty iron! Some better wit
Call it some worse name, if ought equall it;
The iron Age \textit{that} was, when justice was sold, now
Injustice is sold dearer farre. (ll. 35–38)
\end{quote}

While Astraea deserted the world once justice was sold, Donne claims that in England now “Injustice is sold dearer farre.” Through reformulations of the Astraea myth in


\textsuperscript{64} Magnusson, pp. not yet known.
classical, medieval, and renaissance writings, Astraea developed imperial and religious associations that were easily grafted to the iconography of the English virgin Queen. Sir John Davies, another member of the Egerton circle, a poet as well as a legal theorist and member of parliament, composed and published a collection of acrostic poems entitled *Hymnes of Astraea* that revealed the true object of their praise through the first letters of every line of the sixteen-line poems: “ELISABETHA REGINA.” In these courtly verses, judgment and justice are united within the figure of the Queen/goddess who demonstrates decorum in all ways. In Donne’s satire, the Queen/goddess connection enables him to maintain the myth of the Queen’s constitutional perfection while leaving room for injustice which reigns in her absence. Scholarship has overlooked the legal dimension of Elizabeth’s Astraea guise. When Astraea returns to earth a new golden age descends that is predicated on the reform of law and order. The myth was evoked in the English parliament to praise the Queen for her commitment to law reform. In his closing oration for the 1597 session, the Speaker of the House explained that, “we be […] bound to your Majesty for reducing [i.e. returning] again the golden world of Saturn.” In “Satyre V,” Astraea’s return to earth and the new golden age of law reform are signaled by the Queen’s election of Thomas Egerton to the office of Lord Keeper. In the words of Virgil’s fourth eclogue, Egerton is the leader of “the new generation… from heaven on high” which descends to earth when the virgin goddess returns.

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Fig. 1. “Ragione di stato,” from Henry Peacham, Minerva Britanna; or, A Garden of Heroical Deuises, Furnished, and Adorned with Embloemes and Impresa’s of Sundry Natures (London: 1612) 22. Reproduced with permission from the Huntington Library.
4 Secretary of Justice

“All critics,” writes Ronald Corthell, “mark the movement of the satirist from a marginal position in ‘Satyre IV’ to a place inside the circuit of power in ‘Satyre V.’”69 Arthur Marotti reads the direct address to the Queen and her chief legal minister in this poem as “a way of establishing the speaker’s (and author’s) own position of authority and security, a gesture, on Donne’s part, of separating himself from the abject misery of both courtly and judicial suitorship.”70 In order to extricate himself from the “abject misery” and corruption of officer and suitor, however, the speaker must do more than identify with his superiors. At the same time that he asserts his new insider status, he must also distinguish himself and the Lord Keeper from those who threaten the integrity of office-holding itself. Further complicating the speaker’s position is his satiric style that extends classical political analogies to critique current legal-political culture, a style that also risks becoming another source of unchecked excess. Within his direct address to Egerton, therefore, the speaker buttresses his legal-political status by evoking the affective relationship between secretary and superior. While little is known of Donne and Egerton’s personal relationship, secretaries were part of a ubiquitous early modern culture of service. The relationship between secretary and superior was described in detail in the sixteenth-century letter-writing manual The English Secretary, by Angel Day. The secretary was the public and business representative of his superior. According to Day, the difference between subordinate and superior was overcome through mutual good will that signified and reinforced the integrity of each. Just as the analogical extension of a statute’s reasoning reabsorbed the exceptional legal case within the rule, and just as the proliferation of legal-political intermediaries was meant to foreclose the distance between subject and sovereign, so, too, the secretary’s job performance and his master’s gratitude theoretically collapsed the distinction between employee and employer.

69 Corthell, Ideology and Desire 51.
70 Marotti 117.
In *The English Secretary*, Day models an idealized version of the rapport between secretary and lord. The proficient secretary, he explains, is rewarded with friendship, an alternative, affective exchange system that transcends the socio-economic distinctions between servant and master. While “there can be no friend where an inequalitie remayneth,” or “[t]wixt the party commanded and him that commandeth,”71 he argues that friendship is nevertheless possible between secretary and superior because the conditions of the relationship transform over time:

[E]ach vertue [of the servant], kindled by the others [the master’s] Grace, maketh at last a conjunction, which by the multitude of favours rising from the one, and a thankefull compensation alwayes procured in the other, groweth in the end to a sympathie inseparable, and thereby all intendment concludefeth a most perfect uniting.72

This “friendly fidelitie” comes about as the result of the secretary’s “zeale to well-doing [which is] voluntarily embraced.” Because it is “not urged or constrained by soveraigne command,” this voluntary zeal “leaveth the reputation and estimate of our Secretory to be received as a friend.”73 In Izaak Walton’s *Life of Dr. John Donne*, the same ideal elision of secretary and friend is repeated in his description of the Lord Keeper’s treatment of Donne:

Nor did his Lordship in this time of Master Donne’s attendance upon him, account him to be so much his servant, as to forget he was his friend; and, to testify it, did always use him with much courtesy,


72 Day 113.

73 Day 114.
appointing him a place at his own table, to which he esteemed his company and discourse to be a great ornament.

[Donne] continued that employment for the space of five years, being daily useful, and not mercenary to his friend. 74

In this courteous model of employment, the subordinate’s voluntary “zeale to well-doing” disguises the economic motive behind service. Egerton, according to Walton, treated Donne like a friend, and Donne in return was not “mercenary.” 75 Donne himself asserts a similar picture of his non-mercenary character in a letter to Egerton that employs a much plainer style: “I was four years your Lordship’s secretary, not dishonest nor greedy.” 76

In the direct address to Egerton in “Satyre V,” Day’s alternative exchange system of “friendly fidelitie,” grounded in voluntary well-doing, is introduced to differentiate the micro-network of Queen, Lord Keeper, and legal secretary/speaker from the corrupt legal economy of officers and suitors depicted throughout the rest of the poem:

You Sir, whose righteousnes she loves, whom I
By having leave to serve, am most richly
For service paid, authorized, now beginne
To know and weed out this enormous sinne. (31–34)


75 While voluntary well-doing disguised the servant’s economic desire, the superior’s courtesy could just as easily substitute for more substantial compensation, the subject of Donne’s mockery in “Elegy VI”:

Oh, let mee not serve so, as those men serve
Whom honours smoakes at once fatten and sterve;
Poorely enrich’t with great mens words or lookes. (ll. 1-3)

On the blending of political and private service in Donne’s poetry, see Aschsah Guibbory, “‘Oh, let me not serve no’: The Politics of Love in Donne’s Elegies,” English Literary History 57 (1990): 811-33.

Instead of giving her “soveraigne command,” the Queen “authorize[s]” or empowers the Lord Keeper “To know and weed out.” This opens a space for the voluntary “zeale to well-doing” of her chief legal minister through which his “righteousnes” can be externalized. The syntax of this passage positions the speaker (“I”) between Egerton and the righteous work of reform, or between the main subject and verb, grammatically highlighting Donne’s function as a legal-political representative or intermediary. But the self-serving potential of the intermediary, explored through the rest of the poem, is here controlled by the secretary-master dynamic. Like Egerton, Donne is not the subject of a “soveraigne command” but instead is given “leave to serve.” In return, the speaker claims he is paid in the currency of service itself, not rewarded directly with material wealth and thus not tempted by it: “I / By having leave to serve, am most richly / For service paid.”  

If initially Donne “manages to suggest that everything corrupt is interconnected” through the doctrine of likeness, in this passage the closed circuitry of service prevents the possibility of destructive excesses generated by self-serving exploitations of the system. Service to another creates more opportunities to serve, or an ethical surplus. In reality, of course, the secretary received financial and social-political compensation for his services. But the servant who is self-serving through service to another or to the state is still juxtaposed with the corrupt officer and suitor who are ultimately self-harming through their harm to others and the state. Donne fuses the secretary-superior exchange system with the Aristotelian ethical system to craft a space for the honest legal-political representative. When the secretary or servant’s “zeale to well-doing [which is] voluntarily embraced” is applied within the legal-political system—when a secretary is legal—the result is voluntary just action, or perfect justice as presented in The Nicomachean Ethics. Aristotle explains that within justice every other virtue is comprehended because “it is the actual exercise of complete virtue… towards [our] neighbour.” By evoking his service as a legal secretary in “Satyre V,” Donne fashions or positions himself as the virtuous legal-political intermediary (a literal embodiment of a mean) who is engaged in voluntary just action to others.

77 Patterson 121.
78 Aristotle 108.
In *Excess and the Mean in Early Modern English Literature*, Joshua Scodel argues that Donne “[r]eject[s] many of his contemporaries’ use of the mean to justify prevailing religious and sociopolitical formations,” and “he instead adapts the mean to enlarge the sphere of individual freedom.” In “Satyre III,” Scodel writes, “Donne spurns the English church’s self-description as the *via media* and advocates a mean of skeptical inquiry between rash acceptance and rejection of any of the rival Christian denominations.”

Using the same strategy in the verse epistle to Sir Henry Wotton, “Sir, more then kisses, letters mingle Soules,” Donne rejects the tradition that presented the city as an ethical midpoint between the extremes of Court and country life. In so doing, he also distances himself from “their representative inhabitants: exalted aristocrats, middle-rank citizens, and lowly rural laborers.”

Donne divorces both himself and the ethical mean from a particular geographical place and social rank. Instead, he advocates being “thine owne home, and in thy self dwell” (l. 47): the mean is relocated within. Detached from the fixity of place and social rank, however, that home or that self must be on the move: “as/ Fishes glide, leaving no print where they passe,/ Nor making sound, so, closely thy course goe” (ll. 55–57). “By its self-declared middleness,” explains Scodal, “the Wotton epistle both asserts and enacts the ultimate value of being in transit, neither here nor there.”

Through the mean-extreme tradition, Scodal redescribes the often noted “betwixt and between” character of Donne’s poetry and personae. According to Anna K. Nardo, this liminality is a function of Donne’s self-confessed obsession with verbal play: “play is always in-between—the precise location his poetic speakers and his preaching persona

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79 Scodal 21. Similarly, Ronald Corthell reads the truth seeker of “Satyre III” as “the dynamic mountain climber who takes his stand ‘in strange way,’ occupying a no-man’s-land where conventional social relations seemed suspended” (*Ideology and Desire* 46).

80 Scodal 39.

81 Scodal 44.
need to occupy.” Ronald Corthell argues that this characteristic “in-betweenness” draws attention to “the processual aspect of the subject’s relation to culture,” its unfixed, developing nature.  

“Donne creates satire whose truth… ‘is not an essence but a practice.’” Multiple legal and political processes of extension have surfaced over the course of this chapter in relation to “Satyre V,” and what these ultimately illuminate is the position of the insider satirist who has developed a relationship and responsibility to in-betweenness that are very different from what we’ve come to expect from Donne. The insider satirist is a legal secretary, a legal-political intermediary, a part of the network of extra eyes and ears that is supposed to close the gap between subject and justice, or subject and state. Rather than distancing the speaker from “prevailing religious and sociopolitical formations” and “enlarg[ing] the sphere of individual freedom,” the insider satirist’s in-betweenness is a function of his new proximity and enlarged responsibilities to others and to prevailing social, legal, and political forms.

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83 Corthell, Ideology and Desire 46.

84 Corthell, Ideology and Desire 54.
Chapter 4
The Court of Assize, Local Justice, and Measure for Measure

“[C]ourt motions are up and down, ours circular; theirs like squibs cannot stay at the highest nor return to the place which they rose from, but vanish and wear out in the way; ours like mill-wheels, busy without changing place; they have peremptory fortunes, we vicissitudes.”¹

“I know there be many good [justices], and I wish their number were increased; but who be they? even the poorer and meanest Justices, by one of which more good cometh to the Commonwealth, than by a hundred of greater condition and degree. And thus much I had in commandment to say to Justices of Peace, to Commanders, to Constables, and other inferior Officers.”²

“This is why the saying of Bias is thought to be true, that ‘rule will show a man’; for a ruler is necessarily in relation to other men, and a member of a society.”³

We have already heard the central government’s pessimistic perspective on local justice as it was communicated in Nicholas Bacon’s parliamentary speeches. In his closing oration, the Lord Keeper addressed the country’s provincial magistrates, admonishing them to put into practice the policies that had been instituted in statute form. He warned


² From Sir Thomas Egerton’s 1601 Star Chamber charge to Assize judges, printed in Heywood Townshend, Historical Collections: or, An Exact Account of the Proceedings of the Four Last Parliaments of Q. Elizabeth of Famous Memory. Wherein is Contained the Complet Journals Both of the Lords [and] Commons, Taken from the Original Records of Their Houses (London: 1680) 355.

of the dangers of bad justices who failed to enforce the law, of negligent and corrupt officeholders who posed the most insidious threat to order by inviting contempt of all authority. Beyond parliamentary chastisement, however, what could actually be done “to remove from the bench those that are drones and not bees”? At the turn of the seventeenth century, the court of Assize was responsible for overseeing the execution of local justice and government administration throughout the country. The Assizes were an itinerant tribunal through which judges from the central courts brought legal expertise, the voice of the sovereign and the privy council, and imposing ceremonial grandeur to their sessions in the English counties. Convening twice a year, the court produced a cyclical representation of central authority that intervened in the countryside’s legal, political, and social operations. Through the circuitry of the Assizes, the national policies of the privy council were disseminated and corrupt or incompetent local officers were identified and reformed (corrected, fined, shamed, or removed from office). The Assizes, I argue, supply a historical analogue through which the representation of legal administration in Measure for Measure can be productively analyzed. This chapter reads Shakespeare’s problem play alongside the history and structure of the court, including the socio-political tensions it was designed to mitigate and those it inadvertently instigated in its direction and reform of local justice. The Assizes were a regular and dynamic feature of English life that provided an accessible context through which audiences might construe the legal plot and issues of the play.

The first scene of Measure for Measure, in which the Duke departs abruptly and leaves the governing of Vienna in the hands of his substitute Angelo, bears the mark of the Assizes’ abrupt dissolution and withdrawal from county life after their sessions had concluded. Likewise, the last scenes of the play, which chart the Duke’s return to Vienna and resumption of power, parallel the court’s grand return to the counties. From the very beginning, Vienna is infused with an English legal tradition that capitalized on socially destabilizing absences and representations that eventually enabled the performance of social reconstruction. Imagining the play as framed by the cyclical structure of the

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4 From the 1599 Star Chamber charge to Assize judges, printed in William Paley Baildon, ed. Les Reportes del Cases in Camera Stellata, 1593-1609, from the Original MS. of John Hawarde (1894) 106.
Assizes, moreover, generates new insight into the nature of its supposed irresolution, the conclusion’s indeterminacies for which the play is most famous. As Conal Condren explains, the play’s “striking openness is widely accepted, but often as a challenge.”⁵ I argue that the play’s conclusion is a final statement on the multiple models of reform presented by officers throughout the play. I examine the final trial scene in reference to the Assize trial’s functions of exposing local officers and promoting ongoing local surveillance. The process of the Assize trial, through which private knowledge was transformed into public fact, I argue, is diffused throughout Viennese culture generally via the final marriages which subject characters to exposure and accountability on a daily basis. Through Angelo and Lucio’s marriages to their female accusers, local surveillance is domesticated.

The main action of the play takes place between the two Assize-like coordinates of the Duke’s departure and return. The plot develops in the absence of the Duke, or during the invisible part of the Assize cycle in which local officers were disconnected from central oversight and support. This situation was a source of anxiety for both central and local authorities alike: the privy council had to rely on reports or rumour about order in the counties, while local officers faced pressure from the community when the implementation of royal policy and law jarred with the interests of local magnates or tradition. In Measure for Measure, Angelo and Escalus, acting like justices of the peace (JPs) for their county, attempt to put the Duke’s commission into execution, to put legal-political policy into local practice. The problematics of legal execution that subsequently develop, however, are secretly monitored by the Duke, who takes note not only of Angelo and Escalus’s work, but also of the humbler Provost’s. The Assize system was organized to bring the efficacy and ethics of local officers to the notice of higher authorities. In Measure for Measure, this is achieved through the Duke’s disguised presence in Vienna, which enables him to expose Angelo and promote the Provost in the concluding trial.

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While the local execution and administration of the law was continually and cynically suspected by central authorities, Shakespeare’s play ultimately derives its pattern for justice from the Provost. The Provost executes his function by safeguarding the integrity of the law and the individual. He presents an example of legal-political prudence that contrasts both Angelo and Escalus’s judicial styles and limitations. His judgment, cultivated through knowledge and experience with the community, is the mirror for the Duke’s execution of justice and the rearrangement of relationships in the final scene. The Duke has been the focal point for numerous critical discussions of Shakespeare and James I. Instead of comparing the Duke to the English King’s political theology, legal ideology, or early reign, I argue alternatively that, like an Assize judge, Vincentio takes the pulse of a city and discovers, along with corruption, an exemplary exponent of local law enforcement.

This chapter is divided into discussions of the function and form of the court of Assize that then inform a close reading of the structure and officeholders of Measure for Measure.

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1 The Court of Assize and Local Law Reform

1.1 The Assize Judge and the Surveillance of Local Justice

The need for reform of local government and officers was an ongoing concern for major Elizabethan statesmen. In the early years of the Queen’s reign, Nicholas Bacon had proposed a commission of “certaine experte and proved persons… to trye out and examine by all meanes and wayes the offences of all such as have not seene to the due execucion of lawes” by means of a “visitacion” every two or three years throughout the realm. By the end of Elizabeth’s reign, this job had been meted out to the judges of Assize in addition to their regular legal work. Twice a year, judges from the central courts at Westminster were selected to preside over cases in each of the six circuits into which England was divided. This system of delivering justice to local communities eliminated the inconveniences that would have been involved in the transportation of litigants, suspects, witnesses, and jury members to Westminster. For the two to three days that the Sessions lasted, the court tried both criminal cases and civil suits. Despite their

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8 T. E. Hartley explains that “[t]he problem of law enforcement had been a well-nigh constant preoccupation of Lords Chancellor and Keeper throughout the reign” (Elizabeth’s Parliaments: Queen, Lords, and Commons, 1559-1601 [Manchester: St. Martin’s P, 1992] 33). Lorna Hutson reports that “recognition that local administration was defective and needed reform was strongly advocated by Sir Nicholas Bacon, Lord Burghley, Sir John Puckering, and Sir Thomas Egerton” (The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama [Oxford: Oxford UP, 2007] 162).


10 The Assize’s jurisdiction was constituted by three documents: it functioned according to the commissions of oyer and terminer and of gaol (jail) delivery, and under the writ of Nisi Prius. Oyer and terminer empowered Assize judges to “inquire into, hear and determine... all offences committed within the counties and liberties of the circuit.” Gaol delivery entailed the determination of cases involving those suspects committed to prison or bailed between Assize Sessions and the quarter Sessions presided over by JPs. “Between them,” writes J. S. Cockburn, “the commissions of oyer and terminer and gaol delivery gave the Assize judges unlimited criminal jurisdiction within their circuit” (Introduction, Calendar of Assize Records: Home Circuit Indictments, Elizabeth I and James I [London: Her Majesty’s Stationery Office,
extensive jurisdiction and the remarkable time constraints for clearing dockets, the Assize judges had in addition broad-ranging duties in government administration and oversight. These duties were outlined in charges delivered by the Lord Keeper or the sovereign in Star Chamber to judges going out on circuit and to JPs residing within the vicinity of London.\textsuperscript{11} These speeches emphasized government policies for dissemination in the countryside and pressured judges to carefully scrutinize, and report on, local justice.\textsuperscript{12} As J. S. Cockburn explains, Tudor and Stuart domestic policy required a “reliable media for conveying to provincial agencies the content and implications of relevant legislation and for ensuring that the programmes therein expressed were fully and persistently implemented.” Over the period that he studies (1558 to 1714), Cockburn writes, “there can be little doubt that this function was most regularly and successfully discharged by the judges of Assize.”\textsuperscript{13}

\textsuperscript{11} See, for instance, the 1595 Star Chamber charge that was addressed to an “audience of such Justices as are in Towne & of other of her Judges of Circuite of Assise whome we have requyred to be here” (Baildon 20).

\textsuperscript{12} While charges were used irregularly, they were “consistently used in periods of acute governmental anxiety, especially in the critical period 1595-1602 (when seven charges were issued)” (Steve Hindle, \textit{The State and Social Change in Early Modern England, c. 1550-1640} [New York: St. Martin’s P, 2000] 6). Cockburn explains that in 1595 the Lord Keeper’s practice of delivering a public speech on the state of the commonwealth at the end of legal terms was revived after a lapse of more than twenty years: “[i]t appears to have been no accident that the practice was resumed in June 1595 as the impact of two consecutive bad seasons was beginning to make itself felt in food riots and the soaring price of corn. Significantly the Lord Keeper’s address, apparently for the first time, gave greater prominence to the responsibilities of the judges of Assize, some of whom were specifically commanded to attend and hear it” (\textit{A History of English Assizes, 1558-1714} [Cambridge: Cambridge UP, 1972] 182).

In a letter of advice to James’s favourite, the Duke of Buckingham, Francis Bacon explains the importance of choosing “the learnedest of the profession… the prudentest and discreetest” men to be judges, “because so great a part of the Civil Government lies upon their charge.” This was most obviously and publicly the case with Assize judges, “the visitors for tooe times in the yeare, not for Justice alone, but for the peaceable governemt of the Cuntrye, put in great truste by his Ma[tie]…” Time and again in Star Chamber charges, the Lord Keeper or sovereign emphasized the importance of the Assize judges’ attention to the administration of the counties. In his 1601 charge, Sir Thomas Egerton goes so far as to present the legal work of the court as secondary to the work of governing. Her Majesty, he explains, “hath chosen you to be Justices [of Assize] for your wisdom and integrity… not onely to try a Nisi prius [a civil suit], or decide some petty Cause, but with special care and diligent observance, to look into the disorders of your Circuits.” The Queen thus “would have you spend more time in understanding the faults and grievances in every of your Circuits.” In his 1616 oration, James reiterates publically his “ordinary charge” that “I use to deliuer to the Judges before my Councell, when they goe their Circuits”: “Remember that when you goe your Circuits, you goe not onely to punish and preuent offences, but you are to take care for the good government in generall of the parts where you trauell, as well as to doe Iustice in particular betwixt party and party, in causes criminall and civiull.” “The diligence of magistrates and other local officials,” writes Cockburn, “together with a careful manipulation of the religious climate

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15 1608 Star Chamber charge in Baildon 368.

16 1601 Star Chamber charge in Townshend 355.

17 1601 Star Chamber charge in Townshend 356.

form the core of most [...] circuit charges."\textsuperscript{19} Within these late Elizabethan and Jacobean speeches the instructions are already conventional, suggesting that the Assize judge’s administrative responsibilities to monitor and reform local justice had become entrenched functions of the office and important mechanisms for social maintenance.

The Assize judges executed their governmental duty by organizing a temporary, nationwide information highway along which the privy council’s programme for the country was disseminated and court officials gathered intelligence on various aspects and activities of local community life.\textsuperscript{20} In charges to grand juries at the beginning of sessions, judges presented national policy updates to a public audience and reminded local officeholders of their obligations. While the impaneled men were directly addressed, it was made clear that judges’ speeches were intended to be heard by a much wider audience. Before the Norwich Assizes of August 1606, for instance, Sir Edward Coke explained, “[T]hough my speech shall principally be directed to you of the Jury which are sworn, yet… I hope that all my words shall extend unto the general good of all these here present; unto whom they are spoken.”\textsuperscript{21} Addressing the jury at the York Lent Assizes of 1620, “selected out of all freeholders of this shyre to beare a princypall part in the publick service,” Serjeant John Davis explained that “when I speake to yow I conceive that I speake to the whole countye… for yow represent the whole bodye of this whole countye.”\textsuperscript{22} At the same time that they were responsible for disseminating vital public information through these speeches, Assize judges were also expected to perform local intelligence-gathering. In his 1617 charge, Francis Bacon reminded the judges,

\textsuperscript{19} Cockburn, \textit{A History of English Assizes} 58.

\textsuperscript{20} Cockburn, \textit{A History of English Assizes} 154.

\textsuperscript{21} Edward Coke, \textit{The Lord Coke His Speech and Charge. VVith a Discouerie of the Abuses and Corruption of Officers} (London: 1607) sig. B1’.

\textsuperscript{22} From the “Preamble to the charge given to the grand jury by Serjeant Davis at York Assizes Lent 1620,” transcribed in Cockburn, \textit{A History of English Assizes} 308.
that besides your ordinary administration of justice, you do carry the two
glasses or mirrors of the state; for it is your duty, in these your visitations,
to represent to the people the graces and care of the king; and again, upon
your return, to present to the king the distastes and griefs of the people.\textsuperscript{23}

The Lord Keeper or sovereign regularly reminded Assize judges of their duty to provide
their firsthand report of conditions on the circuits. As the “best intelligencers of the true
state of the Kingdom,” Bacon argued that Assize judges were “the surest means to
prevent or remove all growing mischiefs within the body of the Realm.”\textsuperscript{24}

The Lord Keeper, Elizabeth, and James repeatedly stressed that Assize judges
were to gather information and report on JPs in particular. The JPs were “the Kings eyes
and eares in the countrey.” If they did not exercise “their helping hands” the kingdom
“must needs suffer.”\textsuperscript{25} As Assize judges were responsible for recommending local
gentry for the Commission of the Peace, they were also made responsible for culling bad
 justices from the list. James’s comments in his 1616 charge explain the process:

\begin{quote}
The Chancellour vnder me, makes Justices, and puts them out; but neither
I, nor he can tell what they are: Therefore wee must bee informed by you
Judges, who can onely tell, who doe well, and who doe ill; without which,
how can the good be cherished and maintained, and the rest put out?\textsuperscript{26}
\end{quote}

In the 1595 charge, the Queen complained through the Lord Keeper and Treasurer that
“the number of Justices of the peace are growne allmoste infinite, to the hinderaunce of
Justice”; “that there are more Justicers then Justice”; and that,

\begin{footnote}
\textsuperscript{23} Francis Bacon, “The Speech which was used by the Lord Keeper of the Great Seal, in the Star-Chamber,
before the Summer Circuits, the King being then in Scotland, 1617,” \textit{The Works of Francis Bacon}, vol. 4
(London: 1826) 498.

\textsuperscript{24} Bacon, “A Letter of Advice” 18.

\textsuperscript{25} James VI and I 220.

\textsuperscript{26} James VI and I 221.
\end{footnote}
she would not haue any to be in Commission of the Peace to serue her… that are vnlearned & negligente in there places, & y' the Justices of Assise showld looke narrowly vnto this, & they to remooue those that in discrecyon they thoughte not meete for the place.  

The following year the charge was more precise: “the Justices of Assise [are] to looke very strictely to all these articles [of the justices’ duties], & to be instructed who hathe bene forwarde in the reforminge hereof, & by particular instance what & how it is done… & to punishe where it is not done.” In successive speeches through the end of the sixteenth century, the Queen charged Assize judges “especially to regard the negligence of some Justices of the Peace, and the forwardness of others, and to punish the one and to recompense the other, and to make report of this to her Majesty.” They were “to remove from the bench those that are drones and not bees, with disgrace and punishment; and the diligent and industrious to notify to the Queen to encourage them.” In a plainer style, James was equally insistent that the judges take account of the JPs: “You haue charges to giue to Iustices of peace, that they doe their dueties when you are absent, aswell as present: Take an accompt of them, and report their service to me at your returne.”

A good Assize judge had to be independent in his investigation of the quality of JPs and the state of local justice. He was cautioned to rely on his own observation of local gentry and officeholders rather than on the advice or word of others. In his 1608 charge, Egerton addressed the issue of JP selection by explaining, “he [the Chancellor] puts in few into Commission but vpon Commendacayon from the lorde or Judges, whoe showlde Certifye vpon knowledge, & not informacyon.” In discussing the judge’s responsibility for general intelligence-gathering, Francis Bacon would similarly distinguish between

27 Baildon 20-1.
28 Baildon 57-8.
29 Baildon 101-2, 106.
30 James VI and I 220.
31 Baildon 367.
firsthand “knowledge” and unreliable local “informacyon.” It is the Assize judge’s job to “represent[] to the King the griefs of his people”: “for the King ought to be informed of any thing amiss in the state of his countries from the observations and relations of the judges, that indeed know the pulse of the country, rather than from discourse.”

The problem with relying on “information” or “discourse” from the local community was the biased nature of its source. Justice of the peace was a coveted title that enabled gentry or magnates to wield social, political, and economic influence. Many vied for the position without having any intention of conscientiously fulfilling its mundane and potentially quite burdensome duties.

Because of politicking and self-interest local recommendations for the office could not be taken at face value, and Assize judges were criticized for crediting them. Instead, the reports and recommendations of the judges as well as their work on the bench were supposed to reflect an unbiased observation of county life and local justice. At one and the same time, they were responsible for injecting neutrality into legal proceedings and the arbitration of local affairs and gaining an intimate understanding of the local context to report back to the heads of government.

The Assize judge was thus a prominent royal legal-political representative who was officially responsible for monitoring and reforming the execution of local justice and

32 Bacon, “Speech” 499.
33 Cockburn, A History of English Assizes 156. J. A. Sharpe estimates that as many as 300 statutes accumulated to specify the “duties and powers” of the JP between the mid-fourteenth century and the late sixteenth century (Crime in Early Modern England, 1550-1750 [London: Longman, 1984] 28). In light of such numerous regulatory responsibilities, Elizabeth’s representation of her justices as inept and ignorant seems unfair.
34 In the parliament of 1601, a member complained that corrupt justices owed their existence to Assize judges who, “ignorant of local affairs,” simply certified the names recommended by local JPs (Cockburn, A History of English Assizes 159).
who presided over a court with an expansive jurisdiction. While Egerton may have subordinated the hearing of “petty Causes” to the work of administrative review, the judges’ supervision of local society was possible in part because the activities of the court drew the attention of the community. The theatrics of the Assize sessions as well as the court’s efficient (and therefore economical) process were strong attractions.\(^\text{36}\) The stateliness of the judges’ entrances into towns, the extensive display of both royal authority and the upper echelons of local society, the judges’ grand jury charges, and the trial of officers before an eminent authority all produced a powerful spectacle for public consumption. “No other local courts (aside from the special jurisdiction of the Cinque ports) could invoke capital punishment; no other tribunals handled cases so cheaply, conveniently or quickly; no other forums were so communal in their involvement of local residents and in their determination to make decisions a public spectacle.”\(^\text{37}\) The same coupling of local surveillance and legal spectacle that was associated with the Assizes and that was orchestrated by the Assize judge, is easily observed in Shakespeare’s *Measure for Measure*, in which Duke Vincentio secretly surveys the operations of his justice system and then exposes its corrupt elements in trial. Before moving on to a detailed reading of the play, however, the next section outlines more closely the features of the historical spectacle and the impact of the itinerant court on local life and officeholders.

### 1.2 The Spectacle and Cycle of the Assizes

The cycle of the Assizes can be divided into four stages that each had a shaping influence on community life: the judges’ formal entrance into counties, accompanied by all the pomp that the local elite could muster; the process of the trials themselves; the judges’ abrupt departure; and the invisible part of the cycle in which local magistrates struggled to fill the legal-political vacuum left in the sessions’ wake. The first two stages drew a crowd and involved many local participants. A large part of the Assizes’ effectiveness as

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\(^{36}\) On judicial complaints about the inadequacy of court premises for the size of the audience gathered, see Cockburn, *A History of English Assizes* 66-67.

\(^{37}\) Herrup 44. Herrup’s comments were applied to the Assize and Quarter sessions.
a vehicle for reform was due to the spectacle of its procession and trials, which attracted both the awe and interest of the region. Through an examination of this cycle, an early modern conception of justice emerges that demanded the conscientious execution of legal duties and process, and the public exposure and shaming of offenders. The difficulties of local law enforcement, of putting law and policy into local practice, likewise surface. The conception and process of justice that was articulated and demonstrated during the Assizes will ultimately help us read the decisions of legal representatives in Shakespeare’s fictional Vienna.

The formal Star Chamber charge discussed above was followed by ceremonial grandeur as the judges were welcomed into the counties where their temporary seats of justice were established. As Cockburn writes, “there is much to suggest that for rural society and average litigant alike Assizes assumed the awful remoteness of a divine visitation.”38 The anonymous late seventeenth-century manual, The Office of the Clerk of Assize, describes the extensive formalities of the judges’ welcome:

When the Judges set forth for that County, the Sheriff sends his Bailiff to the edge of the County, to bring them the best way to that place where the Assize for that County is to be held; and before they come thither, the Sheriff attended with his Under-Sheriff, and Bailiffs, with their white Staves and his Livery-men with their Holdberds in their hands, and accompanied with the chief of the Gentry of the County do wait upon the Judges at the usual place, and conduct them from thence to their Lodgings at the Town where the Assizes be appointed to be held.

When the Judges have reposed themselves at their Lodgings; and the Gentry have paid their respects to them, and they have put on their Robes; then the Sheriff covered, with this white Staff in his hand, attended by his Under-Sheriff bare-headed, and his Bailiffs, uncovered, with their white Staves in their hands, and his Livery-men, uncovered, with their

Holdberds in their hands, two by two on foot, wait on the Judges from their Lodgings to Church, where the Minister of the Parish reads Prayers, and the Sheriff’s Chaplain gives them a Sermon; and when that is done, the Sheriff waits on them in the same manner from Church to the usual place appointed for holding the Assizes, or General Gaol-delivery for that County.  

This extended, grand procession, involving many of the county’s elite, was a biannual event through most of the early modern period and into the nineteenth century.  

Once in court, the judges took the lead, delivering before the local assembly the charge to the grand jury. Reform of local justice began with these speeches in which the Lord Keeper’s Star Chamber address “was echoed and embellished by the judges.” With the backing of their remote, royal authority, the judges encouraged juries to bring the clandestine offences of local officeholders to light despite their fears of reprisal or their personal associations. In his 1606 speech at the Norwich Assizes, Coke appealed


40 Cockburn, A History of English Assizes 65. This image of the ceremony and display that accompanied the Assize judges persists well into Charles Dickens’ day, who juxtaposes the appearance of a judge on circuit with a judge on vacation in Bleak House:

> If the country folks of those Assize towns on [the judge’s] circuit could only see him now! No full-bottomed wig, no red petticoats, no fur, no javelin-men, no white wands. Merely a close-shaved gentleman in white trousers and a white hat, with sea-bronze on the judicial countenance, and a strip of bark peeled by the solar rays from the judicial nose, who calls in at the shell-fish shop as he comes along, and drinks iced ginger-beer! (Bleak House, ed. Stephen Gill [Oxford: Oxford UP, 1998] 278).

41 Hindle 6.

42 The grand jury’s oath included, “you shall present no man for envy, hatred, or malice, neither shall you leave any man unpresented for love, fear, favour, or affection, or hope of reward, but you shall present
to the members of the grand jury to present those men who have abused their position. He “point[ed] out… some seuerall officers, whose actions not beeing sufficiently looked into, many abuses are committed, which passe vnpunished.” These officers included “Excheaters,” the “Clarke of the Market,” the “Purueyor,” and the “Salt-peter man.” No officer was too lowly for the court’s notice: “[a]ny such fellow, if you can meete withall, let his misdemenor be presented, that he may be taught better to vnderstand his office: For by their abuse the countrey is oftentimes troubled.” These officers frequently swindled money and resources out of the public through the misrepresentation of the rights conveyed in their quite limited commissions. Offending officeholders were to be made a particular example at the Assizes where they could be tried under the auspices of royal justice and where local society could witness it all:

You of the Iurie therefore for the good of your selues and yours, carefully looke to the proceedings [of officers] and such abuse as you shall find therein, let it be presented. And such as shall bee found offendors, they shall know, that we haue lawes to punish them. For proofe whereof, I would you could find out some, of whom there might be made an example.

The Assizes were an especially apt venue for public shaming since they put on display neighbours before neighbours, subordinates before superiors, and superiors before subordinates. In “Honour, Reputation and Local Officeholding in Elizabethan and Stuart England,” Anthony Fletcher recounts the case of Sir Henry Winston, who was prosecuted in the court of Star Chamber in 1602 by a fellow JP and faced punishment at his home

things truly as they come to your knowledge, according to the best of your understanding, so help you God” (Clerk of Assize 31).

43 Coke sig. G3'–H2r.

44 Coke sig. H1'.

45 Coke sig. G3v.
Assizes. Charged with beating a bailiff for arresting one of his servants and alleged to have shown unwarranted mercy to offenders who were also his dependents, Winston “pleaded with Sir Robert Cecil for remittance of the punishment of public confession of his offence at Gloucester Assizes. ‘I desire rather to remain in prison,’ he wrote, ‘than to receive open disgrace in my country.’” 46 In many cases the “open disgrace” of formal accusation was punishment enough. Bernard William McLane explains, “[l]ocal opinion may have held that the process of being publicly prosecuted was an unambiguous means of putting certain individuals on notice that they had seriously, but not fatally, violated accepted standards of conduct and should mend their ways.” 47

Assize justice was thus a function of public inquiry, accusation, and exposure as much as, or more than, conviction (which might or might not occur, which might or might not involve punishment proportionate to the offence). The judges’ charges to grand juries focused not only on the presentment of men with local power, but also on the communal process by which offences were brought to light. While the Star Chamber charges outlined the Assize judge’s responsibility for local surveillance, John Davis explained to the assembly at the York Assizes that the judge’s “private knowledg” could only be brought to light and acted upon through the “inquisicyon and presentment” of the grand jury and the “tryall” of the petty jury. He compares the process of the “publick justice of England” to God’s own execution of justice against Sodom and Gomorrah:

[B]y the ordynarye course of the lawe of the land wee that are judges cannot proceed agaynst offenders without the service and ministrye of yow that are jurors, without your inquisicyon and presentment noe malefactor can be brought to his aunswer. And herein the publick justice of England doth observe the lyke course as the divine justice did in


proceeding agaynst those sinfull cyttyes, for though there sinns were crying sinnes and most notoryous to the worlde, and most perfectyke knowne to God himselfe… yet was the Divine Majesty please to make an enquirye thereof before he would give anye judgment agaynst them….
Not that God was ignorant of theyre most secret offences, but for that it was his most dyvine pleasure to give an example or pre\centid to the judges of the earth how they should procede in causes brought before them, not grounding theyre judgements upon their own private knowledg but upon solemne and publick inquisicyon and tryall.\footnote{Cockburn, \textit{A History of English Assizes} 310.}

In the Assizes, overwhelmingly, the concentration was on the process of bringing offences to light—through judicial and community effort. Judicial knowledge had to be coupled with a public display that legitimated the legal process and shamed offenders (suspected or convicted). In his grand jury charge, Davis emphasizes the shared responsibility of bringing offences to light as well as the shared benefit. Public justice is in the service of the public good: entire cities are scourged in his Biblical example. By bringing to light the offences of officeholders in particular, the entire common weal benefits.

The spectacle of the Assizes came to a conclusion with the judges’ hasty retreat after only two to three days in the county. Their exit presented a stark contrast with the ceremonial grandeur of their entrance. “[T]\he fact that the judges arrived, presided, and then immediately departed lent an air of mystery and finality to the Assizes,”\footnote{Herrup 51.} explains Cynthia Herrup. The court temporarily constrained tensions between neighbours and between local and central interests within the formal roles of public ceremony and legal process before disappearing into “airy nothing.” “[Francis] Bacon’s description of the circuits as ‘rivers in Paradise’ is particularly apt,” writes Herrup: “[I]ike rivers they visited many areas, but also like rivers they ran through the kingdom, permanently impermanent, leaving a silt of orders and commands and moving on before the deposit
had fully settled.” The legal-political vacuum they left in their wake had to be filled by the efforts of (hopefully) conscientious and competent JPs. With neither the expertise nor the authority of the Westminster judges, the local JPs were responsible for seeing that the legal-political policies introduced during the Assizes reverberated effectively through local life. “The Assizes were like any other grand visitation; their authority was momentous and their grandeur was awesome, but their real power rested ultimately on far less eminent officials than the judges.”

The Assize judges’ local legal authority was effectively terminated at the end of a session. The JPs, on the other hand, were magistrates all year round, with significant duties outside their own court, the Quarter sessions. They were responsible for arbitrating among neighbours and factions, forestalling suits or cases at law, and preventing unlawful assemblies and riots wherever possible. A JP could “bind over the unruly to be of good behaviour; he was to stop affrays... and enquire into apprenticeship disputes and differences between master and servant; he could also take steps to suppress vagabonds, rogues, nightwalkers, nocturnal hunters in masks, and players of unlawful games.” While the Assizes were responsible for the oversight of JPs, the JPs were responsible for the oversight of the county itself on a day to day basis. While he was humbly “to inform and to listen” during the Assizes, “for most of the year and in most of the county, the [JP] could claim to be the key to justice—he arbitrated, licensed, bonded, tried, and punished.” “[A]ccessible” and “highly visible,” the good JP cultivated an extensive knowledge of local activities and people that helped him keep tabs on the region. Yet his intimate involvement in and knowledge of the community meant that he was, as the central government feared, far from neutral on the topics of local politics and economic interests. “The Privy Council,” writes Herrup, “doubted the ability of local justices to

50 Herrup 56-57.
51 Herrup 57.
52 Sharpe 28.
53 Herrup 61.
54 Herrup 54-55.
reach dispassionate, rational decisions.” The Assize judges were supposed to counterbalance the influence of self-interest in local justice.

Central authorities were obsessively concerned with the quality of the justices of the peace; however, the rigorous pursuit of statutory offences by an energetic and vigilant JP could do more to disrupt social harmony than to consolidate it. Keith Wrightson explains, “the very process of definition and statutory regulation which was involved in the legislative initiative might ultimately threaten to create new problems of order and obedience at the point at which precise national legislation came into contact with less defined local custom.” The infusion of royal authority into the counties twice a year, with the mandate to reform officers and society alike, inevitably introduced tensions that could erupt upon the court’s abrupt departure. Intended to reform and maintain local order and justice and to preserve its consonance with the expectations of central government, the Assizes’ commissions to JPs could also foment disorder and alienate locals (including magistrates) unprepared, unable, or unwilling to conform to the directives. As Francis Bacon explained, “it is not possible to find a remedy for any mischief in the commonwealth, but it will beget some new mischief.” In the case of the statute form that Bacon was analyzing, provisos mitigated the potential harm of new legislation. In the case of the execution of local justice, a great deal of legal-political and interpersonal savvy was needed to effectively perform the uncomfortable task of imposing national policy and standards upon local behaviour.

55 Herrup 44.


2  *Measure for Measure* and Local Law Reform

The major features of the Assize system examined above—the stages of its cyclical structure, the aspects of legal spectacle, the alternating surveillance and exposure of local officeholders, the expectation that justice and judicial process transformed private into public knowledge, the tensions between central and local authorities, between Assize judges and JPs, and between the rule of law and its execution—all inform the plot and the characterization of legal officers in *Measure for Measure*. If this list seems unwieldy, well, so is the play. The play begins where the Assizes ended, with the evacuation of royal authority and the creation of a legal-political vacuum that must be filled by subordinate officeholders, guided by rhetorical reminders of their duties and commissioned with new policies for local implementation. What opens in the opening scene is the local officer’s dilemma over the proper way of executing his duties or enforcing policy and law, a question that unavoidably engages individual judgment, discretion, and interpretative practices. The relationship between the laws and their execution is thus also the measure of a legal officer. The following close reading examines Shakespeare’s legal officers’ various approaches to the execution and enforcement of the law against the historical operations and expectations of the Assizes and local justice. In the analyses below, I distinguish between Angelo, Escalus, the Provost, and the Duke based on their degree and kind of intervention in local justice. I argue that Shakespeare evokes the ideal of the proactive JP (historically discussed in Star Chamber and grand jury charges as well as the Lord Keeper’s parliamentary orations) against which we can judge the efficacy and ethics of his officers. While Angelo represents a passive judicial philosophy, Escalus’s judicial efforts illustrate both the necessity and difficulty of actively bringing offences to light. The Provost and the Duke, meanwhile, exemplify a proactive justice that balances the rule of law against social realities, preserving the certainty and force of the law as well as human life. Instead of relying on the unreliable reformatory power of punishment or mercy, they employ a particularized knowledge of local circumstances to forcibly redirect offenders’ energies into legitimate or approved activities.
2.1 Commission and Execution: The Opening of *Measure for Measure*

Duke Vincentio begins his reform of Viennese justice and governance in 1.1 by targeting local officeholders.\(^{58}\) In recommissioning and reorganizing local authority before his hurried retreat, the Duke mimics the Assize judge’s responsibility for reforming the Commission of the Peace and admonishing those in charge of local justice. The name at the top of the commission traditionally had seniority. For instance, the commission was revised for each Assize session to include the judges’ names at the top, giving them the status of highest local authorities while they held trial.\(^{59}\) In the play, the more experienced Escalus is made Angelo’s second in command. The distinction the Duke draws between deputy and secondary is expressed in his verbal charges that echo those in which Assize judges instructed JPs to “doe their dueties when [the judges] are absent.”\(^{60}\)

A rehearsal of the traditional “properties” of government to Escalus, the Duke explains, is unnecessary given the subordinate’s extensive experience, but by beginning with the dismissal of this formality he indicates that such comments were expected. In the Duke’s brief instructions to Escalus we are introduced to the subordinate’s professional reputation as well as the duties of a local justice:

> Of government the properties to unfold
> Would seem in me t’affect speech and discourse,
> Since I am put to know that your own science
> Exceeds, in that, the lists of all advice
> My strength can give you. Then no more remains
> But that, to your sufficiency, as your worth is able,
> And let them work. The nature of our people,


\(^{60}\) James VI and I 220.
Our city’s institutions, and the terms
For common justice, y’are as pregnant in
As art and practice hath enriched any
That we remember. (1.1.8-12)61

The Duke’s charge reflects the balancing act that local justices had to perform on a daily basis. In executing the law, Escalus is expected to combine his knowledge of the abstract principles of governing with a knowledge of the “nature of our people/ Our city’s institutions, and the terms/ For common justice.” His effectiveness in governing is the result of “art and practice” combined with the local influence or authority that accompanied his social status or his “worth.” The exercise of the JP’s authority and refined judgment in governing or in administering the law, however, is regulated by his place in the legal-political hierarchy. Escalus’s range of motion is circumscribed by the Duke’s final directive: “There is our commission,/ From which we would not have you warp” (1.1.13-14). The complications that arise from trying to harmonize policy with local practice reveal themselves in a later scene with Escalus and Elbow, as I describe below.

While the Duke’s instructions to Escalus outline the complex responsibilities and decorum of local governing, his instructions to Angelo evoke a very different branch of the discourse on justices of the peace. To Angelo he gives a lecture on the necessity of putting virtue into action:

Thyself and thy belongings
Are not thine own so proper as to waste
Thyself upon thy virtues, they on thee.
Heaven doth with us as we with torches do,
Not light them for themselves; for if our virtues
Did not go forth of us, ‘twere all alike
As if we had them not. (1.1.29-35)62

The Duke’s instructions express the Aristotelian idea of justice as virtuous action toward our neighbours that was discussed in Chapter Two. In his 1616 Star Chamber charge, King James similarly explained to Assize judges and JPs, “To bee righteous, is to a mans selfe: To bee iust, is towards others.” The Duke’s emphasis on this principle is in response to Angelo’s public reputation, the “character in thy life/ That to th’observer doth thy history/ Fully unfold” (1.1.27-28). In a later scene with Friar Thomas, the Duke describes his deputy as “[a] man of stricture and firm abstinence” (1.3.12). Here in 1.1, the Duke’s advice suggests that this quality of “firm abstinence” conflicts with the duty to put virtue in action, or with the extensive public immersion demanded of a JP. His comments refract widespread concerns over legal officers’ inactivity that were voiced in Star Chamber charges, grand jury charges, Assize sermons, and in the parliamentary speeches examined in Chapter One. Thomas Egerton, for instance, cited “the number of newe & younge knightes” who sought a place in the Commission of the Peace only to “stande there lyke an Idoll to be gazed vpon, & doe nothinge.” James described bad justices as those who “thinke it is enough to contemplate Iustice, when as Virtus in actione consistit: contemplatiue Iustice is no iustice, and contemplatiue Iustices are fit to be put out.” Justices were suspected, moreover, of covering negligence with the guise of virtue: JPs “doe dayly… cloke these their faultes with the title of quietnes,” Nicholas Bacon complained, “where in very deed they seeke only ease, profitt and pleasure to them selves, and that to be sustayned and borne by other men’s cares and labours as

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62 The torch metaphor for the execution of the law comes up in the Elizabethan Lord Keepers’ parliamentary orations: “lawes without execucion be as a torche unlighted or body without a soule. Therfore looke well to th’executinge” (PPE 1:111-2).

63 James VI and I 204.

64 Cockburn, A History of English Assizes 147.

65 Baildon 368.

66 James VI and I 222.
drones doe among bees.” These concerns over the effective, ethical administration of local justice help illuminate the focus of the Duke’s instructions to his deputy. His comments immediately engage early modern standards for evaluating the conduct of JPs. From the play’s opening scene abstinence is not only potentially hypocritical (firm abstinence-cum-negligence), but it is also juxtaposed with the basic principle of community justice. Justice required local legal-political representatives to be actors, not idols.

In the Duke’s verbal charge, the notion of justice as virtue in action is reinforced by the idea of Angelo’s embodiment of his new powers:

In our remove, be thou at full ourself.
Mortality and mercy in Vienna
Live in thy tongue, and heart. (1.1.43-45).

The execution of the law was imagined widely in legal-political writings and speeches as the physical life of the law, and conversely, as Nicholas Bacon reminded JPs in parliament, “a law without execucion […] is but a bodie without life.” The Duke himself describes Viennese law as “dead” (1.3.28), the result of his own judicial negligence which in turn was the product of his love for “the life remov’d” (1.3.8, 1.1.19-31). The law embodied is the law that is filtered through the perceptions and refined judgment of the JP. Its embodiment is what should enable its flexible application and responsiveness to social or human circumstances. At the same time, as a body, the law and the JP are subject to all the bodily weaknesses and temptations. “A man of stricture and firm abstinence” who “scarce confesses/ That his blood flows” (1.3.51-2), Angelo cannot also be just unless he also risks spiritual contamination through bodily desire by putting virtue physically into action in the performance of his duties.

By reading the opening scene through the lens of the Assizes and local justice, we can see how the duke’s actions and his subordinates’ reactions refract the process and

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67 PPE 1:50.
68 PPE 1:191.
problems of early modern legal-political delegation and law enforcement. The Duke’s rushed and unceremonious departure presents a version of the historical scene in which the judges moved on from one locality to the next. His “haste from hence is of so quick condition/ That it prefers itself, and leaves unquestion’d/ Matters of needful value” (1.1.53-55). The result is that the Duke’s brief remarks in 1.1 fall short of adequately informing or reforming the local officeholders, who are left pondering the exact nature of their offices. While critics and modern audiences or readers have speculated about the Duke’s mysterious motives, his substitutes instead exit the scene to deliberate the correct way in which to put their verbal charges and written commissions into local practice. Escalus immediately appeals to his new superior for guidance:

I shall desire you, sir, to give me leave
To have free speech with you; and it concerns me
To look into the bottom of my place.
A pow’r I have, but of what strength and nature
I am not yet instructed. (1.1.76-80)

Angelo, who is to be the principal authority in Vienna in the Duke’s absence, responds to his associate’s request for a tête-à-tête by affirming that he is equally nonplussed: “‘Tis so with me” (1.1.81). So ends the scene, the Duke having left more questions than answers through his instructions and departure.

In order to secretly monitor the fallout of this shake-up of local governance, the Duke adopts the disguise of a friar through which he can “Visit both prince and people” (1.3.45). At the same time that power changes hands, then, a closer scrutiny of the execution of justice is also instituted. Though his new deputy asks for “more test made of my metal” (1.1.48) before he takes charge, the Duke’s scheme transforms the exercise of local authority into a continual test of the magistrate’s judgment and character. It is a test, moreover, that is also overseen by an audience that witnesses firsthand more secret

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“passes” than the Duke himself. When the Duke adopts the role of social spectator, the audience member or reader is pulled into a communal surveillance project and reminded of his or her responsibilities in a participatory justice system that necessitated the conscientious noting and reporting of suspicious or illicit conduct. The responsibility for surveillance is transferred between Duke and audience, between Assize judge and jury or local community. What makes this exchange particularly Assize-like is the object of surveillance and reform: local officeholders. In the verbal charges of 1.1 and the account of his plans in 1.3 the Duke steers our attention toward the evaluation of his substitutes.70

Though, as Victoria Hayne maintains, the disguised ruler may be “utterly unmimetic of anything outside the theater,”71 the Duke’s hidden presence facilitates the same difficult negotiation that was demanded of Assize judges who gathered firsthand knowledge of the counties at the same time that they were supposed to assert a neutrality in the administration of local justice. Through his disguise as Friar Lodowick, the Duke comingles with Viennese society while maintaining a reflective stance on what he observes. The Duke’s new immersion in his city contrasts not only with Angelo’s aloof abstinence, but it also reforms his own self-confessed governing failures. At the very beginning of the play he exercises the self-correction required of legal-political representatives who were, in fact, only intermittently under the gaze of the central authorities. His surveillance activities simultaneously turn inward and outward. If Duke Vincentio has, as Escalus claims, “contended especially to know himself” (3.2.226-7), the product of this contemplative activity is the reform of justice and governance. While the

70 Victoria Hayne argues that this focus of the Duke’s distinguishes his project from those of his predecessors within the disguised ruler tradition: “Like his precursors, the disguised Duke in Measure for Measure has a political and social quest, but, unlike them, his is a very specific one: he goes into disguise not to correct social abuses himself but to ‘behold [Angelo’s] sway,’ to find out ‘what our seemers be’ when they have power ‘to enforce or qualify the laws’” (“Performing Social Practice: The Example of Measure for Measure,” Shakespeare Quarterly 44.1 [1993]: 1-29, esp. 23-24). For discussions of the disguised ruler genre in relation to Measure for Measure, see also Stephen Cohen, “From Mistress to Master: Political Transition and Formal Conflict in Measure for Measure,” Criticism 41.4 (1999): 431-464; and Tennenhouse.

71 Hayne 23.
disguised immersion in and surveillance of Vienna may be temporary, he permanently redirects his own course through marriage. By proposing to Isabella, the Duke prepares a future in which both husband and wife are cut off from the life removed that both find tempting.

### 2.2 Vienna’s Justices

The second scene with Angelo and Escalus picks up right where 1.1 leaves off. Act Two opens with the two officers debating the correct execution of the law. In the course of defending his decision to behead Claudio for fornication, Angelo describes the process of law as essentially passive, a perspective that is in direct contradiction with early modern English ideas about the JP’s role as the local leader of a communal, participatory justice system. According to Angelo, instead of actively searching out offences, justices must wait until offences manifest themselves. His judicial aloofness, hinted at in Act One and developed over Act Two, derives from his own philosophy through which the law seeks only what is already found:

The jury passing on the prisoner’s life
May in the sworn twelve have a thief, or two,
Guiltier than him they try. What’s open made to justice,
That justice seizes. What knows the laws
That thieves do pass on thieves? ‘Tis very pregnant,
The jewel that we find, we stoop and take’t,
Because we see it; but what we do not see,
We tread upon, and never think of it. (2.1.19-26)

Angelo is undeniably correct that only “What’s open made to justice,/ That justice seizes upon.” He misunderstands or ignores, however, the justice’s responsibility to actively investigate cases within his region and to make suspicious conduct visible to the law by representing it in the terms and categories of legal offences. In Nicholas Bacon’s words, the JP must “become a diligent searcher out, follower and corrector of felons, murderers,
and such like common enemys to the common wealthe."\textsuperscript{72} Angelo’s analogy of the found jewel suppresses the extensive network of conscientious individuals involved in bringing offences to light, from the beginnings of cases to their conclusions. That the law can act upon only what is brought within its gaze is, in fact, the greatest case that could be made for the officer’s proactive efforts on the law’s behalf and for the monitoring of the quality of the law’s administration. That Shakespeare was thinking along these lines is evidenced by Elbow’s entrance soon after the above speech of Angelo’s. Through the constable’s inept execution of the law, very little—nothing actionable—comes to light of Pompey’s bawdry.

Despite the Duke’s charge to put his virtue into action, we see Angelo do very little. Instead he becomes an “Idoll to be gazed vpon,” to use Egerton’s words, or a “looming presence,” to use Pamela K. Jensen’s.\textsuperscript{73} Confronted with the constable Elbow and his case against Pompey (the suspected bawd) and Master Froth (the suspected john), the deputy escapes a tedious, convoluted narrative that “will last out a night in Russia/When nights are longest there” (2.1.133-34). Escalus is left on his own to sort through the constable’s malapropisms and Pompey’s specious defense. Likewise, when the Duke makes the extraordinary gesture of allowing Angelo to judge over his own cause in the final trial, it is Escalus instead who takes the lead in questioning plaintiff and witnesses. In his delegation of labour, Angelo invites the kind of criticism found in Nicholas Bacon’s closing remarks to parliament, in which the Lord Keeper complained of negligent justices who “cannot endure to have their eares troubled with hearinge of controversies of their neighbours for the good appeasinge of the same.”\textsuperscript{74} These men are “sustayned and borne by other men’s cares and labours as drones doe among bees.”\textsuperscript{75}

\textsuperscript{72} \textit{PPE} 1:50.


\textsuperscript{74} \textit{PPE} 1:50.

\textsuperscript{75} \textit{PPE} 1:50.
Both the Duke and Escalus visit the prison; Angelo is the only character who never makes an appearance there. Both Escalus and the Provost have a wider knowledge of community members; Angelo seems to be the only character unaware that Claudio has a sister. Angelo’s virtue “goes forth” while he personally stays behind. His strict adherence to the letter of the law—which radically reduces the amount of gray area in legal interpretation and saves the deputy the trouble of considering the particular mitigating circumstances of any case—gains him a “name,” as Claudio complains (1.2.146-60).

While Angelo’s speech at the opening of 2.1 emphasizes readily apparent, gleaming facts as the proper object of the law, the Elbow episode that follows immediately in the same scene illustrates the difficulties of bringing offences to light and the degree to which justice depended on local officeholders’ initiative. While the Duke takes the principle of being “a diligent searcher” to an extreme through his undercover operation, Escalus’s more modest judicial methods are put on display in his hearing of Elbow’s case against Pompey. Escalus repeatedly attempts to get Elbow to defend his accusations with evidence that is never successfully produced. The justice inquires, “How know you that” (2.1.67) and “How dost thou know that, constable?” (2.1.77) But Elbow’s account comes short of describing a chargeable offence, and Pompey’s defense is filled with superfluous evidence and specious arguments that are nothing to the point. Bored with the absurdities of the case, Angelo leaves it to Escalus to be sorted out, “Hoping you’ll find good cause to whip them all” (2.1.136). Escalus is barred from proceeding, however, because of the constable’s incompetence. Pompey remains only suspected. “Truly, officer,” Escalus tells Elbow, “because he hath some offences in him that thou wouldst discover if thou couldst, let him continue in his courses till thou know’st what they are” (2.1.182-5). The justice’s decision prompts another misconstruction from Elbow, who tells Pompey, “Thou art to continue now, thou varlet, thou art to continue” (2.1.188-9). The misunderstanding pointedly associates the failure of the legal process (the continuance of a flagrant offender) with the officer’s incompetence.

Escalus has commonly been implicated in the lax, ineffective justice that the Duke describes as characteristic of Vienna, and this episode would appear emblematic of
the counterproductive overextension of mercy. As Lars Engle writes, Escalus “finds himself condemning others to continue what they are doing.”\textsuperscript{76} The result of this policy, Jensen explains, is that the offenders are all “tempted by ‘continuance’ of their freedom into committing new [sins].”\textsuperscript{77} This popular perspective ignores not only the fact that Escalus’s judgment is constrained by the inadequate presentation of evidence and the incompetence of the local officer, but also the pointedly unalterable character or nature of the suspect. Through Pompey’s comments, we learn that legal punishment is as ineffective in altering behaviour as Angelo believes its merciful reprieve to be. While Escalus lets Pompey off with the warning of a whipping if he is brought before the court again, the bawd responds in an aside by asserting his imperviousness to such reform:

Whip me? No, no, let carman whip his jade;  
The valiant heart’s not whipt out of his trade. (2.1.252-3)

While Escalus does his best to reform the conduct of those brought before him, and to inform and warn them of new policies (“There is pretty orders beginning, I can tell you” [2.1.233]), significantly, his attention shifts quickly from Pompey and Froth to the incompetent constable. Escalus has the greatest chance of reforming local justice by replacing or reforming Elbow. Escalus inquires into the back story of the constable who has been in office for more than seven years because his neighbours have shirked the responsibility (presumably because it is more burdensome than profitable). This information inspires Escalus to start an investigation of sorts, and he orders Elbow to bring him the names of “some six or seven, the most sufficient of your parish” (2.1.269-270) in order, in all probability, to eventually replace Elbow and to admonish those community members who have sidestepped their duty. If Escalus’s justice is incapable of effectively redirecting Pompey from his trade and Froth from the brothels, he nevertheless starts the process of improving the competency with which the office of


\textsuperscript{77} Jenson 114.
constable will be executed. Through the replacement or reform of Elbow, the system has a better chance of bringing to light the activities of types like Pompey. This scene prefigures the final trial in which the case at hand is overshadowed by the larger issue of the Duke’s own administration of justice.

2.3 The Prince and the Provost

The governing styles of both Angelo and Escalus are predicated on a conception of human nature or character that is unchanging, or at the very least, extremely resistant to reform. For Angelo, one error guarantees the next, and so the subject must be cut off to prevent inevitable future crimes. Instead of investigating past facts, it is the law’s job to sift through manifest offences for signs of future ones. The law is “like a prophet” that

Looks in a glass that show what future evils,
Either new, or by remissness new conceiv’d,
And so in progress to be hatch’d and born,
Are now to have no successive degrees,
But ere they live, to end. (2.2.91-100)

But if to err is human, Angelo’s strict policy must, as Pompey suggests, devastate the entire population (2.1.235-40). The more practical and humane approach of Escalus presents the correction or replacement of the officeholder as an alternative method and focus of reform. But even if more skilled local officers can be discovered or educated, who can more successfully bring offences to light, offenders like Pompey will continue in their “trade,” impervious to the law’s non-capital punishment and mercy. The limitations of both Angelo’s and Escalus’s justice—of capital punishment and continuance—establish the limits of the punitive dimension of law as an instrument of social and individual reform. The limitations of both Angelo’s and Escalus’s justice are circumvented, however, through the more nuanced practices of the Provost and the Duke, who safeguard the integrity (the certainty and force) of the law as well as human life. Through several substitutions these latter two legal officers redeem individuals incapable of reform by redirecting their energies away from illicit practices. The work of the Provost and the Duke, moreover, reflects an early modern legal mentality that preferred
the reorganization of relationships and the reallocation of resources through negotiation, arbitration, and community intervention in lieu of final decrees and convictions.\textsuperscript{78}

By 3.2, justice in Vienna does seem to be more effectively administered. When Elbow appears again, he is more competent in his office, a change signaled by his vastly improved language use. His verbal mistakes are at an end, and instead, he manages a very coherent joke in which he compares bawdry to theft. Pompey is in tow once more, but this time his crime is manifest, and the culprit openly admits he’s a bawd. Elbow may have been successfully refurbished, but the audience has been prepared to expect the failure of legal remedies against the resolute offender. The traditional “correction and instruction” of physical punishment and moral admonishment that the Friar-Duke prescribes for Pompey (“this rude beast” [3.2.31-2]), however, are sidestepped entirely by the Provost who keeps the prison. In Act Four the Provost offers Pompey the alternative trade of executioner’s assistant. Faced with this unexpected opportunity, the first thing the bawd does is pun. Pompey tells the Provost that he “ha[s] been an unlawful bawd time out of mind,” but that he “will be content to be a lawful hangman” (4.2.14-16). In the bawd’s response, the sexual connotations of “hangman” come out: Pompey has been the unlawful kind that helps johns to sexual gratification, sexually transmitted diseases, and even the noose—all of which hang a man. The bawdy consonance between an execution and the sexual beheading of maidenheads likewise comes up in Pompey’s speech: “If the man be a bachelor, sir, I can [take his head]; but if he be a married man, he’s his wife’s head; and I can never cut off a woman’s head” (4.2.2-4). Despite the differences between a bawd and an executioner’s assistant, the linguistic consonances figure a kind of commonality that makes this opportunity a reasonable, attractive career move. Certainly Pompey remains an assistant in both cases and deals with the same clientele. And as it turns out, the position has all the disreputability Pompey could wish

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\textsuperscript{78} Timothy Stretton emphasizes the degree to which a final decree at law was relatively rare and even systematically avoided in preference for arbitrated solutions to interpersonal conflict. “The successful resolution of suits,” he writes, “did not always require the making of decisions or the granting of decrees…. Few cases stayed the distance to a final court order” (Women Waging Law in Elizabethan England [Cambridge: Cambridge UP, 1998] 82).
for, and a great deal more job stability. The Provost invites the executioner, Abhorson, to “compound with [Pompey] by the year, and let him abide here with you” (4.2.21-22). While Pompey had shirked conviction and punishment earlier (and apparently for years), the Provost gets the now former bawd to agree to dwell in prison voluntarily and indefinitely in his new occupation.

When Abhorson protests that Pompey will “discredit our mystery” (4.2.26-7), the Provost replies, “Go to, sir, you weigh equally: a feather will turn the scale” (4.2.28-9). Neither the hangman nor the bawd was reputable. The all-important difference between the two trades is the legality of the one and the illegality of the other. Several characters in the play suggest that this difference could be overcome by simply rewriting the law to accommodate human desire and action. Pompey himself had earlier recommended that the law change to accommodate his profession:

Escalus. How would you live, Pompey? By being a bawd? What do you think of the trade, Pompey? Is it a lawful trade?

Pompey. If the law would allow it, sir. (2.1.220-224)

Pompey’s reasoning here recalls the story of the “sanctimonious pirate,” related in the course of Lucio’s conversation with two fellow gentlemen at the beginning of 1.2. The “sanctimonious pirate… went to sea with the Ten Commandments, but scrap’d one out of the table” (1.2.7-9). “Thou shalt not steal” was “a commandment to command the captain and all the rest from their functions” (1.2.12-13). Instead of changing the law, the Provost changes Pompey’s job, and in so doing he deflects two threats to the law: first, the threat to the law’s force posed by the bawd’s continuance, and second, the threat to the law’s certainty posed by redefinition.

The Provost’s success with Pompey introduces a new option for legal practice in the play, a type of remedy that does not hinge on the effectiveness of character reform through punishment or mercy. It takes the Provost’s extensive knowledge of the local community and of the characters in his prison to enable him to perceive opportunities for social reorganization which escape the consideration of his superiors, Escalus and Angelo. If justices were ideally supposed to be proactively searching out offences, the Provost demonstrates the equal importance of searching out the means of social repair.
work. His efforts with prisoners attract the attention and admiration of the Duke who, through the bed-trick, employs a similar strategy that turns a false bargain into the satisfaction of an older, honest one. Emphasizing the contiguity between the Provost’s and the Duke’s justice is the fact that Pompey makes his career change at the same time that the bed-trick is put into action.

Together, the Provost and the Duke devise a plan to protect life and the integrity of the law by switching Claudio’s head for that of a dead pirate when Angelo demands the fornicator be executed. The legal advantages of this substitution come to light in the final trial that the Duke orchestrates. The head switch enables the Duke to deny mercy to his officer in a case of abused legal authority. After Angelo is initially sentenced to death for the unjust execution of Claudio, Isabella asks the Duke to wink at the crime: “Look, if it please you, on this man condemn’d/ As if my brother liv’d” (5.1.442-3). But “What’s open made to justice,/ That justice seizes,” and the Duke refuses to falsely redescribe his deputy’s crime. Instead, Claudio’s continuing existence is finally revealed, altering the facts of the case and the judgment Angelo deserves. To Angelo, according to whom justice is blinkered, the Duke’s knowledge of secret “passes” appears “like power divine” (5.1.367-8); to the wider audience, the Duke’s knowledge and elaborate orchestration of the trial resonate with the backstage work, the preventative measures, of proactive justice taken to a theatrical extreme. The Duke is thus also like the “Divine Majesty” of Serjeant Davis’s grand jury charge, who “give[s] an example or precedent to the judges of the earth how they should proceede in causes brought before them.”

The Duke’s penchant for substitution has been well investigated. What has not been observed is the fact that this technique has the same effect of upholding life and the integrity of the law as the Provost’s management of Pompey’s career change. The Provost’s legal practice and mentality, the efforts of this legal officer negotiating the

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expectations of his superiors and the needs of locals, provide a prototype for the Duke’s reformed governing method and the promise of order in the absence of royal authority. The extensive cynicism generated by the play’s complications is at least partially counterbalanced by the Duke’s discovery of the Provost whose merits, along with Angelo’s secret “passes,” are also brought to light through the Assize-like surveillance and exposure of local justice. The Duke’s Assize-like public reentrance culminates in a hearing that is the setting for a public shaming and commendation of local officeholders.

2.4 The Duke’s Return

The Duke’s public reentry into Vienna evokes the multi-step, ceremonial reappearance of the Assize judges in the English counties. Commissions are sent before the Duke’s arrival, instructing his substitutes to “Give notice to such men of sort and suit/ As are to meet him” and inviting his subjects to submit petitions for justice (4.4.7-16). Cockburn writes that the Assize judges “went first to their lodgings. There they received leading members of the local gentry who probably reported briefly on the state of the county.” The Duke initially gathers Valencius, Rowland, Crassus, Flavius, and Varrius where he is staying (4.5.7-13). He is thus “accompanied with the chief of the Gentry of the County,” who usher him from his lodgings to the city gates. There he is greeted with trumpets and by Angelo and Escalus who are stationed to publically “redeliver [their] authorities” (4.4.5). This process terminates in a greeting staged before the Duke’s subjects that emphasizes (for the offstage audience or reader) the disconnection between representation and reality. The initial gathering of local gentry (ordered but not represented onstage) substantiates the Duke’s claim, upon reuniting with his substitutes, that “We have made enquiry of you” (5.1.5). The report has been unequivocally

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82 Clerk of Assize 23-24.
favourable, and the Duke explains that public recognition is the purpose behind his proceedings:

we hear
Such goodness of your justice that our soul
Cannot but yield you forth to public thanks,
Forerunning more requital (5.1.5-8).

Like a conscientious Assize judge, however, the Duke does not rely on the reports of others. The difference between the local report on local officeholders and the Duke’s private knowledge gathered through surveillance vindicates the state’s anxieties over the difference between “report” or “discourse” and the judge’s firsthand knowledge. In his greeting, the Duke immediately, ironically, begins to hint at a private knowledge that must be revealed. “O, but your desert speaks loud,” he tells Angelo, “and I should wrong it/ To lock it in the wards of covert bosom” (5.1.10-11). The Duke explains that his public greeting will represent to the people his inward sense of Angelo’s worth:

Give we our hand,
And let the subject see, to make them know
That outward courtesies would fain proclaim
Favours that keep within. (5.1.14-17)

What happens in the trial is a process through which the private knowledge of the Duke, gathered and established over the course of the play, is transformed into public knowledge. His role as judge, as Isabella declares, is “To make the truth appear where it seems hid” (5.1.68). Her expectations of the judicial process echo Serjeant Davis’s description of the “publick justice of England” that used “solemne and publick inquisiyon and tryall” to bring to light “the judges… own private knowledg.”

The truths hidden to the Viennese public, however, are well-known to the offstage audience well before the trial: we know that Angelo is guilty, that Lucio is a slanderer, and that Isabella is chaste. Lorna Hutson compares the transparency of Measure for Measure to the “evidential uncertainty” of George Whetstone’s Promos and Cassandra. “[W]here Whetstone’s Cassandra yields to the magistrate and then complains for justice
to a King who must decide, *without knowing the facts*, whether or not she is telling the truth and whether or not Promos is guilty,” Hutson explains, “Shakespeare’s Duke Vincentio stage-manages not only the chastity-preserving bed-trick, but the feigned evidential uncertainties of the whole trial.”83 The result, I argue, is that Shakespeare’s audience or reader is asked to concentrate instead on the nature and justice of the methods by which secret practices are brought to light. The Duke deliberately steers the on- and offstage audience’s attention away from the issue of Angelo’s guilt or innocence and toward the motives of the deputy’s accusers. In answer to Isabella’s description of Angelo’s false bargain (her chaste body for her brother’s freedom), the Duke presents his deputy’s innocence as unquestionable:

By heaven, fond wretch, thou know’st not what thou speak’st,
Or else thou art suborn’d against his honour
In hateful practice. First, his integrity
Stands without blemish; next, it imports no reason
That with such vehemency he should pursue
Faults proper to himself. If he had so offended,
He would have weigh’d thy brother by himself,
And not have cut him off. Someone hath set you on:
Confess the truth, and say by whose advice
Thou cam’st here to complain. (5.1.108-117)

Cutting short the case against Angelo, he insists repeatedly that “This needs must be a practice” (5.1.126), and instructs his subordinates “To find out this abuse, whence ‘tis deriv’d” (5.1.246). The Duke draws the crowd’s attention indirectly and eventually to his own secret practices as Friar Lodowick. The dramatic climax of the trial is thus the unmasking of the Duke’s secret identity rather than Angelo’s hypocrisy.

The revelation of the Duke’s surveillance of Viennese justice and society collapses the paramount distinction drawn earlier in the play between what the law can and cannot see. Through the Duke’s undercover operation and final public resumption of

83 Hutson 288-89.
power, all action appears subject to the law’s observation and judgment. This new demonstration of the Duke’s power immediately prompts Angelo’s confession:

O my dread lord,
I should be guiltier than my guiltiness
To think I can be undiscernible,
When I perceive your Grace, like power divine,
Hath looked upon my passes. Then, good prince,
No longer session hold upon my shame,
But let my trial be mine own confession.
Immediate sentence, then, and sequent death
Is all the grace I beg. (5.1.364-72)

There is every reason to think Angelo’s request a sincere one, I believe, because of its consistency with his own policy and character. Resisting the argument that the judge should forgive offences of which he is personally guilty, Angelo had earlier argued instead that,

When I that censur him do so offend,
Let mine own judgement pattern out my death,
And nothing come in partial. (2.1.29-31)

Upon the revelation of his abuse of authority, no other position but immediate death is logically defensible for Angelo. And like an extreme version of the case of Sir Henry Winston who preferred prison to public exposure at the Assizes, Angelo may truly prefer death to a public shaming that launches a direct attack against what the deputy most prizes: his reputation for “gravity” (2.4.9-10). If justice can see all, reputation has a much greater chance of being aligned with reality.

*Measure for Measure* has gained the most attention for the supposedly unsatisfactory nature of the Duke’s resolution to the problems of Vienna: Angelo, Lucio, and Claudio are pardoned and married off or engaged to the women whose reputations they’ve harmed. This “collapse into quick fixes by way of forced marriages […] has disappointed and puzzled commentators,” writes Lars Engle. “Modern readers cannot
imagine that this solution leads to lasting comfort.” In her widely cited account, Harriet Hawkins claims “the kinds of solutions offered by the Duke—whether Shakespeare intended them to or not—seem hopelessly inadequate in the face of the psychological, sexual, and moral conflicts they are supposed to have resolved.” Historically censured, the ending is now more frequently admired for the complex social realism of the irresolution and indeterminacy of its themes and conflicts. Yet critics have consistently failed to evaluate the Duke’s public exposure of officers’ practices, his general gaol delivery, and his marriage solution in relation to the models for reform offered elsewhere in the play: Angelo’s capital punishment, Escalus’s continuance, and the Provost’s and Duke’s substitutions. The labour-intensive substitution practices of the Provost and the Duke are successful specifically because they compensate for imperfect characters and safeguard life and law alike. The concluding marriages are a part of this same strategy. The new tensions created by the concluding marriages point toward the practical necessity of the ongoing work of local governance and vigilance.

Part of what disgruntles modern moral-literary expectation is the fact that Angelo, Lucio, and the rest, are the same characters at the end of the play as they are at the beginning. If the plot is sparked by the Duke’s determination to reform Vienna, this outcome apparently presents quite a thorough failure. The precedent of Pompey’s case, however, suggests that the Duke’s strategy of marriage (rather than beheading or continuance) may be more effective than has traditionally been supposed. Angelo and Lucio undergo the same kind of conversion as Pompey the bawd had earlier: their particular fault of fornication is redirected toward a legitimate form for its expression. Marriage, moreover, binds these characters in intimate relationships through which their faults or offences are more easily subject to regular observation and exposure. Comically, these newly married or engaged men—Angelo, Lucio, and the Duke, too—will soon be under the surveillance of their wives, women whom we know have the chutzpah to

84 Engle 87, 102.

publically complain. Despite Lucio’s claim that “Marrying a punk... is pressing to death/Whipping, and hanging” (5.1.520-21), the Duke’s marriage solution has the opposite effect of Angelo’s execution policy: the members of each couple are propelled into relationships that increase their social ties, their visibility, and their accountability. Those characters who would withdraw from the community—Angelo and Lucio (who would prefer death to their marriages), Isabella (who would prefer the convent), Mariana (who had been cloistered at the grange), Claudio and Julietta (who had kept their pre-marital intimacy hidden), and the Duke himself (who preferred “the life remov’d” [1.3.8])—are all more deeply embedded in the community at the end of the play, more fully subject to all its constraints and possibilities. In the concluding trial, the Duke passes on the responsibility for local governance and surveillance from the Assize-like judge to the locals themselves.

What emerges through this reading of Shakespeare’s problem play is an early modern attitude toward governing that recognized the impracticality or unreliability of character reform as a legal-political policy. Instead, the reform of individuals in Measure for Measure comes about through substitution and redirection practices—practices ethically consistent with the kinds of interventions demanded of Assize judges and local officers within the community. Shakespeare champions a legal decorum that preserves the integrity of both law and life and that can be found in Dukes and Provosts alike. But the dissemination of this kind of justice throughout the system requires that Duke and Provost meet—an exchange facilitated historically by the operations of the Assize system and within the play by the Duke’s disguise. The individual, custom-made solutions that Duke and Provost devise require ongoing tending or regular maintenance. They require that virtue be put into action consistently in order to bring conduct to light. They require that responsibility for governance be shared across the community and between local and central authorities, reflecting the wide participation in early modern justice that was both encouraged and scrutinized during the Assizes.

While justice in Measure for Measure is achieved through the same intersection of jurisdictions and the coordination of legal responsibilities that made the historical Assizes effective, in the following and final chapter I argue that justice in The Winter’s Tale is instead achieved through the more careful observance of the boundaries of legal-
political power. In his later romance, Shakespeare registers the tensions in James’s reign over the proper jurisdictions of the King and his common-law judges. Justice in Sicilia is disrupted for the very reason that the King does not observe the proper limits of his authority, while justice is restored in the final scene as the King resumes his proper place within the legal-political hierarchy.
Chapter 5

The Winter’s Tale and the Oracle of the Law

Oracles have a bad reputation in early modern literary history, as Howard Felperin has observed: “The fondness of pagan oracles for ambiguity, obscurantism, equivocation, and general verbal trickery is commonplace in Elizabethan literature.”¹ Stephen Orgel underscores their spiritual dubiousness: the oracle in The Winter’s Tale, he argues, “would have been rather like the word of the ghost in Hamlet—something the play requires you to believe but that you knew, as a good Reformation Christian, you were supposed to reject.”² What critics have not noted, however, is that this perspective coexisted with another oracular tradition that functioned in the legal-political and literary contexts contemporaneous with Shakespeare’s romance. The epithet “oracle” also distinguished a legal-political type, the legal expert and wise counselor whose authority was established through deliberative and self-fashioning practices that suggested the rhetorical mode and performance style of the oracles of antiquity. Adopting an appropriately epideictic tone, Thomas Blount honors several legal luminaries in the Nomo-lexikon (1670) by claiming that “[t]he first and principal” motive for writing his law dictionary was “to erect a small Monument of that vast respect and deference, which I have for your Lordships, who are... the Oracles of our Law, and Grand Exemplars of Justice.”³ While the judiciary cultivated its own oracular image through professional practices, this same kind of oracle was repeatedly depicted as a recognizable social type in a literary form that gained momentum in the first two decades of the seventeenth century.


³ Thomas Blount, Nomo-lexikon, a Law-Dictionary Interpreting Such Difficult and Obscure Words and Terms as Are Found either in Our Common or Statute, Ancient or Modern Lawes (London: 1670) sig. A2².
century, the “charactery” or character essays that were compiled in miscellanies like Joseph Hall’s *Characters of Vertues and Vices* (1608) and Nicholas Breton’s *The Good and the Badde, or Descriptions of the VVorthies, and Vnworthies of This Age* (1616).\(^4\) The oracle of the law was a culturally widespread (professional and amateur, legal and literary) figure who exploited the mystique of the classical oracle in the exercise of his judgment and the cultivation of his authority.

This alternate tradition enables a reimagining of *The Winter’s Tale* in which Apollo’s supernatural oracle evokes human judicial figures. I argue that the play thereby resonates with the explosive tensions between the judiciary and the sovereign in early seventeenth-century England. While Apollo’s oracle makes a minor appearance in the form of its pronouncement that is revealed during the trial scene, its judicial presence is nevertheless extended throughout the play via its avatars, Paulina and Camillo. A number of critics have identified Paulina as “Apollo’s representative.” Through her role at the end of the trial and her orchestration of the final scene in which Hermione’s statue is awakened, she becomes “the spiritual guide for Leontes, eventually leading to his new health and that of the body politic.”\(^5\) Her function as Apollo’s representative, however, is legal as well as spiritual. In 5.3. Shakespeare’s “much noted—and celebrated—effort to turn Ovid’s story of Pygmalion into one about the transforming powers of theatrical representation” hinges on Paulina’s animating voice.\(^6\) That authority, I argue, derives from her association with the early modern oracles of the law, through which

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\(^{4}\) Lorna Hutson discovers a similar overlap between the forensic rhetorical methods of justices of the peace (JPs) and popular literature. By the end of the sixteenth century, the JP’s methods “have already become indistinguishable from the ‘wit’ and ‘judgement’ exercised in more informal contexts by the variety of fictional social types (ne’er-do-wells, rogues, gallants, gentlemen, gentlewomen, clowns, maids) coming to prominence in satirical representations of urban fashionable life and low life both in print and on the stage” (*The Invention of Suspicion* [Oxford: Oxford UP, 2008] 304).


Shakespeare further transforms the Pygmalion story into a pun on the performative power of legal language. In contrast to the commentary available on Paulina, her counterpart Camillo (to whom she is finally linked in marriage) has received scant attention. Addressing this lacuna in a critical tradition that has largely ignored the predominance of counsel and counselors in the play, Stuart M. Kurland has examined Camillo’s role in relation to the tradition of humanist advice literature and James’s relationships with court favourites.\(^7\) In a further effort to draw attention to the play’s counselors, I read Camillo’s character as another oracle of the law, a judicial figure who embodies wisdom as it is represented in the charactery and legal writings of the day, and whose behavior helps countermand the tragic missteps of King Leontes.

The reform of justice in *Measure for Measure* involved the officeholder’s greater immersion in local affairs through his proactive efforts to put virtue into action and to bring offences to light. By contrast, *The Winter’s Tale* centers on a king who overextends his sovereign authority: Leontes’s extraordinary intrusion in the legal process produces injustice. The reform of justice in *The Winter’s Tale* is achieved through processes of restoration—one of the major early modern connotations of “reform.” In the conclusion to the play, the restoration of Hermione and Perdita partially reverses the errors and tragic consequences of Leontes’s past judgments. At the same time, I argue, the reestablishment of the distinct jurisdictions of king and legal oracle guarantees the future of justice in Sicilia.

1 Early Modern Oracles of the Law and the Oracular Method

A number of legal cases in the early seventeenth century raised questions about the royal prerogative, the scope of judges’ powers, and the jurisdictions of courts including parliament. One response to the challenges faced by legal authorities involved a narrative

\(^7\) Stuart M. Kurland, “‘We Need No More of Your Advice’: Political Realism in *The Winter’s Tale,*” *Studies in English Literature, 1500-1900* 31 (1991): 365-386.
of the common law’s coherence and authority through time. The narrative that would come to be called historical jurisprudence argued that the common law had not changed since it first materialized as customary law, as the practices of the English people. Common law, it was argued, had survived multiple conquests and had remained essentially the same since Anglo-Saxon or pre-Roman times. Or, if it had changed, it was still coextensive with the spirit of the people it served, that is, it had changed with the people. Or, if it was no longer coextensive with the spirit of the people—if it had deteriorated—this erroneous trajectory could and would be corrected by a process of restoration, a return to the proper course of the law through further judicial decisions and legislation. This judicial narrative manufactured judicial authority in the process of representing it as historically determined, so that at the moment of its exertion it appeared to have always already existed. The narrative veiled the actuality that judicial authority—always in the process of becoming, of being freshly instantiated, as it made arguments about its own historicity—was a projection into the near and distant future through the contribution of a living judge. The individual judge accessed the largely unwritten common-law tradition of judicial decision-making (the profession’s past that he claimed to represent) through “artificial reason,” the refinement of natural reason that involved “long study and experience” with professional practices. Artificial reasoning ensured that what was spoken by any one judge mirrored the collective opinion of all legal authorities. As Sir Edward Coke put it, “all the Judges and Justices in all the severall parts of the Realme… with one mouth in all mens cases pronounce one and the same


sentence.” When a judge delivered an opinion from the bench, then, he did not make new law or speak for himself; instead, he merely declared the law as it had been, was, and would be. Authorized by this construction of the past, the judiciary’s pronouncements were, in effect, self-fulfilling prophecies, the infallibility of its opinions rhetorically and logically contrived.

Historical jurisprudence was not systematically or comprehensively explicated and theorized. It developed as a patchwork in the period, an admixture of comments and claims scattered among various writings, the result of a professional mentality oriented toward practice rather than theory. Nevertheless, even its stitched narrative provides insight into a judicial method by which the judicature established its authority. The legal story I have outlined here is subtended by two distinct strategies. The first involves a line of reasoning that leans on the temporal continuity, and thus the internal coherence, of the common-law tradition to lend the judiciary its historical credibility and prophetic aspect. The second takes the form of a performance in which the individual judge reveals the collective understanding of that tradition that is otherwise concealed from all but the professional insider. Together, these strategies form the heart of an oracular method which in turn shaped judicial identity. This method linked a mode of reasoning (a combination of forensic and deliberative practices) with a mode of self-fashioning (the alternating gestures of concealment and revelation) that suggested the classical oracle’s supernatural character, whose own authority was constituted by a rhetorically distinct message and a particular style of ceremonial performance.

Such a method was ascribed to the most prominent legal oracle of Shakespeare’s day, Sir Edward Coke, Solicitor General, Attorney General, Chief Justice of Common Pleas and later of King’s Bench, Privy Counselor, parliamentarian, and author of the multi-volume *Reports* and *Institutes of the Laws of England*. His tomb announces, “Here Lies Edward Coke... Spirit, Interpreter, and Inerrant Oracle of the Laws, Discloser of its Secrets—Concealer of its Mysteries.” The epitaph’s phrasing links Coke’s professional

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10 Coke 1:59.

11 Coke 3:1337.
reputation directly to his success with the oracular practices of revealing (or disclosing) and concealing. It is a method that conceals the terms of judicial deliberation and has therefore more often than not been viewed by legal historians (let alone contemporaries) as an impediment to recovering the largely unwritten common-law tradition of judge-made law. “It seems to have been a long time before courts were legally required to give reasons for their decisions,” J. H. Baker reports. He goes on to give an instance of a case from 1594: “after the Queen’s Bench had given a judgment without reasons, [a reporter writes in law French,] ‘Mr Attorney presse eax pur render overtment lour opinions; mes ils huddle up the judgment et fell to other matters.’”

Coke himself treats the importance of the oracular concealment of reasoning to judicial reverence. In the course of detailing the several sources of the common law in Part Three of the *Reports* (1602), he explains,

> [In] the judiciall records of the Kings Courts, wherein cases of importance and difficultie are upon great consultation and advisement adjudged and determined, [...] the reasons or causes of the Judgements are not expressed; For wise and learned men doe before they judge, labour to reach to the depth of all the reasons of the cases in question, but in their judgements expresse not any: And in troth, if Judges should set downe the reasons and causes of their judgements within every Record… in mine opinion [they would] lose somewhat of their present authoritie and reverence; And this is also worthie for learned and grave men to imitate.

The oracular method was meant to cultivate a faith-based reverence for judicial opinions that was surely buttressed by the gravity of legal ceremony.

The rhetoric of Shakespeare’s own oracular pronouncement reflects this same emphasis on judicial reserve through a strategic revision of his source text, Robert Greene’s prose romance *Pandosto*. The inheritance from Greene’s text has been largely

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13 Coke 1:60.
overlooked by the few critics who seriously consider the function of Apollo’s oracle. Yet the wording of the oracular pronouncement in *The Winter’s Tale* replicates the wording in *Pandosto* minus the commonplaces that preface its judgment:

Suspicion is no proof; jealousy is an unequal judge; Bellario is chaste; Egistus blameless; Franion a true subject; Pandosto treacherous; his babe an innocent; and the King shall live without an heir if that which is lost be not found.  

The commonplaces or axioms supply external principles of evaluation, or standards of probability and proof that are superimposed upon the case at hand in order to reach a conclusion. The validity of the judgment is verifiable by reference to its premises which are themselves derived from solid proverbial wisdom: “Suspicion is no proof; jealousy is an unequal judge.” Regardless of the oracle’s supernatural powers, therefore, the deliberative process involved in its decision-making is rendered transparent to, and reproducible by, Greene’s reader. When these commonplaces are dropped from Shakespeare’s text, the reasoning behind the oracle becomes submerged:

Hermione is chaste, Polixenes blameless, Camillo a true subject, Leontes a jealous tyrant, his innocent babe truly begotten, and the King shall live without an heir if that which is lost be not found.  

In Greene’s romance, the oracle’s pronouncement is immediately legitimized by the commonplaces. In Shakespeare’s, it adopts the judicial method of suppressing, and thus mystifying, deliberative practices. The final demonstration of the prophecy’s truthfulness (its fulfillment in the rediscoveries of Hermione and Perdita) must self-reflexively confer validity on the oracle’s claim regarding the past facts of the Queen’s case. In lieu of Greene’s commonplaces, Shakespeare supplies Paulina and Camillo, his own characters

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who safeguard the oracle’s relationship to the royal family and its relevance to the political reality by enabling the return of mother and daughter: Paulina obstructs plans to have Leontes produce a new heir and secretly harbors Hermione, and Camillo directs Perdita and Florizel to run away to Sicily. The oracle’s supernatural powers of truth-finding are thus directly related to the success of the human advisors in the play, whose own powers, I will demonstrate, evoke the tradition of the legal-political oracle. Camillo illuminates the signature deliberative techniques and character traits, and Paulina the performance and performative aspects of these historical oracles.

2 The Oracle of the Law in Charactery

Sir Edward Coke made strong claims for the legal professional who was uniquely qualified through his professional education and experience to execute the law. Yet in the quotation above from his Reports, the strategy whereby judges “labour to reach to the depth of all the reasons of the cases in question, but in their judgements expresse not any” is also said to be “worthie for learned and grave men to imitate,” implying that these oracular strategies had a range of applications beyond technical legal questions. His own extensive resume suggests that they were useful in the roles of the legal expert, statesman, counselor, and courtier. The oracular method, in fact, was consonant with both legal and popular notions of what constituted refined or wise judgment. These notions get taken up by character writers in the period and deployed in “discrete essay[s] in prose about a fictive person whose presiding ‘virtue’ or ‘vice’ is manifest in a number of tell-tale traits and gestures.”¹⁶ The metaphor of the ancient oracle and the contemporary reasoning and self-fashioning practices that it signified shape Joseph Hall’s depiction of the “Character of the Wise Man” in his Characters of Vertues and Vices:

His free discourse runnes backe to the ages past, and recovers events out of memory, and then preventeth Tyme in flying forward to future things; and comparing one with the other, can give a verdict well-neer propheticall: wherein his conjectures are better than anothers judgements.... He is his own lawyer, the treasury of knowledge, the oracle of counsel; blind in no man's cause, best sighted in his own.\textsuperscript{17}

Good judgment, as it is represented here, is a matter of the mind’s working upon matter from the past to project conclusions onto the future. The wise man’s reasoning, which thus appears “well-neer propheticall,” is accompanied by a distinct mode of self-fashioning that Hall depicts earlier in the same sketch. He explains that the wise man, seeks his quietnesse in secrecy, and is wont both to hide himselfe in retirednesse, and his tongue in himself. He loves to be gessed at, not known; and to see the world unseen; and when hee is forced into the light, shewes by his actions that his obscuritie was neither from affectation nor weaknesse.\textsuperscript{18}

Hall’s portrayal of this character suggests that this carefully modulated performance of concealing and revealing is what generates the wise man’s authority in the eyes of others.

In \textit{The Good and the Badde: or, Descriptions of the VVorthies, and Vnworthies of This Age}, Breton’s account of “A Worthie Privie Counceller” puts Hall’s wise man to work in numerous political functions:

\begin{quote}
A Worthy privie Counceller is the Pillar of a Realme, in whose wisdome and care, vnder GOD, and the King, stands the safety of a Kingdome… hee is an Oracle in the Kings eare, and a Sword in the Kings hand, an euen weight in the ballance of Justice, and a light of grace in the loue of truth: he is an eye of care in the course of law, a heart of loue in his seruice to
\end{quote}

\textsuperscript{17} Joseph Hall, \textit{Characters of Vertues and Vices: In Two Bookes} (London: 1608) 8-11.

\textsuperscript{18} Hall 7-8.
his Soueraigne, a mind of honour in the order of his service, and a braine of invention for the good of the Common-wealth: his place is powerfull, while his service is faithfull, and his honour due in the desert of his employment.  

Here the oracular judgment of the Privie Counciller is redeployed in various arenas of civic life—including the law—depending on his sovereign’s and the commonwealth’s needs. In comparison to Hall’s allegorical figure, the particularized individual surfaces in this essay through the evocation of the business and busyness, the numerous titles and functions, of the sovereign’s most valued servants.

In the satiric style associated with the collection of Thomas Overbury’s *Characters* (1614), Shakespeare himself would lampoon the shallow affectation of this character type in *The Merchant of Venice*, where Graziano cautions Antonio against the posture of a “Sir Oracle”:

There are a sort of men whose visages
Do cream and mantle like a standing pond,
And do a wilful stillness entertain,
With a purpose to be dressed in an opinion
Of wisdom, gravity, profound conceit,
As who should say, ‘I am Sir Oracle,
And when I ope my lips let no dog bark.’
O my Antonio, I do know of these
That therefore only are reputed wise
For saying nothing, when I am very sure
If they should speak, would almost damn those ears
Which, hearing them, would call their brothers fools.

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19 Nicholas Breton, *The Good and the Badde: or, Descriptions of the VVorthies, and Vnworthies of This Age. Where the Best May See Their Graces, and the Worst Discerne Their Baseness* (London: 1616) 5.

Here are the tell-tale gestures of the oracle minus the virtue. As easily mocked as Sir Oracle himself are those who assume that great social standing necessarily entails the possession of oracular judgment and authority. John Earle writes in his *Micro-cosmography* (1628) that “A Vulgar-Spirited Man” is one “[t]hat worships men in place, and those only; and thinks all a great man speaks oracles.”

In *The Winter’s Tale*, Shakespeare revisits the character type to craft the morally genuine article. Camillo could as easily be a tribute to Sir Edward Coke as to Breton’s Privie Counsellor or Hall’s Wise Man. His multiple titles and functions in the Sicilian court reinforce his association with Apollo’s oracle, the oracle of the law, and the oracular character of the essays. Until he branches from the King’s “diseased opinion” (1.2.294), he is Leontes’s most valued advisor:

> I have trusted thee, Camillo,  
> With all the nearest things to my heart, as well  
> My chamber-counsels, wherein, priest-like, thou  
> Hast cleansed my bosom; ay, from thee departed  
> Thy penitent reformed. (1.2.232-236)

While judges were dubbed “oracles of the law,” there was also a long tradition of calling them “priests.” In *Fovre Bookes of Offices: Enabling Privat Persons for the Speciall Service of All Good Princes and Policies* (1606), Barnabe Barnes conflates the functions of all three: “A judge is as it were… a priest of divine iustice…. [S]o is the judge properly called th'interpreter of those lawes… and oracle of the Commonwealth.”

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22 Ernst H. Kantorowicz explains that “jurists [were] styled by Roman Law so suggestively [as] ‘Priests of Justice,’” and that this tradition made its way into works important to the development of the English common-law tradition, such as Bracton’s and Fortescue’s (*The King’s Two Bodies* [Princeton: Princeton UP, 1997] 16).

the judge’s interpretative function is the central attribute that links him to priest and oracle. Camillo’s power to aid the commonwealth through his own legal and political interpretative expertise, however, is circumscribed by Leontes, who reduces his servant’s position to that of a personal confidante just as he reduces all law to his own prerogative (“the ord’ring on’t/ Is all properly ours” [2.1.169-170]).

Camillo is even more directly associated with the judicature a little later in the same scene, when Leontes suggests that his legal expertise and authority particularly qualify him to judge the King’s personal situation. In his attempt to conscript his subordinate into a scheme to poison Polixenes, the King assumes that Camillo, “whom I from meaner form/ Have benched and reared to worship” may “see/ Plainly as heaven sees earth and earth sees heaven/ How I am galled” (1.2.309-313). The OED offers “to seat on a bench” and “to sit oneself, or take a seat, upon a bench” as the possible senses in which to take Leontes’s claim to have “benched” Camillo. But “to bench” is used in a more specific legal sense here and in the other instances cited by the OED. In King Lear, the mad Lear holds an imaginary session and appoints Edgar, the Fool, and Kent as presiding judges of his case: “Thou his yoke-fellow of equity/ Bench by his side,” he tells the Fool. And in Thomas Heywood’s The Captives, a friar is described as having “like a surly Justice benched himself.” The benches in question clearly refer to seats of justice. Leontes, then, imagines that Camillo, from his benched perspective, is in a position to see the intimate affairs as clearly as the most apparent physical differences (as “Plainly as heaven sees earth and earth sees heaven”).

When Leontes offers him a title too many, the role of murderer, Camillo gives us an example of the oracular reasoning that informs his actions. Like Coke’s judge, Camillo “labour[s] to reach to the depth of all the reasons of the cas[e]” in an aside where, like Hall’s wise man, he “seeks his quietnesse in secrecy.” His asides reveal the part of common-law process that is concealed from the legal record and, as we will see, that is fatally absent from Leontes’s own reasoning: judicial and wise deliberation.

Camillo considers his commission to poison Polixenes in terms that show him a more balanced judge of his own cause than Leontes proves to be:

What case stand I in? I must be the poisoner
Of good Polixenes, and my ground to do’t
Is the obedience to a master, one
Who in rebellion with himself will have
All that are his so too. To do this deed,
Promotion follows—if I could find example
Of thousands that had struck anointed kings
And flourished after, I’d not do’t. But since
Nor brass, nor stone, nor parchment bears not one,
Let villainy itself forswear’t. I must
Forsake the court; to do’t or no is certain
To me a break-neck. Happy star reign now! (1.2.347-359)

Whereas Leontes projects his own perception and reasoning hegemonically onto the world, or “impose[s] the kingdom of the mind upon his subjects” (as Jonathan Goldberg writes of James I’s literary projects), Camillo here brings various perspectives to bear upon his current condition, investigates the moral and pragmatic implications of his actions, and considers relevant precedents or authorities to decide on the safest course for the future.25 His method is as oracular as Coke and Hall could wish.

Camillo’s concealed reasoning is opposed in the same scene by Leontes’s inferences about his counselor’s character and motives. The King initially assumes that Camillo has formed the same conclusion about Hermione and Polixenes’ relationship.

25 Jonathan Goldberg, James I and the Politics of Literature: Jonson, Shakespeare, Donne and Their Contemporaries (Baltimore: The Johns Hopkins UP, 1983) 23. Kurland’s conclusion that Camillo’s moral character is tainted by his calculation of self-interest is, I would argue, misguided, since it is self-preservation that is really at stake. Where the counselor may show moral weakness is in his abandonment of Hermione, as A. E. B. Coldiron observes in “‘Tis rigor and not law’: Trials of Women as Trials of Patriarchy in The Winter’s Tale,” Renaissance Papers (2004): 45.
When his contrary opinion is revealed, Leontes reads it as the sign of a bad counselor. The debate over Camillo’s nature that ensues incorporates the kinds of traits itemized repeatedly in character essays:

To bide upon’t—thou art not honest; or,
If thou inclin’st that way, thou art a coward,
Which hoxes honesty behind, restraining
From course required; or else thou must be counted
A servant grafted in my serious trust,
And therein negligent; or else a fool,
That seest a game played home, the rich stake drawn,
And tak’st it all for jest. (1.2.239-261)

The fault line in Leontes’s reasoning, which leads him to threaten the lives of his closest family and friends, is traceable in this account of Camillo. Disagreement with the King signals dishonesty and disloyalty in his judge or counselor; moreover, he invests the act with retroactive significance. This one apparently dishonest act of Camillo is an indicator of how his character was already disposed. His history is rewritten to reflect perfectly the King’s current perception of him. Camillo’s new history then provides evidence of the current and future dishonest state of his character. This is the same kind of reasoning Hermione is subjected to. Leontes concludes that she was unfaithful to him in the conception of Perdita; therefore, according to his logic, she must always have been unfaithful. Face to face with his son Mamillius in 1.2, Leontes is not in doubt about the boy’s paternity, but rather in the grip of paradoxical certainties: his son is not his son, and yet the boy looks just like him (see 1.2.127-134). The King’s mind goes to extreme lengths to construct rigid accounts of character continuity, in effect replacing the particularized individual with a caricature or type. His mental agility is both singular and formidable, for the pattern dictates that with any new evidence or actions that he is forced to accept, he must continue rewriting, reinventing character histories, so that someone is always becoming what they have always already been and will always be. This process comes at a great cost: the King’s mind is palpably shocked and permanently destabilized.
Leontes’s reasoning presents a tyrannical form of historical jurisprudence in which the past is manufactured to reflect the present judge’s opinion (in this case, to reflect the King’s will). In his version of the oracular method, a strict conception of continuity is forcibly overlaid upon the world of human action and character. The result is the foreclosure of the mode of correction otherwise built into legal thought in which future judicial decisions and legislation present the potential to restore or redirect the law should it veer off course. The past is so thoroughly overwritten or reconceived in Leontes’s thinking that if Camillo proves to be a bad councilor now, then there has never been any good in him and thus never will be. Camillo’s subsequent self-defense, however, complicates this over-simplified approach to character-reading and, at the same time, illuminates oracular reasoning at its best.

Despite the multiple roles Camillo appears to perform, Leontes would now limit him to one. The “or,” however, that characterizes the King’s argument above (his counselor is *either* dishonest, a coward, negligent, *or* a fool) is countered by the inclusive, conjunctive “and” in Camillo’s response:

My gracious lord,
I may be negligent, foolish and fearful;
In every one of these no man is free,
But that his negligence, his folly, fear,
Among the infinite doings of the world,
Sometime puts forth. In your affairs, my lord,
If ever I were wilful-negligent,
It was my folly; if industriously
I played the fool, it was my negligence,
Not weighing well the end; if ever fearful
To do a thing where I the issue doubted,
Whereof the execution did cry out
Against the non-performance, ‘twas a fear
Which oft infects the wisest. These, my lord,
Are such allowed infirmities that honesty
Is never free of. (1.2.239-261)
In an essay on “What a Character Is” from the Overbury collection, the writer defines a character sketch as “a picture, real or personal, quaintly drawn in various colors, all of them heightened by one shadowing.” Similarly, in Camillo’s answer, individual actions are evaluated against a person’s predominant trait, in this case a virtue: the questionable “infinite doings of the world” can thus coexist with “honesty.” His self-defense, however, brings out the contribution of time that is otherwise marginalized by the essay’s picture analogy and by Leontes’s character-reading. Camillo’s argument is subtended by a method of oracular accommodation that emphasizes both historical continuity as well as the potential for error and its correction. The “Sometime” that puts forth “his negligence, his folly, [and] fear,” that both “makes and unfolds error” (4.1.2) as the Chorus later says, is the same time through which honesty or dishonesty, as a trait, is revealed. It was a legal and popular commonplace that truth was the daughter of time, a conviction reflected in the full title of Greene’s romance: Pandosto, The triumph of time. Wherein is discovered by a pleasant historie, that although by the meanes of sinister fortune truth may be concealed, yet by time in spite of fortune it is most manifestly revealed. The same commonplace is reflected in the play not only through the rediscovery of Perdita, but also through that of the Queen. Because Hermione’s restoration is the result of human calculation and not witchcraft—because she has been alive all along—she comes to signify constancy, a temporally-inflected virtue that testifies to her original and continuing innocence. The complex nature of human truth or character defended here by Camillo is later embodied by the “mov[ing] still[ness]” (4.4.142) of the Queen’s statue.

3 Apollo’s Oracle of the Law

The exchange between Camillo and Leontes prefigures the King’s assumption of the oracle’s support and his subsequent refutation of its authority once its contrary opinion is revealed in court. Just as there is no truth in the independently-minded judge or counselor, so there is no truth in an oracle that contradicts him. While the reasoning practices of the legal-political decision-maker surface through the above argument over character, the source and scope of legal-political powers are contested in the course of

26 Beecher 293.
Hermione’s trial, convened ostensibly to determine an issue or question of fact, her innocence or guilt of adultery and treason. In this later scene, Apollo’s oracle evokes its early modern counterparts through its legal function and its challenge to the King’s free reign over the state’s legal process. Leontes’s flawed deliberative strategies prove to be a prelude to his misappropriation of legal powers and mismanagement of legal procedure during the trial. The dramatic fallout brings to the fore the concurrent historical struggle between James and the judiciary over the sovereign’s relationship to the law and the jurisdiction of courts. Obliged to resolve the onstage conflict, however, Shakespeare activates complimentary aspects of James’s and Coke’s ideologies that are reflected in the orchestration of a new balance—at the very least a separation—of powers at the end of the scene.

As Leontes admits, as his counselors are aware, and as Hermione herself intuits, the queen has already been convicted within Leontes’s imagination or reason. The King arrives at his own “diseased opinion” (1.2.294), as Camillo calls it, long before the trial begins. We learn that he has dispatched Cleomenes and Dion to the temple in Delphos for Apollo’s opinion on the case, because, “Though [he is] satisfied and need no more/ Than what [he] knows, yet shall the oracle/ Give rest to th’ minds of others” (2.2.189-191). Assuming that the oracle’s judgment will amplify or over-determine his own, Leontes convenes the trial, then, not to decide the fact of the case; instead, as A. E. B. Coldiron, David M. Bergeron, and Daniel J. Kornstein all point out, he intends to vindicate himself. In his opening remarks in court, he announces, “Let us be cleared/ Of being tyrannous since we so openly/ Proceed in justice, which shall have due course” (3.2.4-6). The King directly invites the on- and offstage audience to evaluate the justice of his judicial process rather than the evidence in Hermione’s case; but it is legitimate judicial process that Leontes defies most violently when he perceives Apollo’s anger.

27 Kurland writes, “the result [of the trial] is, as Hermione recognizes, foreordained” (375).

28 Coldiron 45; Bergeron 376-377; and Daniel Kornstein, Kill All the Lawyers? Shakespeare’s Legal Appeal (Princeton: Princeton UP, 1994) 83.

29 Kornstein is similarly sensitive to the self-reflexivity in these lines, but his attention to procedure is much more general. In reference to 3.2.4-7, he writes, “[g]iven such high-minded goals, the exact trial procedures
In Greene’s *Pandosto*, Apollo’s oracle reveals that the eponymous King has falsely accused his wife of adultery and attempted regicide, whereupon Pandosto immediately cedes to the oracle’s authority. As Bergeron points out, the order of events shifts in Shakespeare’s dramatization of the trial scene. After the oracle’s judgment is read out in court, King Leontes first questions the honesty of the speaking officer and then the honesty of the oracle itself: “There is no truth at all i’ th’ Oracle,” he decides, “The sessions shall proceed: this is mere falsehood” (3.2.138-139). As Bergeron observes, “Pandosto immediately relented; Leontes commits sacrilege and blasphemy against Apollo.”

The very next thing announced in court is the death of the King’s son, and Leontes interprets it as immediate punishment for angering the god. Lynn Enterline alone considers what Leontes believes he is being punished for: “Mamillius’s death… results from Leontes’s having doubted oracular speech. Or so Leontes understands it.”

The King goes on to ask Apollo pardon for, “[m]y great profaneness ’gainst thine oracle” (3.2.151-152). This “profaneness,” I argue, is his conduct during the trial scene and not his earlier extraordinary and unjust treatment of Hermione, Camillo, Polixenes, Perdita, and even Antigonus.

By challenging the oracle’s authority, Leontes upends what is presented in the play as established legal procedure. Pre-“condemned/ Upon surmises” (3.2.110),

to be used take on great importance. Who will be the judge? Will there be a jury? What kind of proof will be offered? What quantum of proof will suffice? A trial will prove nothing, neither Hermione’s guilt nor Leontes’s lack of tyranny, if the trial is merely a sham, a show trial” (177). Leontes’s injustice and the sham nature of the trial, however, have been established for the audience long before 3.2. begins, foreclosing several of the questions that Kornstein raises. Kornstein further reads “Hermione’s request for trial by Apollo” as the queen’s surrender of “whatever procedural rights she has” (179), while I argue here that her appeal to the oracle is revealed as an established feature of the Sicilian justice system.

30 Bergeron 372.

31 Howard Felperin deconstructs the causal relationship that Leontes and generations of critics, audiences, and readers have perceived between divine vengeance and the boy’s death (6-7).

32 Enterline 28.
Hermione concludes her futile self-defense by requesting the judgment of the oracle, to which a lord with officiating powers responds: “This your request/ Is altogether just; therefore, bring forth,/ And in Apollo’s name, his oracle” (3.2.114-116). Initially inscribed by Leontes as a supplement to or extension of the monarch’s authority, here, at trial, the oracle is reinscribed as a customary feature of “open” proceedings—at the very least, for a Sicilian state trial of this magnitude, it is considered “altogether just.” By annexing legal procedure to his will, identifying justice with his own reasoning and behaviour, Leontes threatens the standard operations for the identification and correction of error in Sicily. By acting upon his own construction of the royal prerogative—that “The matter,/ The loss, the gain, the ord’ring on’t/ Is all properly ours” (2.1.161-170)—the King “cannot choose but branch” (1.1.23) from the oracle, a force that is more closely concerned with the practical execution or “ord’ring” of the law than has yet been understood. The judicial authority of sovereign and of oracle are thus pitted against one another in a jurisdictional battle that is at once extremely topical in the early seventeenth century and understandable in terms of the available pseudo-historical narratives of the development of the political nation.

In *De Republica Anglorum* (1583), Sir Thomas Smith explains that, in the beginning, a kingdom was ruled by an absolute monarch, such that his subjects “obeyed him for his great wisedome and forecast, went to him in doubtfull cases as to an oracle of God, feared his curse and malediction as proceeding from Gods own mouth.”33 In “the first and most natural beginning and source of cities, towns, nations, kingdoms, and of all civil societies,” judicial or oracular powers were centered within the King.34 But far from that ancient or mythical absolutism was Henry de Bracton’s England, whose King was “under God and the Law,”35 or Sir John Fortescue’s England, whose “kingdome

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34 Smith 14.

35 Coke 1:479.
politique” he championed in opposition to “royall gouvemement.” James himself explained to parliament, “all Kings that are not tyrants, or perjured, will be glad to bound themselves within the limits of their Laws…. For it is a great difference between a Kings government in a settled State, and what Kings in their original power might do in *Indiuiduo vago.*” J. P. Sommerville translates “*Indiuiduo vago*” to mean, “an undefined individual; i.e. before [a King’s] power had been regulated.” Two different sources of legal-political authority underwrite these historical claims about the development of England. The first involves the process of substitution: the gradual transference of sovereign powers to subordinate delegates for the more efficient administration of the law and government. The second involves the “settling” of the state, especially the gradual establishment of laws and legal-political institutions and offices that come to be legitimized by reference to their own history and practices. These two processes provided opposing claims to judicial authority in the seventeenth century, yet legal-political substitution, which naturally engages questions of representation, has received far greater critical attention. Jonathan Goldberg has explicated the literary and political uses of “the voice of power,” which is, “in Foucault’s definition, to speak beyond oneself, ascribing one’s powers elsewhere.” More recently, Holger Schott Syme has illuminated the “logic of substitution that governed the construction of authority and authenticity in judicial and theatrical performances.” Much less attention has been paid to the process of settling, although it was the basis for judicial opposition to crown interference in legal causes during James’s reign.

The King’s right and fitness to intervene in or personally judge legal issues came under scrutiny in a jurisdictional dispute that arose between the common-law judges and the ecclesiastical court of High Commission in the course of Fuller’s Case (1607). The


38 Goldberg 6.

Archbishop of Canterbury, appealing to James to intervene, argued, much like Leontes, that, “The matter,/ The loss, the gain, the ord’ring on’t/ Is all properly [the King’s]” (2.1.161-170) as he is the fountainhead of all other powers:

in any […] case in which there is not express authority at Law, the King himself may decide it in his Royal person; and that the Judges are but the delegates of the King, and that the King may take what causes he shall please to determine, from the determination of the Judges, and may determine them himself.40

The Archbishop’s argument rests on the logic that delegated powers can be resumed. In response, Coke (then Chief Justice of Common Pleas) emphasized that the form in which judgment is given is in the name of the King’s courts: the judges do not speak for the King or for themselves. Coke argued that were the King to mete out judgments personally, instead of the court, the formal mechanisms for the discovery and correction of judicial error would break down. More radically (and to James, infuriatingly), he further argued that the King was not qualified for the job. He goes on in his report of this case in Prohibition del Roy to portray the judiciary as possessing much more than delegated monarchical authority:

[T]he King said, that he thought the Law was founded upon reason, and that he and others had reason, as well as the Judges [to determine the law]: To which it was answered by me, that true it was, that God had endowed his Majesty with excellent Science, and great endowments of nature; but his Majesty was not learned in the Laws of his Realm of England, and causes which concern the life, or inheritance, or goods, or fortunes of his Subjects; they are not to be decided by natural reason but by the artificial reason and judgment of Law, which… requires long study and experience, before that a man can attain to the cognizance of it.41

40 Coke 1:479.

41 Coke 1:481.
Although the judiciary is appointed by the King to his nominal courts, its authority is nevertheless substantially self-legitimizing, derived from a professional method that excluded the uninitiated—King and commoner alike.42 “James talked often of the *arcana imperii*, the secrets of state, that were reserved to the king alone,” Richard Helgerson observes, “[a]s Coke presents (and represents) it, the common law has its own *arcana*.”43

James’s fury at Coke’s claims is legendary, and the Chief Justice hardly succeeded in redirecting the King’s legal energies. In a speech from 21 March 1610, James declared that kings, like Gods, are “Judges over all their subjects and in all causes.”44 He went on to reassure parliament of his active concern:

> Yee have heard (I am sure) of the pains I took both in the causes of the Admiralty, and of the Prohibitions [i.e. in cases like Fuller’s]: If any man therefore will bring me any just complaints upon any matters of so high a nature as this is, yee may assure your selves that I will not spare my labour in hearing it. In faith you never had a more painful King, or that will be readier in his person to determine causes that are fit for his hearing.45

Printed three times in 1610—the year before Leontes was first represented onstage wrestling power from the oracle and abusing legal procedure—this speech magnified James’s interest in direct monarchal intervention at law, the effects of which would challenge the powers of the judiciary and parliament.46


43 Helgerson 100.

44 James VI and I 181.

45 James VI and I 191-192.

In the Sicilian trial, the results of King Leontes’s heavy-handed intervention propel him down a path of religious repentance and produce a highly mediated rule of state. In the wake of Mamillius’s death, he confesses his own crimes and injustices against his best friend (Polixenes), his best counselor (Camillo), and his “sweet’st companion” (5.1.11) (Hermione), and commissions Paulina to supervise his punishment: a lifetime of rites at the single grave of his wife and son (see 3.2.230-41). To a radical degree, he goes on to delegate his will to Paulina, who, along with Camillo, is most clearly associated with the oracle. At the end of the trial scene, in fact, she appears to adopt the “priest-like” function Camillo once held. And, as with Camillo, this function is as legal as it is personal: Paulina’s first object as Leontes’s “spiritual guide” is to usher the King out of the courtroom, removing him from the sphere of judicial decision-making where he proves dangerously incompetent. At the end of the trial scene, then, the play presents the relocation of legal authority squarely within oracular or judicial, rather than royal, hands, while the otherwise undisciplined mental-emotional life of the King’s natural body is harnessed to daily acts of piety.

In an effective accommodation of common-law and royal ideologies, Leontes’s abrupt shift in focus to religious practices both ejects the King from the judge’s seat and redeems his character in accord with James I’s own political theology. As Constance Jordan reminds us in her discussion of The True Law of Free Monarchies, in James’s schema, “[p]roper rule was guaranteed by [the King’s] piety.” With no legitimate recourse against tyrants, subjects could rest assured that the King’s rule was in the service of god’s by witnessing his religious self-fashioning. James repeatedly asserted that only God could judge a King; nevertheless, a good King will submit himself to the law as an

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47 In the final scene of the play Leontes again cedes control to Paulina: “Faced with the fantastic offer of a living Hermione, Leontes leaves his former control and acquiesces to the will of another: ‘What you can make her do,/ I am content to look on; what to speak,/ I am content to hear’ (5.2.91-93)” (James A. Knapp, “Visual and Ethical Truth in The Winter’s Tale,” Shakespeare Quarterly 55 [2004]: 276).


example to his people. Here in Shakespeare’s romance, Leontes is judged and punished by Apollo in the form of his son’s death, after which he makes a show of submitting himself to Paulina’s direction, first to her supervision of his spiritual rites and then, in Act Five, to her legal-political counsel. The result is a face-saving balance of power that common-law authorities like Sir Edward Coke would likely have approved, in which the king is removed from the judicial bench and relegated to the political role of ethical/religious exemplar. The promise of this new arrangement is put into practice in the last scene of Act Five. In the final moments of the play, I will argue, Leontes performs the kind of formal authorizing or legitimating function the sovereign assumed in parliament, while Paulina exhibits the more active judicial power associated with statute interpretation.

4 Lawful Art

To read Shakespeare’s oracle as a figure for the early modern English judiciary is to relocate the immediate source of its authority in a professionally safeguarded method of self-fashioning, formally sanctioned by but independent of a higher, prior source of power, such as a King or divinity. Indeed, Howard Felperin observes that part of the uniqueness of Shakespeare’s oracle is produced by its separation from its divine source: the contents of Apollo’s judgment are reported during the trial but Apollo himself is never represented. This is an alteration of Greene’s romance in which Apollo’s voice is heard, and it is in contradistinction to the representation of divine authorities in Shakespeare’s preceding romances, Pericles and Cymbeline. The result, Felperin argues, is the destabilization of the truth that the oracle is intended to represent:

Since [the oracle] is supposed to be itself a validation, there is nothing left to fall back on when its validity is questioned [by Leontes], other than

50 See, for example, The True Law of Free Monarchies 66 and 72, and Political Writings 184, quoted above.

51 Felperin 8.
Cleomenes’ reported awe…. Once cut off from the presence of their divine speaker, with his univocality of meaning and intent, Apollo’s words enter the realm of… the interpretable, where they can be contradicted or dismissed, for all we know, with impunity.52

Felperin is right to underscore the human and linguistic mediation of Apollo’s judgment: it is received at the temple, sealed in a document, carried by Cleomenes and Dion to Sicily, and read in court by a third lord. Instead of opening a chasm of interpretative uncertainty, however, the procedure instills in the visitors to Apollo’s temple a sense that “something rare... will rush to knowledge” (3.1.20-21) once the contents of the oracle are learned. According to Cleomenes and Dion, understanding or revelation is imminent rather than an impossibility in this process. “I shall report,” explains Dion, “the celestial habits—/ Me thinks I so should term them—and the reverence/ Of the grave wearers. O, the sacrifice,/ How ceremonious, solemn and unearthly/ It was i’th’ offering!” (3.1.3-8). The unearthliness of the event, its supernatural quality, is here depicted as an aesthetic achievement, the artful and strategic result of the priests’ practices. With no direct access to Apollo’s deliberative method, nor his sealed words, the visitors construct an understanding of the authority—and from there, of the validity—of the oracle based on the ritual at the temple, on the ceremonial construction of the reception and transmission of its judgment. Like the early modern oracles of the law, Apollo’s oracle establishes the legitimacy of its judgment through the integrity of a performance or procedure that strategically conceals and reveals. Most importantly, Cleomenes and Dion’s report depicts a legitimate and conscientiously-executed process that culminates in a just verdict or judgment in contrast with the trial scene in Sicily that immediately follows.

The theatrics that surround the written oracle’s transmission ensure that its validity (its authority as truth) is never really in doubt, though its ability to generate justice (its success as a speech act) is obstructed in the course of Hermione’s trial. In her

52 Felperin 8. Cf. Bergeron’s comparison of the mediated process of the oracle’s transmission in Shakespeare’s play with Greene’s prose romance: the “ceremony attached to Apollo’s messengers and the formal reading of the oracle enhance the ‘presence’ of the god, making him more real than in Greene’s cursory treatment of the event” (371-372).
article on “The Rhetoric of Animation in *The Winter’s Tale,*” Lynn Enterline identifies the failure of performative language in the trial, in which Leontes equates the law and the truth with his own “linguistic prerogative,” as the culmination of a play-wide pattern in which language exceeds or falls short of speakers’ intentions. To see language and action or language and intention realigned, she maintains, we must wait until the final scene, in which Hermione transforms from a statue to a living body in imitation of Ovid’s story of Pygmalion. Through the “consciously and artistically controlled theatrical effects [of] Paulina’s staging of Pygmalion’s statue…. language appears to perform the act it intends: ‘Music! awake her!... descend; be stone no more.’” I argue that the misfiring speech acts that Enterline observes in the Sicilian courtroom are caused by the disingenuousness and illegitimacy of Leontes’s “open” proceedings. While the failure of performative language in the trial signals the failure of Sicilian justice, the subsequent success of performative language in the Pygmalion-like scene orchestrated by Paulina signals its final return. With the penitent Leontes’s approbation, Paulina’s resonance with both the mystic and legal aspects of Apollo’s oracle increases over the course of Act Five so that her theatrics and “magically effective voice,” her actions and her speech, successfully combine in the final scene as an expression of legitimate legal authority and practice.

Just as the written oracle’s authority is cultivated in a manner analogous to the method of early modern legal oracles and sanctioned by Apollo, so, too, is Paulina’s oracular authority self-fashioned and eventually sanctioned by her King. In 5.2, a scene turned over to report much like the earlier one between Cleomenes and Dion, an account is given of Paulina’s divided response to the news of Perdita’s survival and her husband’s demise. In the course of this exchange between nameless gentlemen, a portrait of her joy and grief is verbally painted that could not have been physically staged: “O, the noble combat that ‘twixt joy and sorrow was fought in Paulina! She had one eye declined for

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53 Enterline 27.
54 Enterline 40.
55 Enterline 41.
the loss of her husband, another elevated that the oracle was fulfilled” (5.2.71-74). Our second last impression of Paulina, before she returns to the stage to bring Hermione back to life, consists of an image that suggests the trance-like state of an ancient oracle in action and that consequently evokes the ceremony of Apollo’s temple which the play presents as emblematic of just legal proceedings. Earlier in 5.1, we discover Paulina upholding the oracle’s judgment and appropriating its conditional, paradoxical, riddling style for herself. Clearly the most influential advisor at court, she counters the other voices that urge Leontes to remarry in order to obtain an heir despite the oracular ruling that, “the King shall live without an heir if that which is lost be not found.” She succeeds in obtaining Leontes’s promise not to seek a new wife. In so doing, Paulina upholds the force of Apollo’s oracle at the same time that she produces her own prophetic judgment: the King shall not have a wife “Unless another/ As like Hermione as is her picture/ Affront his eye” (5.1.73-75). And “That/ Shall be when your first queen’s again in breath;/ Never till then” (5.1.82-84). Hermione’s final return thus vindicates the original oracle as much as the oracular function and authority Paulina self-consciously exerts. Paulina’s self-fulfilling prophecy simultaneously originates and demonstrates her legitimate judicial authority in the Sicilian court.

In the Metamorphoses, Enterline observes, Pygmalion’s statue is brought to life through a speech act: the sculptor’s prayer to Venus initiates the extraordinary action that follows. It is a story motivated by a pun: “[d]rawing on the contemporary word for rhetorical power—the power, that is, to ‘move’ (movere)—the narrator tells us that in his statue, Pygmalion believes he has an audience who ‘wants to be moved.’” The statue’s metamorphosis thus presents “an erotic version of a rhetorician’s dream.”56 In The Winter’s Tale, the statue scene is the culmination of “a rhetorically self-conscious play in which Shakespeare continues to test language’s power as a mode of action rather than mere vehicle of representation, to search for a kind of voice that can effect the changes of which it speaks.”57 Instead of a god, it is Paulina’s imperatives that trigger Hermione’s

56 Enterline 22.
57 Enterline 31.
apparent physical metamorphosis which underscores the basic theatrical illusion of dramatic language. This is not, however, the only way word and action are aligned in this scene. Paulina’s oracular verbal force, produced by and evident in her self-fulfilled prophecy, ensures that the illusion of Hermione’s transformation is accompanied by the performative power of a legal judgment.

Nowhere is the performative force of language more overt and more consequential than in the legal sphere. Thomas Wilson’s *A Christian Dictionary* (1612) defines “a lively oracle” as “Making alive, or giving life. Such the words of the law are, in their own nature.” A lively oracle is an oration, sentence, or judgment that mobilizes techniques of rhetorical mimesis such as energia in the pursuit of “moving” an audience. The qualification added to the legal example suggests, however, that the law has a linguistic life that distinguishes it from other methods of mimesis. It surpasses the eloquent *illusion* of “liveliness” achieved by rhetorical animation and the theatrical enactment of dramatic dialogue: embodied in documents such as statutes, legal language is authorized to alter or create not only the legal but also the social and political status of subjects and property. Within legal-political rhetoric, moreover, the gatekeepers of this performative power were represented as *bringing statutes to life*, the sovereign through his or her passive authorizing power and the oracular judiciary through its active interpretive power.

In *De Republica Anglorum*, Smith explains that the authority of parliament ensured that laws were passed “in peace & consultation where the Prince is to giue life, and the last and highest commaundement” to legislative acts. He goes on to elaborate on the typical sentiments expressed in the Lord Chancellor’s closing speech to parliament, in which the country’s highest-ranking legal official declares “his pleasure concerning their proccéeings, whereby the same may haue perfect life & accomplishment by his princelie authoritie.” In a much more remarkable amplification of this

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59 Smith 34.

60 Smith 42-43.
commonplace that “princelie authoritie” gives “perfect life” to the law, Christopher Yelverton, Speaker of the House in 1597-98, compares the Queen’s function in parliament to the god’s within the story of Pygmalion:

The picture of Pigmalion, though by art it were never so curious and exquisite, and that in all the liniaments (almost) it had overcome nature and enticed the artisan himself, through the finenes of the faitures, to be fondly enamored with his owne creature, yet had it not the delight of life untill Jupiter, assuming some pittie of his wofull state and travell, inspired breath into it.

So these our petitions, howe fitt soever they be framed, and howe commodious soever they be imagined for your kingdome, yet be they but emptie and senseless shaddowes untill your Majestie takeing compassion on the common wealth, and entring into the examination of them by your princely wisdome, shall instill your most high and roiall assent, to geve full life and essence unto them. 61

Here, Ovid’s figurative construction of mimetic skill as the breath or voice that transforms art into life supplies a palimpsest for a pervasive conception of the sovereign’s legitimating power over legal language and instruments. The mystification of aesthetic skill and effect subtends the mystification of political power. The submerged but motivating logic of this comparison is a pun on statue and statute: just as Jupiter gives life to the statue, so Elizabeth breathes life into the parliamentary statutes. In the final scene of The Winter’s Tale, Shakespeare adapts and dramatizes this pun to both register and reconcile the jurisdictional tensions between James and his judiciary, a legal-political culture intensified by a King who identified his authority over the law with god’s creative and destructive powers over life: “God hath power to create, or destroy, make, or unmake

at his pleasure, to give life, or send death, to judge all…. And the like power have Kings: they make and unmake their subjects: they have power of raising, and casting down: of life, and of death.”

If the sovereign gave statutes legal life by authorizing parliamentary acts, it was the judiciary who made them walk and talk, put them into effect, through interpretive practices and the determination of cases. As we have seen, these oracles of the law established and defended their performative authority through a narrative that claimed what was in the process of coming to life had actually always already existed. Accordingly, judicial activity that appeared creative was dressed as a return to, or restoration of, the law’s proper course or spirit which had been altered through erroneous interventions. In the Preface to the third volume of his Reports, Coke writes:

albeit some time by actes of Parliament, and sometime by invention and wit of men, some points of the auncient Common Law have been altered or diverted from his due cours[e]; yet in revolution of time, the same… have bin with great applause, for the avoyding of many inconveniencies, restored againe.63

The speciousness of this reasoning and the reality of judicial inventiveness were not lost on James. In his notes from a meeting between the King and the judiciary (13 November 1608), Sir Julius Caesar reports an outburst by James in which he protests that “[t]he Judges are like the papists. They allege scriptures and will interpret the same. The Judges allege statutes and reserve the exposition thereof to themselves.”64 The King’s suspicions about judicial misrepresentation were not the byproduct of a tyrannical paranoia—far from it. The court was often forced to take it on faith that statutes and reports not only

62 James VI and I, 181.
supported a legal authority’s argument or interpretation, but that they even existed in the first place. There are instances of Coke, for example, alleging or “vouching” in court for the existence of statutes and manuscript reports that, at times, could only be found in his own private collection.\(^\text{65}\) In a later Elizabethan treatise attributed to Sir Christopher Hatton, Lorna Hutson uncovers the concern that the judicial interpretation of statutes “constituted a new form of political agency which no one as yet had seen fit to check”: “For the Sages of the Law, whose wits are exercised in such matters, have the interpretation in their hands, and their Authority no man taketh in hand to control: wherefore their Power is very great, and high, and we seek these Interpretations as Oracles from their mouthes.”\(^\text{66}\) In the conclusion to *The Winter’s Tale*, the Pygmalion intertext advances and resolves the question of the oracular Paulina’s lawful or unlawful inventiveness and of Leontes’s fitness or unfitness to intervene in Sicilian law.

The increasing political stability of Shakespeare’s Sicily is writ large by the decorous exchange of courtesies between King and counselor that opens the last scene set in Paulina’s gallery (5.3.1-14), replacing the breaches on both sides that characterized the Leontes-Paulina relationship in the first half of the play. Nevertheless, as Paulina assumes the oracular function of bringing the statu(t)e to life, the scene insinuates the potential for her strategies to misfire and for Leontes to interfere once again with disastrous consequences. Her method of concealing and gradually revealing Hermione’s continuing existence risks aggravating the royal humour that ignited the tragic plot in the first place. Indeed, the visible transformation of the King is registered in the concern expressed by Camillo, Polixenes, and Paulina (5.3.49-70). At the same time that Paulina ostensibly attempts to comfort or calm the King, she plants suggestions for his overactive


imagination. “I’ll draw the curtain,” she offers, since “My lord’s almost so far transported that/ He’ll think anon it lives” (5.3.68-70). “No longer shall you gaze on’t,” she proclaims, “lest your fancy/ May think anon it moves” (5.3.60-61). “I am sorry, sir, I have thus far stirred you, but/ I could afflict you farther” (5.3.74-75), she simultaneously apologizes, promises, and threatens. These suggestions gradually prepare the way for Leontes’s acceptance of a new reality at the same time that they expose to the gathered court his ongoing psychological susceptibility. Her stage-management keeps the King conscious of his mental-emotional instability and of his gross errors in judgment: the statue “has/ [his] evils conjured to remembrance” (5.3.39-40). In effect, Paulina subverts Leontes’s self-possession and exploits his reformed self-awareness and self-doubt in order to contain his tyrannical desire to intervene in oracular business. His two persistent character traits, his psychological excitability and his legal-political overreaching, are simultaneously demonstrated by his desire to kiss the statue (5.3.80). He is prevented from doing so by Paulina, who bars him from participating in the final oracular drama in a principle role. The King instead is forced to revert to his rightful authorizing function, sanctioning both Paulina’s stage show and the politically important marriage unions that conclude the play. He orders Paulina to “Proceed” (5.3.97-98) with her lawful art: “What you can make [Hermione’s statue] do,/ I am content to look on; what to speak,/ I am content to hear” (5.3.91-93). And, along with Polixenes, he “justifi[es]” Paulina’s “worth and honesty” to her future husband, Camillo.

We are repeatedly assured that the unique authority Paulina exercises in the last scene—that her “business” (5.3.96), “spell” (5.3.105), or “art” (5.3.110)—is “lawful.” That is, she is not violating natural or positive law through the use of witchcraft to bring Hermione back to life. She is not fully exonerated of the suspicion of unnatural and unlawful creativity, however, until the on- and offstage audiences appreciate that the Queen’s revivification is the achievement of human agency and calculation rather than supernatural powers. Hermione’s return, which functions as evidence that her absence

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was after all a sublimated presence, comes to exert the principle of continuity or temporal coherence that is as important to historical jurisprudence and artificial reasoning as it is to the personal virtue of constancy. Paulina engineers an ideal version of the oracular method in which her restoration of Hermione puts Leontes’s past judicial errors under erasure. As J. H. Baker observes, “the idea of law as prophecy... embraces a hope that the error [of a legal decision] will one day be rectified, or perhaps a prediction that its consequences will be minimized [and] will produce that right result when the time is ripe.”68 The division of legal and political responsibilities inaugurated at the end of Hermione’s trial ultimately leads to the restoration of the royal family and a stable political future for Sicily and Bohemia alike in the final scene. While offstage the relationship between James and Coke continued to sour until Coke was removed from office in 1616, the onstage accommodation of royal and common-law ideologies suggests that Leontes will continue his submission to the oracular direction of Paulina: “Good Paulina,/ Lead us from hence…. Hastily lead away” (5.3.151-155).

68 Baker 5.
Conclusion
The Lines and Veins of Unperfect History

Francis Bacon might have likened this dissertation to the planks of a shipwreck, “tanquam tabula naufragii,” a comparison that he uses to describe the historical works of “industrious persons” who,

by an exact and scrupulous diligence and observation, out of monuments, names, words, proverbs, traditions, private records and evidences, fragments of stories, passages of books that concern not story, and the like, do save and recover somewhat from the deluge of time.¹

Today’s literary historian engages in the same kind of scholarship, gathering textual evidence of every kind (“fragments of stories” and “passages of books that concern not story”). From Bacon’s perspective, she is a researcher of laudable effort and questionable ends. Her reconstructed shipwreck (perhaps a respectable raft, presumably leaking) would be categorized along with the “kinds of unperfect histories” to which Bacon “assigns no deficience, for they are ‘tanquam imperfecte mista’, [‘As it were imperfectly compounded,’ an unstable mixture bound to disintegrate] and therefore any deficience in them is but their nature.”² The literary historian wades through unstable concoctions regularly—from metaphysical conceits to entire archives—sifting through detritus in search (sometimes in despite) of sunken treasure.

Bacon was not against mixtures—far from it, as his innumerable metaphors and analogies suggest. The problem he spies in the unperfect history is its tendency toward disintegration, the separation and isolation of its parts. The divisions of learning, similarly, are like tributaries cut off from their source: they “hath made particular sciences to become barren, shallow, and erroneous; while they have not been nourished and maintained from the common fountain.” This was rhetoric’s fate: “we see Cicero the


² *AL* 179. Vickers’ translation.
orator complained of Socrates and his school, that he was the first that separated philosophy and rhetoric; whereupon rhetoric became an empty and verbal art.” The “distributions and partitions of knowledge,” explains Bacon, “are not like several lines that meet in one angle, and so touch but in a point”—a popular metaphor for the intersections of modern interdisciplinarity. Instead, they “are like branches of a tree that meet in a stem, which hath a dimension and quantity of entireness and continuance, before it come to discontinue and break itself into arms and boughs.” The different disciplines of knowledge should be founded on that common stem (in Bacon’s “universal science”), and their partitions should “be accepted rather for lines and veins, than for sections and separations… that the continuance and entireness of knowledge be preserved.” As Brian Vickers explains, “lines and veins” are “[d]ivisions that still show the original connections between sciences, unlike ‘sections’, which are cut away.” Such “lines and veins” enable “a kind of perspective, that one part may cast light upon another.”

In keeping with Bacon’s metaphorical method, the bits and pieces of my shipwreck or unperfect history have been splintered by both time and disciplinary “separations.” Time and modern disciplinary barriers work much like the Pillars of Hercules (featured on the frontispiece of the 1640 English translation of *De Augmentis Scientiarum*), not only demarcating the unknown but also creating it through the partial obstruction of the early modern horizon. In this dissertation, I have attempted to forestall, if not reverse, the progress of disintegration and separation. I have followed “lines and

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3 *AL* 205.
4 *AL* 189.
5 *AL* 205.
7 *AL* 200.
veins” that thread through a common fountain, or stem, or body politic, to reconstitute the historical connections between legal, literary, and political culture in early modern England. While the connotations are submerged in the above passages from Bacon, “line” was a commonplace synecdoche for poetry and writing, and “vein” was figurative for style: “a strain or intermixture of some quality traceable in personal character or conduct, in a discourse or writing, etc.” These connotations suggest the vehicle of my study, the language artifacts that provide “a kind of perspective, that one part may cast light upon another.” The result is still, necessarily, a collection of planks saved “from the deluge of time,” but selected and arranged shrewdly, they hint at the labour that built and patched a ship of state before it was scuttled in the course of the seventeenth century.

Part One of this project uncovered several types of legal-political patches in use at the end of the sixteenth century, or the institutional improvisations that compensated for the law’s imperfections: the legislative review and amendment of the law; the statute proviso that built exceptions directly into new law; the general pardon that relieved subjects of snaring laws and excessive fines; the equitable extension of the reason or spirit of the law that compensated for the law’s overly general form; and the structure of legal-political representation itself, which overcame the limitations of a centralized government. In their satirical works for legal-political authorities, the Gray’s Inn revellers and John Donne engage on a deep structural level with these mechanisms that reformed justice and governance. The Inn entertainments and Donne’s lyric experiments advertise the writers’ aspirations to expand their participation in the most elite levels of the legal-political system. Both the Christmas reveller and the satiric speaker cast themselves in the role of governing or reforming agent, concerned with the perfection of the law and the regulation of self and other. Theatrical and literary representations of legal practice and reform were effective means of self-fashioning precisely because they drew attention to the individual contribution of the legal-political representative. Reform was only as effective as the reformer. The studies in Part One ultimately identify the officer’s

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character as the enabling and limiting condition of governance by legal-political improvisation.

In order to suppress innovation and deterioration in the legal-political system, institutional improvisations were carried out through the discretion and judgment of individual officers. The efficacy and ethics of these unsalaried and largely unsupervised officers thus became a popular concern throughout an English society in which the justice system constantly intervened. Part Two of this dissertation concentrated on the nature of legal-political labour, on the duties and character of legal officers. In *Measure for Measure* and *The Winter’s Tale*, the legal-political agent’s integrity is tested through his interpretation and implementation of policies, principles, and practices. By focusing on the execution of the law, Shakespeare presents justice as a function of legal process. In Chapters Four and Five several early modern principles of legal administration were brought to light: proactive JPs were meant to embody the law by putting virtue into action; the execution of the law transformed private knowledge into public justice; the judicial administration of the law could restore justice and order—and correct their trajectory—by overwriting past errors. I recovered the problematics of legal administration by examining the friction between commission and execution, central and local authorities, and king and judge within *Measure for Measure* and *The Winter’s Tale*. Resistant to the royal encroachment of what was ideologically inscribed as the traditional organization of English law and governance, Shakespeare created play resolutions out of legal-political accommodations that were sympathetic to popular and legal expectations of justice. At the same time, the playwright gestures toward the ongoing, unavoidable obstacles to law and order, especially the individual’s resistance to personal reform. In the texts of Part One, the skill and character of the legal-political officer are highlighted through his deft formal circumventions of the law’s imperfections; in the plays of Part Two, the skill and character of the legal-political officer are highlighted through his strategies for bypassing character imperfections—those of legal-political authorities and subjects alike—to restore order.
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