THE FICTION OF LAW IN SHAKESPEARE AND SPENSER

William Eugene Evans, III

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Advisers: Jeff Dolven
Leonard Barkan
Nigel Smith
Margreta de Grazia

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Abstract: The Fiction of Law in Spenser and Shakespeare

This dissertation examines the relationship between literary and legal fiction making in the work of William Shakespeare and Edmund Spenser. It argues that by examining the fictionality of the law at every level, from structure to technique, these poets encountered the constitutive boundaries of their own fictions. The dynamic they discovered is that poetry and law are symmetrically and oppositely fictional. Poetry is fictional in being neither true nor false; law is fictional in being both true and false. The dissertation maintains throughout that Shakespeare and Spenser’s engagement with law is not primarily topical, in the sense of an interest in legal plots; nor literary, in the sense of registering figurative or rhetorical patterns in the law; nor legalistic, in the sense of making properly doctrinal arguments. Rather, the encounters with law in these poets’ works are philosophical, in that they search out the nature of law as a form of human making; in the process, they are confronted with the nature, limits, and responsibilities of their own making as poets.

The introduction lays out the dissertation’s argument, situates it in the current state of law and literature studies, and offers, as an example of the more sustained readings of Shakespeare and Spenser, a preliminary reading of an Elizabethan lyric by George Gascoigne. Chapter 1 explores the most direct reference to an English common law case in Shakespeare, in the gravedigger scene of Hamlet, and the questions the reference opens up about the place of technical language in legal and poetic fictions. Chapter 2 investigates the legal ideology of suspicion in the 1590 edition of Edmund Spenser’s The Faire Queene, and argues that it is a basic element of the Spenserian dynamics. Chapter 3 focuses on the use of concepts of legal practice and process in
Shakespearean comedy, which Shakespeare uses playfully to imagine the disabling of law. Chapter 4 investigates the fiction of corporate personhood in Renaissance culture and in the 1596 edition of *The Faerie Queene*, demonstrating its centrality to that poem’s increasingly troubled second half.
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Unreal, give back to us what once you gave:
The imagination that we spurned and crave.

- Wallace Stevens, “To the One of Fictive Music”

Consider how much would our controversy over the nature of truth have been enriched if, instead of our easy dichotomous division of propositions into the true and false, we had taken notice of what lawyers call legal fictions. Such propositions occur, for instance, when we say that the constitution is the will of the people, or that the judges simply declare and never make the law, or when we say that the innocent purchaser of a chattel subject to mortgage has had notice of this fact if only the mortgage is duly recorded. These propositions, like the statement of the actor, “I am thy father’s spirit,” are not adequately characterized when we say merely that they are true or that they are false.

- Morris Cohen, “Jurisprudence as a Philosophical Discipline”
Introduction
The Fiction of Law in Shakespeare and Spenser

This dissertation examines the relationship between literary and legal fiction making in the work of the two most distinguished poets of the Elizabethan period of English letters, William Shakespeare and Edmund Spenser. I argue that by examining the fictionality of the law at every level, from structure to technique, these poets encountered the constitutive boundaries of their own fictions. The dynamic they discovered is that poetry and law are symmetrically and oppositely fictional. Poetry is fictional in being neither true nor false; law is fictional in being both true and false. Throughout, I maintain that the nature of Shakespeare and Spenser’s engagement with law is not primarily topical, in the sense of an interest in legal plots; nor literary, in the sense of registering figurative or rhetorical patterns in the law; nor legalistic, in the sense of making properly doctrinal arguments. Rather, the encounters with law in these poets’ works are philosophical, in that they search out the elements of law as a form of human making; in the process, they are confronted with the nature, limits, and responsibilities of their own making as poets.

Before any further exposition, however, I want in this introduction to sketch the conceptual, historical, and scholarly landscape. I will begin by examining what the central term in my dissertation, fiction, has been taken to mean in a legal context, with special attention to its use in the English Renaissance. I will then move from my overview of legal fictions to a discussion of how my focus on them might contribute to the state – one is tempted to write impasse – of the study of law and literature. Finally, I will end with a reading of a poem from early in the Elizabethan period, by George
Gascoigne, as both a coda to the introduction, gathering up some of the themes I’ll have discussed and putting them to practice, and as a prelude to the more sustained readings in the four chapters on Shakespeare and Spenser that follow.

**Legal Fictions**

What, though, does fiction mean in the law? Any hope for an easy, analytically clean definition disappears the moment one canvases the literature on the topic; as Maksymilian Del Mar observes, “there are as many definitions of [legal] fictions as there appear functions of them.”¹ Though English law used the term “fiction” to name certain legal procedures since the 1590s, and in fact used such techniques throughout its history, the notion of legal fictions was not much elaborated in the period. The closest scholars have found to a definition in the period is the following, from Henry Finch’s *Law or a discourse thereof* (composed in the 1590s): “a fained construction, which we call a fiction in law, is when in a similitudinary sort the law contrueth a thing otherwise than it is.”² As the legal historian J.H. Baker notes, Finch seems to restrict this definition to legal presumptions and deeming: moments in which the law treats a fact as existing, either irrebuttably, or unless a litigant demonstrates some minimum level of proof to the

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contrary. Sir Edward Coke used a Latin tag suggesting that fictions were a tool of equity, the reconciliation of the law’s letter and spirit: *in fictione juris semper est aequitatis.*

A more robust conceptual and definitional exploration of legal fictions would have to wait until the nineteenth century. Sir Henry Maine offered the following: “any assumption which conceals, or affects to conceal, the fact that a rule of law has undergone alteration, its letter remaining unchanged, its operation being modified.”

But perhaps the best known definition is from the twentieth century, in a classic study by Lon Fuller: “A fiction is either (1) a statement propounded with a complete or partial consciousness of its falsity, or (2) a false statement recognized as having utility.” In a recent volume on the subject, a number of other scholars have essayed their own definitions:

- “True legal propositions asserted with conscious recognition that they are inconsistent in meaning or otherwise in semantic conflict with true propositions asserted within some other linguistic system.” (Douglas Lind)

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• A “re-description of the facts of some event in order to make those facts compatible with the rule while at the same time permitting what might appear to be the right result.” (Frederick Schauer)  

• “Any suspension of one of more of the required operative facts leading to the imposition of an associated normative consequence, whether this suspension is introduced because of (1) the absence of proof of some previously required fact; or (2) the presence of proof to the contrary.” (Maksymilian Del Mar)

These scholars disagree about even some fundamental aspects of the concept: Are legal fictions necessarily false? Do they require a consciousness of falsity on the part of the relevant legal actors (to distinguish fiction from, say, an abuse of pleading standards or procedure)? Nevertheless, following Del Mar, we might usefully divide legal fictions into two types: “fictions in legal practice” and “fictions in legal theory,” which I will call technical fictions and structural fictions, respectively. Technical fictions, we might say, oil the wheels of particular procedural vehicles, and smooth out the rough edges of particular problems, even if the solution is used ubiquitously in a certain class of legal event. Structural fictions, by contrast, concern the principles that underwrite a given legal system, conferring on it coherence, efficiency, legitimacy.

Further, we can extract some principles common to legal fictions. First, legal fictions, if not false in some absolute sense, either directly contradict or implicitly rule


out alternative constructions of a given matter, other plausible truth claims with their own form of procedural verification. Second, legal fictions are accepted by law and enforced to the extent that the legal regime more generally is enforceable. So, legal fictions can be thought as being legal facts or principles that, if not *a priori* false, are nevertheless susceptible to falsification by other truth procedures.\(^9\)

Finally, though – and while it may seem trivial, it is crucial for our purposes – legal fictions are necessarily true. True at law, that is. J.H. Baker, in his attempt to limit legal fictions to purely factual fictions, writes revealingly of the necessary truth of propositions accepted at law: “[A] matter of law cannot, in its nature, be fictitious.”\(^10\) Elaborating, Baker argues why certain legal concepts cannot be fictitious in the way factual assertions about a case can:

\[\text{[A] fiction in the common-law sense must also be distinguished from a rule of law which seems to conflict with natural reality, as in the process known as ‘deeming’, which is sometimes referred to as a statutory fiction. Rules of law cannot be true or false in the factual sense, and lawyers are entitled to make ordinary words bear special sense – not only for the avoidance of circumlocution but because that is how all legal terminology has evolved. In evolving legal concepts, lawyers have often used metaphorical language to describe abstract concepts. For example, husband and wife were deemed to be one person in law, a monk was treated as becoming civilly dead on profession, an abbot and his monks had a corporate legal personality}\]

\(^9\) I think my own formulation, provisional as it is, is closest to Lind’s, in that Lind’s definition seems to suggest that legal fictions are not false but rather falsifiable, that is, “in semantic conflict with true propositions asserted within some other linguistic system.”

distinct from that of the individuals (who were legally dead), acts of parliament were deemed to have been made on the first day of the session, and so forth.¹¹ Baker’s basic point is that unlike a factual fiction, which asserts falsely that some event occurred in the world which did not (as in the bill of Middlesex, discussed below, in which the plaintiff falsely accused the defendant of trespassing in a particular county for jurisdictional purposes), conceptual fictions involve the law assigning the technical meanings it prefers to particular terms. A person, under the law, then, includes a lawfully married couple, or a properly chartered organization. There is no factual fiction here, the reasoning goes, because this is the true meaning of the term at law.

But the distinction does not hold up. After all, one could characterize factual common-law fictions as merely the law giving its own gloss to jurisdictional terms that have another meaning in ordinary language. Thus, trespass in Middlesex might simply be redefined at law to include any action that the King’s Bench otherwise deems properly pleaded and brought before its jurisdiction; assumpsit merely deems at law that any breach of contract involves deceit for legal purposes if not factual ones. Both factual and conceptual fictions can be understood alternatively as the abuse of ordinary language and experience, or the law developing its own technical sense for language, or both.

**Technical Fictions**

The use of the term “fiction” to name a practice or technique inside English law was crystallizing in the late sixteenth century, the period on which this dissertation focuses. The OED dates an early instance of “fiction” in a distinctly legal sense to 1590, ¹¹ *Id.*, 44.
when Henry Swinburne, in his *Brief Treatise on Testaments and Willes*, argues that “It were against all right. . . that he should be iudged the father of that childe, by fiction of lawe.” Yet whether this particular practice – the deeming at law that a man was the father of children born to his wife – and techniques like it sheltered under the word “fiction” or not before the 1590s, the concept had long been available and relevant to English law, and Roman law furnished a venerable precedent.

Under Roman law, a *fictio* involved assuming some fact obviously known by the court or litigants to be false in order to produce some desirable legal result. For example, an emancipated son was technically considered not *heres* or having a right of inheritance from his father: strictly speaking, the law did not allow him to claim his deceased father’s property as his own, or to claim a debt that had been owed to his father. If, however, he brought his action as *heres*, the court would accept the fiction to reach the merits of his claim. Likewise, courts would accept the pretense that a foreigner was a citizen in order to assert jurisdiction to hear certain of his claims. Similar procedural fictions can be found at earlier moments in English law to allow for the effective operation of the courts without disturbing the appearance of honoring their

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15 *Id*.
traditions. The King’s Bench, so named because it was meant to sit *coram rege ubicumque fuerit in Anglia*, “before the king wheresoever he should be in England,” rarely, if ever, heard cases in the royal presence after it began sitting regularly in Westminster Hall.

Fictional devices were used increasingly by the English common law courts in the late sixteenth century. Jurisdictional fictions, in particular, came to prominence as English law and politics experienced systemic change in the period and the common law courts and the crown both consolidated and systematized their authority, absorbing competing local jurisdictions and courts grounded in other legal systems (civil law, canon law, etc.). One of the most famous and effective of these fictions was the so-called “Bill of Middlesex.” As J.H. Baker describes in his history of English law, the fifteenth century saw the rise of alternative jurisdictions such as Chancery, which offered the advantages of a “relative[ly] informal[]” bill procedure and an “inquisitorial trial procedure which by-passed the sheriff and the jury [of the common law courts].”

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response, the King’s Bench developed a procedural fiction allowing a litigant to avoid the expense of obtaining a writ from the Chancery court usually necessary to begin procedures by alleging falsely that the defendant to an action had committed trespass in the county of Middlesex, where the King’s Bench sat and therefore could be directly petitioned to exercise jurisdiction. Since the defendant was not in Middlesex, of course, the sheriff “would duly return that the defendant ‘is not found’ (non est inventus).”21 The plaintiff would then resort to a fiction within the fiction, claiming that the defendant “lurks and runs about (latitat et discurrit)” in whatever jurisdiction the defendant had been in all along, whereupon the Kings Bench would issue a latitat writ instructing the sheriff of that jurisdiction to arrest the defendant; eventually, the court came to issue a latitat under the fictitious pretense that the allegation of trespass in Middlesex had already been made.22 One could say, then, that the Bill of Middlesex “found” the defendant in the right jurisdiction; or, in several senses, it invented that presence. Once the defendant had been arrested “and . . . impleaded by bill[,] the action of trespass could be quietly discontinued before it came to trial[,]” and the genuine legal dispute, say for a debt, could be submitted directly by bill and litigated by the King’s Bench.23 From the late fifteenth to the late sixteenth centuries, the number of latitats issued by the King’s Bench went from “a trickle” to 20,000 a year.24 The common law courts used even more

21 Id., 39.
22 Id.
23 Id.
24 Id., 40.
flagrantly false jurisdictional fictions to rob the admiralty courts of their traditional authority over contracts to be performed in a foreign jurisdiction.25

The common law courts expanded their control not just through geographical fictions, going to what lawyers still call the court’s personal (in personam) and territorial jurisdiction, but also to the substantive range of matters before the court, or what is now called subject matter jurisdiction. Traditionally, the common law courts had no subject matter jurisdiction over informal contracts or covenants. The common law courts devised a means to reach informal contract disputes, however, by treating instances in which a party’s performance on a contract harmed the other as a kind of trespass, an action over which the common law courts did have jurisdiction. The writs for such actions alleged that “the defendant ‘took upon himself’ (assumpsit super se) to do something, and then did it badly to the damage of the plaintiff.”26 The common law courts used the opening created by assumpsit to include cases in which there was no harmful act or commission, but only a failure to act, or omission: the plaintiff could allege that the defendant had committed an affirmative wrong by deceiving the plaintiff into reliance.27 Litigants eventually began using assumpsit and alleging deceit “even when there was no deceit in fact.”28 When the Court of Common Pleas balked at the King’s Bench loose ways with assumpsit, the Exchequer Chamber decided the landmark Slade’s Case (1569-1602),

27 Id., 278-279.
28 Id., 279.
affirming the viability of *assumpsit* for normal contract and debt actions and introducing
the modern doctrine of consideration.\(^{29}\) Fictions thus not only allowed for the efficacious
resolution of individual cases, but also were the means through which the common law
courts aggrandized territorial and subject matter power, and were the engine of judicially
centered legal reform. As Bradin Cormack observes, “by the mid-seventeenth century,”
as a direct result of these aggressive jurisdictional fictions, “the common law of the
central royal courts was fully present to the culture as the dominant source of judicial
norms.”\(^{30}\)

It is important to note how difficult it is to reconstruct the full impact and
presence of these technical fictions. For one of their cardinal features is a kind of
institutional invisibility, as Baker observes:

> [T]he formal invisibility of fictions on the face of the record also
generally kept them out of the law reports. Fictions only surfaced in
the books once they have become widely known and well established.
The precise origin of a fictional device is therefore almost always beyond recovery.\(^{31}\)

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\(^{30}\) Bradin Cormack, *A Power to Do Justice* (Chicago: University of Chicago Press, 2007), 27. Unless otherwise noted, all further references in this dissertation to Cormack’s *Power to Do Justice* are to the 2007 version published by the University of Chicago Press, not to the dissertation.

\(^{31}\) Baker, *Law’s Two Bodies*, 35.
Parsing out the “true” from “fictitious” accusations of trespass in Middlesex or of deceit in *assumpsit* is probably impossible. At the technical level, legal fictions tend to erase the record of their own fictionality. Baker generalizes from this to the principle that “[i]t is of the essence of a fiction that it leaves no explicit evidence of its existence.”

This is powerfully accurate with respect to the jurisdictional fictions driving the consolidation of the common law court’s authority in the sixteenth and seventeenth centuries. But it does not capture the full range of technical effects in the law that have a claim to being called fictions. This is especially obvious in the example of presumptions or deeming, which, as Baker notes, may in fact been the technique most associated with the notion of legal fiction in the Renaissance. Presumptions hold that, in a given set or range of circumstances, the law will deem or consider some fact to be the case when it has not been proved. Often, a high burden of proof must be shown to disprove a presumption, as in the presumption of innocence until proof of guilt beyond a reasonable doubt in criminal cases. Or the presumption might be irrebuttable. Anglo-American law has always been, and continues to be shot through with presumptions large and small.

One particularly infamous presumption, alluded to in the Swinburne passage recorded in the OED that I quoted earlier, is the so-called “four-seas rule,” which held at common law that a husband was irrebutably presumed to be the parent of his wife’s children if he was within the king’s jurisdiction, or within the “four seas” surrounding England, when

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32 *Id.*, 33.

33 Baker observes that “[a]t one time the expression ‘legal fiction’ may indeed have been confined to legal presumptions and the like” ([*Law’s Two Bodies*](#), 41).
the child was born.\textsuperscript{34} Richard Helmholz notes that common law lawyers regularly maintained that even if the husband were in France at the time of the child’s conception in England, the presumption held, for the father could have crossed the Channel at night.\textsuperscript{35} Bradin Cormack has written forcefully about the use of this presumption as a weapon in the jurisdictional battle the common law waged against civil and canon law courts, nicely demonstrating the untenable distinction between blatantly fictional jurisdictional sleights of hand and seemingly more principled or respectable presumptions.\textsuperscript{36}

Whatever else about them might be debated, it is clear that presumptions and deeming are no more tethered to some notion of experience external to the law than more blatant factual fictions. \textit{Contra} Baker, presumptions show the law pushing against external criteria of truth with little concern for the need to leave “no explicit evidence of its existence.” This is a sign of the law’s power, its capacity to impose its own version of truth of the world, sometimes regardless of that truth’s plausibility or wisdom.

Nevertheless, Baker’s observation about the tendency of legal fictions to erase the record of their fictionality is instructive, and not just with respect to factual fictions. It has special force when one considers the English common law’s structural fictions: the myths and artificial structures the common law adopted to confer on itself an attractive intellectual coherence or legitimacy.


\textsuperscript{35} Hemholtz, “Bastardy Litigation,” 370.

\textsuperscript{36} Cormack, \textit{A Power to Do Justice}, 291-330.
Structural Fictions

It would not be an exaggeration to say that the English common law rested on a fiction. In a foundational study of the common law mentality and its relationship to history, J.G.A. Pocock describes how common law jurists in the sixteenth and seventeenth century, facing an increasingly powerful and aggressive model of royal authority, developed a dogmatic account of the ancient origins of the common law. According to this dogma, the common law’s authority rested on its codifications of customs whose existence predated written record, rendering it “immemorial” and immune to critique or the claims of an alternative authority:

[B]y Coke’s time the increasing activity of a nearly sovereign monarchy had made it seem to most common lawyers that if a right was to be rooted in custom and rendered independent of the sovereign’s interference it must be shown to be immemorial in the full sense of ‘traceable to no original act of foundation’. The idea of the immemorial therefore took on an absolute colouring, which is one of the key facts in Stuart historico-political thought. It ceased to be a convenient fiction and was heatedly asserted a literal historical truth; and the more that came to be known about remote ages, the more vigorously it was insisted that the law was before Abraham.37

The common law ideology of custom and immemoriality blurred the line between fiction and the claim to historical authority. And as Bernadette Meyler notes, this process was even more self-conscious than Pocock allows: studies show that Coke was quite knowing in his construction of a monolithic, historically invulnerable common law, going to such

lengths as to alter precedent in his own reports so that they better fit his systematic ambitions. Here, the ambition of the law is to work out, in time, a version of itself that escapes the contingencies of time, to turn *a posteriori* process into *a priori* principle.

Even as the common law jurists fabricated an account of the common law that erased the record of its fabrication, they also embraced a version of the law as an art to better immunize it from lay interference. In the famous case of the *Prohibition del Roy*, Coke, acting as Chief Justice of the Common Pleas, had to face the difficulty of King James’ calling the bluff of the law’s own fictions. As I’ve noted already, the King’s Bench operated according to the fiction that it sat *coram rege*, in the presence of the sovereign, even though the English kings stopped presiding over its business long ago. James, in 1608, decided that he would exercise his duty to preside over the King’s Bench’s proceedings in Westminster. Coke, alarmed at this royal invasion of the common law’s competence, issued a formal opinion, first published in the 1656 edition of his reports, rebuffing the king’s decision:

[Cases] ought to be determined and adjudged in some Court of Justice, according to the Law and Custome of England, and alwayes Judgements are given, Ideo consideratum est per Curiam, so that the Court gives the Judgement: And the King hath his Court, viz. in the upper House of Parliament, in which he with his Lords is the suprem Judge over all other Judges; for if Error be in the Common Pleas, that may be reversed in the King’s Bench: And if the Court of King’s Bench erre that may be reversed in the upper house of Parliament, by the King, with the assent of the Lords Spirituall and Temporall, without the Commons: And in this respect the King is called the Chief

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Justice, 20 H. 7. 7 a. by Brudnell: And it appears in our Books, that the
King may sit in the Star-Chamber, but this was to consult with the
Justices, upon certain Questions proposed to them, and not in Judicio;
So in the King’s Bench he may sit, but the Court gives the Judgment.
And it is commonly said in our Books, that the King is alwaies present
in Court in the Judgement of Law; and upon this he cannot be nonsuit:
But the Judgements are alwayes given Per Curiam; and the
Judges are sworn to execute Justice according to Law and custome of
England. 39

The King’s Bench operates according to the fiction (or, should James wish, the fact) of
the King’s presence at court; but the matter of judgment rests with the common law
judges themselves, with the King and the peerage in the House of Lords acting as a court
of error, capable of hearing appeals. The King’s relationship to the King’s Bench exists at
the level of formality, and no deeper.

Coke recounts that, unsurprisingly, the King was displeased with his answer. But
Coke holds his ground, and offers a conceptual defense of his exclusion of the king from
the substantive operations of the King’s Bench:

Then the King said, that he thought the Law was founded upon reason,
and that he and others had reason, as well as the Judges: 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 Lawes of his Realm of England, and
causes which concerne the life, or inheritance, or goods, or fortunes of
his Subjects; they are not to be decided by naturall reason but by the
artificial reason and judgment of Law, which Law is an art which
requires long study and experience, before that a man can attain to the

39 Sir Edward Coke, Prohibitions del Roy, in The Selected Writings of Sir Edward Coke,
cognizance of it; And that the Law was the Golden metwand and measure to try the Causes of the Subjects; and which protected his Majesty in safety and peace: With which the King was greatly offended, and said, that then he should be under the Law, which was Treason to affirm, as he said; To which I said, that Bracton saith, *Quod Rex non debet esse sub homine, sed sub Deo et Lege*.\(^{40}\)

Coke here affirms an idea of the law as a kind of *techne*, an art distinct from James’ “great endowments of nature” or the other “Science[s]” of government and politics. The law is a fiction in the sense of its being an art, a specialized discipline of human making.

Coke’s final line of defense against the king involves another deep and much-discussed structural fiction of English law, one that will have special importance to this dissertation. According to Coke, the King, “offended” by Coke’s argument that the sovereign lacks the art to judge cases, more than hints that his Chief Justice has gone too far: “and [the King] said, that then he should be under the Law, which was Treason to affirm.” James, a known admirer of absolutism, suggests that, by sealing off the judiciary from his control, Coke has placed impermissible limits on the sovereign’s authority.

Coke’s response is to quote a phrase from Henri de Bracton: “*Quod Rex non debet esse sub homine, sed sub Deo & Lege.*” The maxim resorts to the fundamental, theologically inflected fiction of the “King’s two bodies,” famously explored by Ernst Kantorowitz (and which I will have occasion to discuss in greater length in chapter 4). The fiction held that the king as a person, in his “body natural,” was subordinate to no man, but *was* subordinate to his own “body politic,” the corporate office of kingship, encompassing as it did the entire realm and its political order. The theory of the king’s two bodies was, as Kantorowitz has demonstrated, crucial to maintaining the independence of the parliament.

\(^{40}\) *Id.*, 481.
and the common law from royal claims of absolutely authority; taken further, it
sanctioned rebellion against a given sovereign in the name of the polity the sovereign
embodied.  

Fiction, then, affirmed the deep structures of the common law, its claims to
venerable stability, its self-image as a form of art, its security within a constitutional
order and a limited monarchy. These fictions differ in their mechanics from the factual
fictions I discussed before. They do not operate as an abuse of a technique or an equitable
fabrication oiling the legal machinery toward a just result (as in a fictitious accusation of
trespass in Middlesex), or as a technical manipulation or default rule set in the face of
contrary or uncertain epistemological evidence in a particular range of cases (as in
legalistic meanings to ordinary language or presumptions). Rather, they reveal the artifice
necessary for the law to function coherently and legitimately as a system.

Legal fictions, seen this way, are not an esoteric feature of the law’s life, an
amusing quirk in its history. They are the life of the law at every level, from procedure
(the jurisdictional fiction) to doctrine (presumptions and terms of art) to ideology
(immemoriality, the king’s two bodies). The law is, like literature, fictional in the sense
that it is a paradigmatic form of making a world in language. Unlike literature, though,
the world the law makes in language is then imposed on experience, backed by the threat
of violence.  

In this sense, they are the mirror opposite of poetic fictions. In his Defense

41 Ernst Kantorowicz, The King’s Two Bodies: A Study in Mediaeval Political Theology,
1601-1629.
of *Poesy*, the most enduring work of literary theory from the period, Philip Sidney defends poets from moralistic censure by claiming that the poet “never lieth, because he never affirmeth,” a claim echoed much later and in a different register by Gottlob Frege when he observed that artistic fictions are neither true nor false. Extracting from this, we can say that whereas artistic fictions are neither true nor false, legal fictions are *always both true and false*. They are true in the sense that they are treated as true at law, and are therefore institutionally enforceable; they are false in the sense that they violate and suppress superior or at least equally plausible truth claims. Examining the relationship between poetry and law through the category of fiction, therefore, focuses our attention on a dynamic whereby the discourses come to seem fundamentally related, *and* categorically distinct. In the next section, I explore how this dynamic might offer a productive way out of the methodological dead-end at which scholars have acknowledge the study of law and literature finds itself.

**Fiction and the Law and Literature Impasse**

The stakes of my argument are more legible when it is positioned among recent debates about the “law and literature” movement. Generally, the subject of law and literature has divided intellectuals into two camps. The first denies the utility of the

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endeavor, suggesting that the two discourses serve different, mostly unrelated functions. The attitude is most elaborately and intelligently argued by Judge Richard Posner in his aptly titled book*Law and Literature: A Misunderstood Relation.* Naturally, the second group views law and literature as a rich, perhaps crucial topic for understanding both discourses. But there its coherence ends. The field of law and literature has spawned endless internecine debate, to the point at which it is not an exaggeration to say that the field is at something of an impasse, uncertain about its viability in literature departments or (especially) law schools, and perplexed about how it might imagine its future.

Nevertheless, there are some useful categories into which we might divide the majority of work written by those invested in law and literature as a movement. Almost all the scholarship in the field divides into two categories, or involves a mix of the two: “law in literature” and “law as literature.” As the division suggests, the body of work divides itself into literary treatments of law as a subject matter of literary representation, or itself as a direct object of the kind of rhetorical analysis normally reserved for literature. This categorization has remained surprisingly comprehensive, especially if we add a third, supplemental category: literature as law, as itself an instrument of legal thought.

All of these categories have been especially well represented in the subfield of work on law and literature in the English Renaissance. In particular, scholars have taken seriously the implications of Coke’s claim in the *Prohibition del Roy* that the common law is a form of “artificial reason,” and have considered how the literature of the period

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was deeply connected to law through the art of rhetoric. Kathy Eden, for example, has shown how Renaissance literary theorists, including Sir Philip Sidney, drew on two strands of the humanist legal and rhetorical tradition that begins in Aristotle: the first values artificial or \textit{entechnic} proofs (rhetorical persuasion, demonstration, and narrative) over \textit{atechnic} proofs (witnesses, oaths, documents); the second is the principle of equitable judgment, whereby the rigid letter of the law bends to accommodate the requirements of justice in a particular case.\textsuperscript{47} Renaissance authors imported these legal principles in their concern with artful plot and rhetorical eloquence, and in their attempt to mediate between general and particular by examining ethical problems through vividly drawn characters and plots.

Recent scholarship has made similar insights about the influence of more specifically legal forms of thought on Renaissance literary production. Luke Wilson has argued that dramatists drew on the common law’s retrospective model of intentional action, producing in turn representations that weirdly anticipate the interest of radical philosophers such as Foucault in “agentless agency.”\textsuperscript{48} And Bradin Cormack has shown that the literature of the period took notice of the jurisdictional struggles and consolidations I described earlier, and engaged with jurisdiction both to explore the contingent and “provisional[]” nature of legal authority, and to “articulate the terms in


which literary writers authorize their own representations.” Critics have also found traditionally literary qualities in English Renaissance legal materials. Peter Goodrich, for example, has used bravura close readings of early English legal texts to suggest that “the common law tradition has failed to understand itself as a language and imagery of transmission.”

For all the differences in focus and tone between them, these studies demonstrate the persistence of a few fundamental modes of law and literature scholarship. Without for a moment discounting their sophistication, they tend to involve a kind of interdisciplinarity that risks subordinating one discourse to another. Literary texts become brilliant participants in complex legal disputation; legal texts become specialized examples of literary production. But reading literary texts as primarily legal in their interest (or legal texts as primarily literary) risks falling into a basic category mistake. Literary texts are not statutes or judicial opinions or even legal treatises. Whatever jurisprudential skill they demonstrate, they fundamentally lack legal authority, the capacity for enforcement in a given regime. Moreover, under this view, the literariness of poems and plays come to seem beside the point, or worse, counterproductive: rare is the doctrinal or technical point that could not be more effectively rendered in analytic prose, rather than a sonnet or soliloquy (not always, though – some critics, such as Cormack, have a particular gift for hearing the ways in which poetic effects can serve to amplify, rather than impede, legal analysis). One feels, ultimately, that readings that posit literature’s value with respect to law as a capacity to produce legal argumentation betray

49 Cormack, A Power to Do Justice, 1-2.
a seduction with the law’s authority, a seduction that risks instrumentalizing literature in the service of the law.

Something like this seduction is the subject of Julie Peters’ trenchant critique of the whole law and literature project in her article “Law, Literature, and the Vanishing Real.” Peters’ insight consists in showing the way in which the various permutations of this scholarly tradition keep locating the “real” of experience or truth on one side or another of the discursive boundary. She demonstrates this by sketching out the evolution of scholarship in the field. First came a wave of “humanistic” criticism, confident that literary texts would infuse the law with the human experience obscured by legalism, bringing “humanistic judgment” to the law. Next came a “hermeneutic” movement, in which literary critics asserted the literary complexity and indeterminacy of legal texts as a way, in a sense, of arguing that critical theory, that seemingly most impractical of methods, was in fact the key to understanding operation of the law, the paradigmatically efficacious discourse. Finally, Peters identifies a “narrative” turn, which exposes certain violent “master” narratives dominating legal thought, and seeks to craft counter-narratives that make visible marginalized and suppressed communities. All of these movement, as Peters deftly argues, enact various kinds of “disciplinary projections.”

Literature seems like the repository of feeling, narrative, sympathy, various human values

52 *Id.*, 444.
53 *Id.*, 445.
54 *Id.*, 447.
55 *Id.*, 448.
exiled from law; law seems like a vehicle for the kind of reform literature can only exhort or imagine. The result is that, perversely, the law and literature project subverts its own good intentions: “through the imaginary projection by each discipline of the other’s difference, it exaggerated the very disciplinary boundaries it sought to dissolve.”  

Peters’ essay is more diagnostic than prescriptive. She ends by suggesting that a more sober sense of the limitations of interdisciplinarity might end up enabling more playful scholarship. That is less risky or messy than the more idealistic past versions of law and literature Peters ably surveyed; at the same time, it also signals an unfortunate, substantial loss of ambition. As Bernadette Meyler has noted of Peters’ essay, “[i]ts aspiration to put aside disciplinary boundaries among sectors of the humanities in studying ‘law, culture, and the humanities’ or ‘law and the humanities’ tout court has not . . . proved entirely feasible, nor is it necessarily desirable.”

The article does, however, gesture toward a somewhat different and, I suggest, far more promising direction in its invocation of Elaine Scarry’s cultural criticism. As Peters notes, one of the central questions of Scarry’s work is a paradox of cultural criticism that often goes unremarked:

the modern breakdown of the analytic separation between the made-up (aesthetic objects that retain their fictional quality) and the made-real (human creations such as law, science, gender, and childhood that inhabit the world without bearing the mark of their creation) . . . [h]as contributed to a loss in prestige for both classes of things.

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56 Id., 449.


Peters briefly sketches Scarry’s own solution to the problem as a shift from “an attack on things for feigning realness to ‘the generation of accurate descriptions[,] which will tell us something about how things became real and what their realness consists in.” She then moves toward her own call for a “law and humanities” scholarship, one that bears some resemblance to Scarry’s call for “accurate description.”

This does not, however, do full justice to Scarry’s vision, rooted as it is in the singularity of the arts (not the humanities, exactly) in relation to culture, and which offers an ideal framework for the dynamic between literary and legal fictionmaking in this dissertation. It deserves to be described more fully. Scarry observes that a much wider range of objects than we normally acknowledge – not just technology and crafts but disciplines such as law and medicine and even less formal concepts, such as the “wilderness” – are “made up.” That is, they are the product of human invention: the engineering that produces a new bridge; the theoretical and practical shape given to a profession such as the law; the cognitive distinction that generates a meaningful difference between human “civilization” and the uninhabited “wilderness.” Though they begin “made up” as acts of human creativity, these objects go through a second phase:

What was formerly perceived as the cultural artifact’s “realness” was not an illusion; nor what was formerly perceived as art’s “exceptionalness” an illusion. . . . [H]aving been made up, as a poem is, the created thing must have gone on to a second stage of creation,

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59 *Id.*

where the initial work of invention was compounded by an additional process through which reality was conferred on or discovered in it; and the essence of this second stage lay in the making invisible of the traces of its having been created in the first place.\textsuperscript{61}

Having been made up, these cultural artifacts are “made real,” given the authority of cultural consensus or democratic vote; enforced by the community or the state’s monopoly on violence; taken for granted as self-evident.

Works of art, by contrast, never go through the second stage of this process. They remain openly, obviously “made-up.” Indeed, Scary takes this a step further, arguing that the insistent fictiveness of artistic works is their most “exceptional” quality:

The imagination’s ordinary attribute of self-effacement (in most artifacts other than art) raises a question about the idiosyncratic logic of her appearance in the realm of art, where, far from making any attempt to disguise her own activity, she is self-announcing. While an art work exists in the presence of endless other forms of made things, these others are not ordinarily accompanied by the announcement, “This is a made thing.” But a poem or painting exists within the frame of this announcement. This overt ficticiousness or createdness or madeness is both the ground on which art has been extravagantly honored and, with equal frequency, the ground on which it has been despised or dismissed. Of relevance to the present discussion is not the interesting divergence between the responses of honoring or dismissing, but the fact that both responses are alike in identifying art as exceptional, non normative, or marginal. They are also correct in this identification, for in the overtness of its fictionality (rather than in its fictionality), art \textit{is} exceptional.\textsuperscript{62}

\textsuperscript{61} \textit{Id.}, 216-217.

\textsuperscript{62} \textit{Id.}, 218.
This is the limitation of art; it is also its great strength. Poetry, because of its overt fictionality, cannot claim the reality effect to which law is entitled; poetry is not enforceable. And yet, as Scarry’s analysis suggests, poetry has an authority that comes precisely from its lack of authority. Being fictional, it stands as a reminder of the process by which all cultural objects are made: art, of course, but also all the venerable institutions that have passed into reality. Poetry reminds us of our responsibility to the imagination and its creations. And poetry reminds us that the reality of the law is not an illusion, exactly, but instead something we confer, and something we can take back and reform.

The relationship between law and literature I propose in this dissertation, borrowing from Scarry, thus locates an important dynamic between the two discourses, without falling into the distorting projections that have persisted in the scholarly literature. The relationship is not one of mutual exclusion (as in Judge Posner’s account), but neither is it one of symbiosis (as in an account in which law is treated as purely rhetorical, or literature ends up being most valuable for its capacity to perform unusual kinds of legal analysis). Furthermore, it does not involve vesting either discourse with an idealized version of the real toward which all our critical efforts must be oriented. Instead, law and literature form a symmetrical and complementary picture of human making.

In the poetry of Shakespeare and Spenser, I hear an acute sensitivity to this complex dynamic. They wrote at a time when, as I have suggested, fiction operated more clearly and pervasively in the English common law than it ever had, or would in the future. Although scholars have convincingly demonstrated the myriad ways in which
these two poets engage with the law as law, to discover new arguments within it, to
defend it, or to imagine its improvement, I find their encounters with the law most
interesting when they apprehend, articulate, and amplify the process within the law by
which the imagination takes upon itself the power of institutional truth. As my different
treatments of them suggest, I find that in Shakespeare these encounters take the shape of
a parodic engagement (Chapter 1) that projects a horizon in which law has been returned
to a inhabitable state of cognitive play or comedy (Chapter 3). By contrast, I read Spenser
as engaged in an ideological experiment by which the poet submits himself to the law’s
structural mechanics, whether it be the suspicious evidentiary techniques of the criminal
law (Chapter 2) or the corporate logic of private and public government (Chapter 4).

Before turning to Shakespeare and Spenser, I want to try to model the relationship
between poetic and legal fictionmaking in the work of a somewhat earlier poet, George
Gascoigne, and in a genre not otherwise surveyed in this dissertation, the lyric. The
reading offers a sample of how the poetry of the period plays on the dynamic I have
described in broad terms above.

**Gascoigne’s Case**

“Gascoigne’s Woodmanship,” published in 1573 as part of George Gascoigne’s
collection *A Hundred Sundrie Flowres*, is a poem about failure and limitations, of the
author’s and of the imagination’s. As its full title in the 1573 edition of *Hundred Sundrie
Flowres* makes clear, it purports to arise out of an episode in the author’s life:

Gascoignes woodmanship written to the Lord Grey of wilton upon this
occasion, the sayde Lord Grey delighting . . . in chusing of his winter
deare, and killing the same with his bowe, did furnishe master
Gascoigne with a crossebowe cum Pertinenciis, and vouchsafed to use his company in the said exercise, calling him one of his wodmen. Now master Gascoigne shooting very often, could never hitte any deare, yea and often times he let the heard passe by as though he had not seene them. Whereat when this noble Lord tooke some pastime, . . . he thought good thus to excuse it in verse. 63

The poem begins in a seemingly light vein as an “excuse” for a trivial fault, an ineptitude at hunting, but expands quickly to much larger and more serious failures as it seeks to account for the “cause” of Gascoigne’s poor shots:

And therefore now I crave your Lordships leave
To tell you playne what is the cause of this:
First if it please your honour to perceive
What makes your wodman shoote so ofte amisse,
Beleeve me Lord the case is nothing strange.
He shootes awrie almost at every marke,
His eyes have been so used for to raunge
That now God knowes they be both dimme and darke.
(9-16)

Marked by the kind of finely controlled rhetoric (the coolly balanced couplets, the gruff but precise diction) that lead Yvor Winters to single it out as an exemplar of the “plain style,” 64 the poem at the same time subjects the poet’s purported experience to subtly artificial manipulations. The hunting scene is immediately allegorized: Gascoigne’s poor woodmanship becomes a figure for a more general misfortune and

63 All references to “Gascoigne’s Woodmanship” are from the edition of the poem in George Gascoigne, A Hundreth Sundrie Flowres, ed. G.W. Pigman III (Oxford: Oxford University Press, 2000), 312-16.
weakness in life. And, indeed, the poet’s voice becomes separated from himself, the “I” of the speaker diverging from “your woodman,” who is referred to for roughly the first half of the poem in the third person. He becomes the centerpiece of a tragicomic parable of an earnest youth whose enthusiastic imagination is comically mismatched to the coldly efficient fictions of power.

As Gascoigne pivots from the immediate scene, turning his missing the mark into an allegory of his disappointed career, he also modulates to a subtly legal register. He promises to tell “the cause” of his poor performance, meaning that he will provide a reason in an ordinary sense, but also that he will plead his case, a meaning that emerges fully a couple lines later (“Beleeve me Lord the case is nothing strange.”). Indeed, the law is part of the story of Gascoigne’s haplessness. The poet begins his case by listing his repeated attempts to find his métier and his repeated, hapless failures at each attempt. The progression is from the more intellectually pure and detached to the increasingly worldly and practical. He “shot sometimes to hit philosophy” (18), then turns to the law:

Next that, he shot to be a man of lawe,
And spent some time with learned Littleton;
Yet in the end, he proved but a dawe,
For lawe was darke and he had quickly done.
Then could he wish Fitzharbert such a braine,
As Tully had, to write the law by arte,
So that with pleasure, or with little paine,
He might perhaps, have caught a trewant’s parte.
But all to late; he most mislikte the thing,
Which most might helpe to guide his arrow streight,
He winked wrong, and so let slippe the string,
Which cast him wide, for all his queint conceit.
Gascoigne, aiming to be “a man of law,” tries his hand at mastering “learned
Littleton[‘s]” famous treatise on feudal land tenures, a subject of byzantine complexity.
Baffled by the “darke” law, the poet ruefully wishes that Sir William Fitzherbert’s
systematic summary of the common law, _La grand abregement de la loi_, had the
attractive and readable “arte” of a Cicero. As it is, he lost his best chance at a firm
foothold in the world: “He winked wrong, and so let slippe the string, / Which cast him
wide, for all his queint conceit.”

That last phrase, “for all his queint conceit,” might be thought to refer to his
fanciful wish that the deadly dull law could be given a Ciceronian elegance and polish, or
that he would have the discipline to master the law: for all his quaint conceit that the law
might be easily legible or quickly mastered, it of course turned out to be discouragingly
hard. But there is also a sense in which the phrase refers more generally to Gascoigne’s
debilitatingly quicksilver imagination, and that his failure with the law “cast him wide,
for all his queint conceit,” at the mercy of his own thought. There is an implicit parallel
between the law’s density, and the restless imaginative energies of the poet. As different
as they seem, they might share a deep, common darkness.

The poet keeps careening from one prospective, disastrously unsuitable career to
another. As Gascoigne’s tale progresses, it becomes clear that part of his bad luck is his
inability to profit from the hypocrisies of various social world. Trying his best to succeed
at court, he puts faith in appearances, crediting “flattering” (45) faces with “fidelitie”
(46), trusting “that such rules words as courtiers use at will, / Could not have varied from
the veritie” (47-48). But of course he finds that after he has bankrupt himself on his
“queint array” (that “queint” echoing his own earlier “queint conceit” about the law) (52),
the court has little interest left for him. Gascoigne’s next, even more desperate move is to become a soldier. Yet once more, he cannot engage in the moral double-dealing needed to take advantage of life on campaign, and his self criticism reaches a crescendo of biting sarcasm and baffled outrage:

He cannot climbe as other catchers can,
To lead a charge before himselfe be led,
He cannot spoile the simple sakeles man,
Which is content to feede him with his bread.
He cannot pinch the painefull soouldiers pay
And sheare him out his share in ragged sheetes,
He cannot stoupe to take a gredy pray
Upon his fellowes groveling in the streetes.
He cannot pull the spoile from such as pill,
And seeme full angrie at such foule offence,
Although the gayne content his greedie will,
Under the cloake of contrarie pretence:

(73-84)

Here is the focused moral power Yvor Winters cherished in Gascoigne’s poetry: the savage ironies intensify with each anaphoric repetition of “He cannot.” What the woodman is unable to master, and the poet is unable to accept, are the fictions that smooth over the violence of authority and domination: the obscurities of the law; the silken flatteries of the courtier; the legitimated exploitation and rapine of military rank. The woodman’s life, the poem’s story, is a fiction about the violence of fictions.

At this point, the poem makes a dramatic shift, returning from the third to the first person, a “grammatical shift” that, as Paul Alpers notes, “produces what we might call
poetic agency." But the agency it produces is strange, even more powerfully disabling than anything that had come earlier in the poem. The poet reflects on “the black hour of my constellation” (95), realizing that even the bits of technique he has acquired in his many misadventures – his readings in philosophy, his dabbling in the law, his time at court and on campaign – leave him less fortunate than those who, without any such knowledge or worldly exposure, manage at least not to be as spectacularly unsuited to life as him:

Yet can not these with manye maystries mo,
Make me shoote streyght at any gaynfull pricke,
Where some that never handled such a bow,
Can hit the white, or touch it near the quick,
Who can nor speak, nor write in pleasant wise,
Nor lead their life by Aristotles rule,
Nor argue well on questions that arise,
Nor pleade a case more than my Lord Maiors mule,
Yet can they hit the marks that I do misse,
And winne the meane which may the man mainteine,
Now when my mynde doth mumble upon this,
No wonder then although I pyne for Payne:
And whyle myne eyes behold this mirroure thus,
The hearde goeth by, and farewell gentle does:
So that your lordship quickly may discusse
What blyndes myne eyes so oft (as I suppose).

(109-124)

In his reading of this passage, Alpers observes that the “mirroure” the poet beholds has a threefold significance: it is the speaker’s mind, consumed with reviewing his sad career;

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it is the world itself, the scene of his failures (the world in this period was often figured as a mirror); and it is the poem, the mirror of his misfortunes. Taking this analysis of the layered figure one step further, one might say that it is the poem itself that unsuits the poet, the mirror that, as it is made, transfixed and undoes its maker.

Gascoigne’s witty, parenthetical aside at the end of this passage – “(as I suppose)” – crystallizes this insight. “Suppose” here means what it continues to mean in an ordinary sense: an assumption. But it is also refers to a more specifically legal process of hypothesis, and has a special meaning in the context of Gascoigne’s work. Gascoigne had written a prose comedy called *The Supposes*, which was first performed before an audience of lawyers at Gray’s Inn in 1566. Lorna Hutson has argued persuasively that Gascoigne drew on the increasingly participatory evidentiary culture of early modern English law to create characters whose intentions could be inferred through the same processes by which jurors were meant to evaluate culpability at trial.66 Ironically, the poet’s supposition ties his verses back to the “dark” legal reasoning he never seemed to master. The irony is compounded here by the paradoxical effect of the supposes. Rather than connect discrete actions with the tissue of meaning, as in Hutson’s reading of the earlier play, supposition here is a form of bafflement and paralysis, intensifying the distance between the poet and the world of law and power. Thinking back on the layered sense of “mirroure” in Alpers reading, “as I suppose” takes on its own set of complimentary senses: the poet has failed in the manner supposed in the poem; he has failed while he has supposed, letting the deer go by as he makes his verses; and he has

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failed because he has supposed. The poet’s capacity to create fiction out of his
disappointment only further separates him from the more efficacious fictions of the
world.

Gascoigne drives this paradoxical dynamic home in the poem’s brilliant and
unsettling final passage.

But since my Muse can to my Lorde rehearse
What makes me misse, and why I doe not shoote,
Let me imagine in this woorthlesse verse:
If right before me, at my standings foote
There stoode a Doe, and I shoulde strike hir deade,
And then she prove a carrion carkas too,
What figure might I find within my head,
To scuse the rage which ruled mee so to doo?
Some might interprete by playne paraphrase,
That lack of skill or fortune ledde the chaunce,
But I muste otherwise expounde the case,
I say Jehova did this Doe advaunce,
And made hir bolde to stande before mee so,
Till I had thrust myne arrow to hir harte,
That by the sodaine of hir overthrowe,
I might endeavour to amende my parte,
And turne myne eyes that they no more behold,
Such guylefull markes as seem more than they be:
And though they glister outwardely lyke golde,
Are inwardly but brasse, as men may see:
And when I see the milke hang in hir teate,
Me thinkes it sayth, old babe now learne to sucke,
Who in thy youthe couldst never learne the feate
To hitte the whites whiche live with all good lucke.
Thus have I tolde my Lord, (God graunt in season)
A tedious tale in rime, but little reason.

_Haud ictus sapio_. (125-150)

Repeatedly unable to wield fictions properly in the law, or at court, or in battle, the poet stages one last chance to redeem himself. He imagines another failure: he shoots and hits a deer that turns out to be a pregnant, and therefore “carrion,” doe. He must find some way to defend himself, to “scuse my rage,” as a defendant at trial might be asked to offer circumstances excusing culpability for the charged offense. One option would be to give up and state what seems to be obvious: “Some myghte interprete by playne paraphrase, / That lacke of skill or fortune ledde the chaunce.” Gascoigne, however, “must otherwise expound the case,” as a lawyer might be forced, regardless of his own opinion, to make out the best, most artful argument for his client. So the poet finally tries his hand at his own enabling fiction. And what a grand and strange fiction it is: the imagined carrion doe in turn becomes an emblem of prodigality, a sign that the poet must accept humility, reform himself, and submit to the world.

Even the strongest readers of the poem take this at face value, characterizing it as a final consolidation of moral insight (Winters), or as an elegant plea for patronage (Alpers). But this ignores the obvious, even grotesque outrageousness of the final emblem. The poet takes the carrion doe as a sign that the world’s appearances, “though they glister outwardely lyke golde, / Are inwardly but brass.” The murdered doe, though, is just the opposite, all pregnant inwardness, and only mistook for empty. The doe itself is a weird _mélange_ of Christian and Marian imagery: part sacrificial lamb, part succoring mother. And there is the ultimate, blatant distastefulness of taking the mother’s milk, still hanging on her teat, never to be used by her child, as moral sustenance for the killing
poet. The parable is too shocking and ambivalent to do its supposed moral work. What the reader is left with instead is a lingering sense of the violent cost of institutional fiction making (of the law, the court, the military), and of the poet’s own horrifying attempt to “expound the case” and mimic those larger fictions with the tools of artful pleading.

And that is the point: it is the final, most beautiful failure of this poem of failure. Pretending to be a fiction like the ones that have smoothed over the malfeasance of others the poet has encountered, this final image amplifies and disables the process by which legal fictions excuse and legitimate institutional violence. The poem does not engage with the law on the level of doctrine, offering argumentation on a given controversy or case. It apprehends, instead, the artifice by which the law can impose its habits onto the world, to suppress alternative or competitive discourses, and to make itself real. The poem’s power lies in returning us to that imaginative source. It makes nothing happen; it survives.

In the chapters that follow, I will return repeatedly to the dynamic I have sketched in this reading of Gascoigne’s Woodmanship, whereby poetry, in its encounter with the law’s fictions, returns those fictions to their imaginative origins. Sometimes, the engagement with the law will be more technical that it is in the Gascoigne poem; sometimes it will operate at the same conceptual level. Chapter 1 explores the most direct reference to an English common law case in Shakespeare, in the gravedigger scene of Hamlet, and the questions the reference it opens up about the place of technical language in legal and poetic fictions. Chapter 2 investigates the legal ideology of suspicion in the 1590 edition of Edmund Spenser’s The Faire Queene, and argues that it is a basic
element of the so-called Spenserian dynamics. Chapter 3 focuses on the use of concepts of legal practice and process in Shakespearean comedy, which Shakespeare uses playfully to imagine modes of experience and time in which the law has been disabled. Finally, chapter 4 investigates the fiction of corporate personhood in Renaissance culture and in the 1596 edition of *The Faerie Queene*, demonstrating its centrality to the poem’s construction and to the political questions that increasingly darken its second half.

The chapters are not arranged in a historical or argumentative order; they do not trace out a single logic, nor do they track a cultural development with a regular chronology. Instead, the chapters follow the order in which they were written, moving back and forth across Shakespeare and Spenser’s work in the 1590s, testing repeatedly my basic claim of poetry and law’s mirroring, symmetrical fictionality, trying various theoretical and stylistic approaches to my material. My hope is to invite the reader into the development of my thought on this problem, to share the experience of working through it across different literary and legal texts, and to begin a conversation about poetry and the law that I hope will last beyond reading the dissertation.
Chapter 1
Words of Art: Hamlet

In Shakespeare, English law is the stuff of jokes. At least, that is the impression one gets from Hamlet, Act V, scene 1. Two clowns (that is what they are called in all three of the texts on which we base our editions of Hamlet) begin the scene discussing the legality of Ophelia’s burial:

[5.1] Enter two Clowns [a Gravedigger and a Second Man].

Gravedigger Is she to be buried in Christian burial, when she willfully seeks her own salvation?

2 Man I tell thee she is. Therefore make her grave straight. The crowner hath sat on her and finds it a Christian burial.

Gravedigger How can that be unless she drowned herself in her own defence?

2 Man Why, ‘tis found so.

Gravedigger It must be se offendendo. It cannot be else. For here lies the point: if I drown myself wittingly, it argues an act, and an act hath three branches—it is to act, to do, to perform. Argal, she drown’d herself wittingly.

2. Man Nay, but hear you, Goodman Delver.

Gravedigger Give me leave. Here lies the water-good. Here stands the man-good. If the man go to this water and drown himself, it is, willy-nilly, he goes. Mark you that. But if the water come to him and drown him, he drowns not himself. Argal, he that is not guilty of his own death shortens not his own life.

2 Man But is it law?

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Gravedigger  Ay, marry is’t.  Crowner’s ‘quest law.

2 Man  Will you ha’ the truth on’t? If this had not been a gentlewoman she should have been buried out of Christian burial.

Gravedigger Why, there thou sayst, and the more pity that great folk should have countenance in this world to drown or hang themselves more than their even-Christen. Come, my spade. There is no ancient gentlemen but gardeners, ditchers and grave-makers. They hold up Adam’s profession. (5.1.1-31)

The Gravedigger’s homemade metaphysics of an act apes the structure of mens rea or “malice prepense” worked out in Hales v. Petit, a 1562 case included in Edmund Plowden’s Commentaries (1571). The case concerned the fate of some land in the hands of Sir James Hale, a Protestant judge who committed suicide during the reign of the Catholic Mary I. As a suicide or felo de se, his lands fell to the crown, which then leased them to the Petit of the case; Hales’ widow sued unsuccessfully to recover the land. As part of their argument for the intentional character of Hales’ suicide, and its bearing on the reversion of the land to the crown, Petit’s lawyers argued that “the Act consists of three Parts”: the imagination, the resolution, and the perfection.68 Part of an almost

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68 Edmund Plowden, The commentaries, or reports of Edmund Plowden, Of the Middle-Temple, Esq; An Apprentice of the Common Law, containing divers cases upon matters of law, argued and adjudged in the several Reigns of King Edward VI. Queen Mary, King and Queen Philip and Mary, and Queen Elizabeth. Originally written in French, And now faithfully translated into English, and considerably improved by many marginal Notes and References to all the Books of the Common Law, both ancient and modern. To which are added, the Quæries of Mr. Plowden, Now first rendered into English at large, with References, and many useful Observations. In two parts. With two new tables, more compleat than any yet published, the one, of the names of the cases, the other of the principal matters ([London], MDCCLXI. [1761]), Eighteenth Century Collections
incomprehensibly intricate argument about the relation between intention, the time of
death, and the consequent fate of property, the scheme has been reduced in Hamlet to a
tautological drone. An ingenious legal fiction – a story told to bridge the gap between the
law’s procedures and the stubborn particulars of a case – is made into a different kind of
fiction, a parody.

This is the most direct allusion to an English law case in Shakespeare. It can’t be
surprising, then, that the scene is important to scholars interested in the relation between
law and literature in Shakespeare and in Renaissance culture. What they have done with
the allusion tells us much about the larger critical endeavor. The most ambitious recent
reading of it I know is by Luke Wilson, who argues that the retrospective articulation of
malice prepense in Hales v. Petit provides the structure for the repeated after-the-fact
meditations of Hamlet in his soliloquies, and that the temporally weird and constructed
nature of intention in both the case and the play anticipate various poststructural theories
of agentless agency.69 Wilson’s philosophically sophisticated account is an outstanding

instance of a more general impulse in criticism, one that makes a strong case for reading literature “fully as legal matter,” to borrow a phrase from Bradin Cormack.\footnote{Bradin Cormack, \textit{A Power to Do Justice} (Chicago: University of Chicago Press, 2007), 23.}

I admire the searching virtuosity of Wilson’s reading; but I want to pause and consider what it sacrifices to achieve its remarkable legal-literary synthesis. The most important loss might be a sharp distinction between law and literature: though he warns of the chiasmus-like arguments typical of law and literature studies,\footnote{See Wilson, \textit{Theaters of Intention}, 3-4; see also Bradin Cormack, “Practicing Law and Literature in Early Modern Studies,” \textit{Modern Philology} 101.1 (August 2003): 79-91, esp. 80.} Wilson’s own view of the two discourses entertains a deep isomorphism. This is a product, I think, of the seriousness with which Wilson and other scholars take this kind of allusion. As a result of that seriousness, the parodic elements of the Gravedigger scene tend to be played down in order to enable a philosophical conversation between poetry and the law on equal terms. This is at least in part a reaction to the more traditional habit of treating the Gravedigger’s words as funny nonsense, about which more later. The choice seems to be between hearing the moment as a harmless gaff, or to take it seriously as legal thought according to the law’s standards. Either literature has nothing to say to the law, or, if it is to be heard, it must speak with the law’s peculiar seriousness.

And there are other strong reasons to want literature to engage fully with the law. The law is powerful in many senses. It has a kind of impact on lived experience, and a grip on popular culture, that make literature and criticism feel peripheral, frivolous, and ineffective. The present habits of “law and literature” in Renaissance studies – reading
literature as a tool of practical legal reform;\textsuperscript{72} as an archaeology of suppressed legal experience;\textsuperscript{73} as the product of a deep isomorphism of legal and rhetorical structures\textsuperscript{74} – constitute a natural effort to break the law’s cultural monopoly. There is a kind of exhilaration in the utility and political energy of these readings – but there is some sadness, too, in the implicit acknowledgment that the law exerts, as if by its very nature, a greater charisma and authority than literature.

My instinct is different: I am interested in the law as a discourse that clarifies the nature of poetry. My approach, then, will have less in common with the philosophy of law – though I hope it might speak to that, too – than with the philosophy of literature and of art. The question I want to keep before us is: in its encounters with the law, what is revealed about poetry? Any answer to this question will have to take account of the

\textsuperscript{72} A recent example of this impulse is Kenji Yoshino, \textit{A Thousand Times More Fair: What Shakespeare’s Plays Teach Us About Justice}, (New York: Ecco, 2011), in which selected plays of Shakespeare are brought to bear directly on contemporary legal and political controversies.

\textsuperscript{73} A strong case for this position is made in Subha Mukherji, \textit{Law and Representation in Early Modern Drama}, (Cambridge: Cambridge University Press, 2006): “While not claiming that literature necessarily gives a more profoundly truthful account than form court records, this book does show that drama gives a more well-rounded view that cannot be ignored” (14).

\textsuperscript{74} This is perhaps the approach that has the longest critical lineage, which includes classic and new studies such as Joel Altman, \textit{The Tudor Play of Mind} (Berkeley: University of California Press, 1978); Wesley Trimpi, \textit{Muses of One Mind: The Literary Analysis of Experience and its Continuity}, (Princeton: Princeton University Press, 1983); Kathy Eden, \textit{Poetic and Legal Fiction in the Rhetorical Tradition} (Princeton: Princeton University Press, 1986); and Lorna Hutson, \textit{The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama} (Oxford: Oxford University Press, 2007).
fault lines, the blind spots, the messy details that frustrate even the most sophisticated attempts to fold poetry and the law into a grander synthesis.

My own effort to answer this question will be to test it through the category of fiction. As I suggested earlier, fiction is present in the Gravedigger scene in several senses: in its allusion to an expedient courtroom model of intention; in the reduction of that to a joke; in the Gravedigger and his assistant’s sense that the law might lie when the powerful need it to. The sense of fiction in the air is no coincidence: the common law of Shakespeare’s England was unusually dependent on fictional techniques. It was in the business of creating what we have, at least since the eighteenth century, been in the habit of calling “legal fictions”:\footnote{The OED records the use of “fiction” in a legal context as early as 1590. But fiction in a specifically legal sense seems to have gathered much of its modern meaning in the late eighteenth and early nineteenth century. See “fiction, n.,” \textit{OED Online}, \url{<http://dictionary.oed.com>} (accessed 2 November 2011).} “a proposition about the substance or procedure of the legal system, purporting to be a principle or rule material to the determination of cases, which rests in whole or in part on factual premises known to be inaccurate at the time of the fiction’s invocation.”\footnote{Eblen Moglen, “Legal Fictions and Common Law Legal Theory Some Historical Reflections.” \textit{Columbia Law School}. \url{<http://emoglen.law.columbia.edu/publications/fict.html>} (accessed 2 November 2011).} Legal fictions tend to distort the facts of a case in order to render them more easily comprehended by the law’s forms: a crime might be deliberately said to
have taken place somewhere else in order for it to be tried under a different jurisdiction; a complaint might be described falsely in the language of battery so that it could be heard in courts reserved for trespasses of a certain level of seriousness; a nonhuman entity such as the state might be thought of as a person, and a person as the incorporation of a state. Arguing for “the centrality of fictions to the most important theoretical issues in the study of the common law,” Eben Moglen has gone so far as to call the common law system “a legal culture in which the facts are variable and the law is not.”77 The common law’s systemic procedural reliance on legal fictions points to its deeper reliance on a peculiar fiction of origin. In his classic study of “the common law mind,” J.G.A. Pocock notes that the assertion of the immemorial character of the common law – its reach beyond and before any record, and therefore its claim to timeless applicability and immunity to historical critique - had by the beginning of James I’s reign “ceased to be a convenient fiction and was heatedly asserted a literal historical truth.”78

Thinking more broadly, we might say fictions are stories or models made by humans that operate at some distance from experience. Where one draws the line between fiction and truth, fantasy and history, convenience and necessity – this problem will come back again and again in the chapter, and the ones that follow. Critics have studied fiction as a bridge between poetry and law, the key to an archaeology of both discourse’s development from rhetoric.79 But if fiction helps us to understand the long shared

77 Id.
79 See generally Eden, Poetic and Legal Fiction.
cultural history of law and literature, it also exposes the gaps between them, differences that get to the heart of what makes each so distinctive, their peculiar natures. Poetic and legal fictions operate at different intensities relative to the world: they ask different things from our belief; they have different attitudes to their own artifice; they have distinct aesthetic, ethical, and logical stakes. When played against each other, they prove mutually illuminating. They suggest that the law often needs to blur the line between fiction and reality in order to wield its characteristic power in the world. And at some moments, the law uses violence to turn its fictions into facts. Poetry is of a different, perhaps an opposite nature: Wallace Stevens called it “a violence from within that protects us from a violence without. It is the imagination pressing back against the pressure of reality.”\textsuperscript{80} In Renaissance literary criticism, fiction was invoked to emphasize that poetry is verisimilar, not true – that is, its stories have the quality of the possibly true, or the axiomatically true, or the universally true, but they are not factually true.\textsuperscript{81} Fiction, derived from the Latin \textit{fingere}, also serves as a reminder of poetry as \textit{poesis}, something made, shaped, emplotted. This concept of fiction implies a respect for both the interrelatedness and the difference between the imagination and reality.

In the English Renaissance, I argue, poets critiqued legal fictions both to expose the abuse of fiction in the law, and to assert the validity of poetry’s different fictional energies. Renaissance poets discovered, holding up the mirror to the law, the scope of


\textsuperscript{81} I make this generalization based on the wide canvas of the use of the term “fiction” in Bernard Weinberg, \textit{A History of Literary Criticism in the Italian Renaissance} (Chicago: University of Chicago Press, 1961).
their own fictions: the limits of their force in the world, as well as their capacity for imaginative resistance to the claims of power. This is a discovery important not just to the English Renaissance: in the America and of *Citizens United v. Federal Election Commission* \(^{82}\) and of *Burwell v. Hobby Lobby Stores, Inc.* \(^{83}\), the nature of fiction and its role in the law and in imaginative art are questions of continuing, urgent relevance.

In this chapter on *Hamlet*, my attention will be to the language by which legal and poetic fictions are constructed, weighing legal “terms of art” against the linguistic unruliness of poetry, considering the characteristic modalities of legal and poetic fiction, and finally examining the place of parody in legal and poetic language. Though it will not always operate in the foreground, I want to keep in mind the crucial problem that fiction in its most general sense presents in *Hamlet*. The line between reality and imagination, the nature of madness, the capacity of art to inspire action – these are at the heart of the play, and they concern the nature of fiction in the world. One great fear of the play is that fiction can distort reality, or displace it: thus Hamlet wonders that “But in a fiction, in a dream of passion” (2.2.487), an actor can be moved to tears, or “[t]hat for a fantasy and trick of fame” (4.4.60) soldiers might die over a plot of land too small to bury them, while the Prince of Denmark cannot bring himself to avenge regicide. My attention in this chapter will be primarily to the complicated relationships between poetic and legal fictions; but lurking behind this is the greater problem of fiction’s ambiguous moral and metaphysical status that haunts the play like the ghost of King Hamlet.

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\(^{82}\) 558 U.S. 10 (2010).

\(^{83}\) 134 S. Ct. 2751 (2014).
Let’s return to the graveyard scene in *Hamlet*. I’ve claimed that critics of law and literature, in their interest that literature answer the law on the law’s terms, cannot take a joke. Let’s take the joke at face value – let’s see what happens when we attend to the obvious distortion to which Shakespeare subjects the legal material as it bounces between the two “clowns.” A few questions will guide us through the chapter. Why does the scene start almost immediately with an obscure Latin phrase, one that doesn’t appear, for that matter, in Plowden’s text? What are we to make of the Gravedigger’s straight-faced, tautological certitude? Why is the law being discussed by “clowns?” And why is this most direct of Shakespearean allusions to English law an obvious parody? Answering these questions will help us to sharpen our vision of where poetry and the law’s fictions meet, and where they part.

1

One of the first things that strikes the eye or ear in *Hamlet* V.1 is the Latin phrase the Gravedigger uses to describe Ophelia’s death: *se offendendo*. Or at least, that is what the “goodman delver” says in the First Folio; the phrase and the whole text of the scene, as I shall have some reason to discuss, are wildly uncertain. What to make of this?

Let’s start with the Latin phrase, which tends to be adopted by current editions of the play. Editors think *se offendendo* is a funny mistake. The edition I use notes:

Q2’s ‘so offended’ could mean ‘It must indeed be that kind of offence’ (with the Gravedigger picking up *so* from the Second Man’s previous line). Most editors prefer F’s reading, taking it as the Gravedigger’s error for *se defendendo*, Latin for ‘in self-defense’. The Q2 compositor might have had difficulty with the Latin here, as at 12[The end of the
note refers to the Gravedigger’s “Argal”: in Q1, it is its correct Latin form, *ergo*; in Q2, “or all.”].

According to the editorial consensus, the Gravedigger is the cause of some laughs at his expense. He tries to discuss the legal ruling on Ophelia’s death using the law’s technical language, but ends up saying the opposite of what he wants: self-offense instead of self-defense. This assumes that the Gravedigger doesn’t have the competence to get the terms straight, and that he is in some sense defending the ruling on Ophelia’s death, or at least assenting to its necessity. But this makes little sense in the context. It is evident from the lines immediately following that the Gravedigger has no illusions about Ophelia’s death or the justness of the ruling: “For here lies the point: If I drown myself wittingly, it argues an act, and an act hath three branches – it is to act, to do, to perform. Argal, she drowned herself wittingly” (5.1.10-14). Alluding to *Hales v. Petit*’s model of malice aforethought, the Gravedigger argues Ophelia’s deliberate suicide; indeed, even the tautological reduction of *Hales v. Petit*’s language (from imagination, resolution and perfection to “to act, to do, to perform”) repeats with hammering insistence the obvious fact of the offense. And a few lines later, after the Gravedigger has sketched a ridiculous scenario for excusing the drowning, his friend agrees with him:

*2 Man* But is this law?

*Gravedigger* Ay, marry is’t. Crowner’s quest law.

*2 Man* Will you ha’ the truth on’t? If this had not been a gentlewoman she should have been buried out o’Christian burial.

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Gravedigger Why, there thou sayst, and the more pity that great folk should have countenance in this world to drown or hang themselves more than their even-Christen.

(5.1.21-29)
The Gravedigger’s criticisms lead his friend to realize the political nature of the ruling: when the reality of the situation dawns on the friend, one can hear the thrill and complicity of his discovery (“Will you ha’ the truth on’t?”) and the Gravedigger’s confirmation (“Why, there thou sayst”). There is every reason to believe the Gravedigger knows what he’s saying when he utters *se offendendo* – other interpretations rely on presuppositions about class and intelligence in Shakespeare, not on the lines themselves.

Which brings us back to the curious phrase itself, why the Gravedigger uses it, and what we might hear in it. Editors are probably right when they infer that the excusing category for Ophelia’s suicide would be self-defense, a drowning *se defendendo*. How such a drowning would be plausible is entirely up to our imagination. The Gravedigger upends the probable legal ruling by reversing the categories, slipping *se offendendo* in for *se defendendo*. Besides asserting a different version of Ophelia’s death, the Gravedigger, through the unexpected shock of our hearing *se offendendo* instead of *se defendendo*, makes us think about the power these categories have over the way the verdict is shaped, the way the story of Ophelia’s death gets told by the law.

*Se offendendo* operates here as what lawyers have, from the Renaissance to the present, called a “term” or “word of art” in the law. A term of art is a phrase that has a highly technical meaning under the law: it contains, in its gnomic brevity, entire doctrines of legal thought on some knotty problems. The “art” in question is that of technical mastery, the artifice of legal machinery being brought to bear on problems in the world.
And that artifice points to tensions at the heart of English law in the Renaissance:
between art and nature, fiction and truth, learned and ordinary language.

To start with the language first: *se offendendo* is, as most of Shakespeare’s
audience then and now would recognize, Latin. Rather strange Latin at that: it’s hard to
find an example of what looks to be an ablative gerund form of the verb *offendere* outside
of *Hamlet.*\(^\text{85}\) And this makes it all the more brilliant a parody of the common law’s words
of art, and of the languages in which those words were developed. Experts in the field
talk of the “three languages” of the law in the English Renaissance: Latin, French, and
English.\(^\text{86}\) English, at least since the late fourteenth century, seems to have been the
language of oral debates in the courts. But English was curiously peripheral to English
law: Latin and French were its main sources of expression, the means by which it shaped
its technique and authority.

\(^{85}\) Indeed, a search of Early English Books Online suggests that the phrase has been
repeated only twice since its appearance in Hamlet, both times by dramatic texts: R.A.,
Gent, *The valiant VWelshman, or The true chronicle history of the life and valiant deedes
of Caradoc the Great, King of Cambria, now called Wales As it hath beene sundry times
acted by the Prince of Wales his servuants* (London: 1615), *Early English Books Online*,
<http://eebo.chadwyck.com/>, (accessed 8 November 2011); Thomas Dogget, *The
country-wake a comedy, as it is acted at the New Theatre in Little Lincoln's-Inn-Fields by
His Majesty's servuants* (London: 1696), *Early English Books Online*,

\(^{86}\) My analysis of English law’s three languages depends on JH Baker, “The Three
Law* (London: Rio Grande, 2000); Bradin Cormack, *A Power to Do Justice*, 182-199; and
Peter Goodrich, “Literacy and the Languages of the Early Common Law,” *Journal of
Latin, J.H. Baker explains, “was from the outset the language of record of the common-law courts.”\textsuperscript{87} The plea rolls of the law courts – the written records by which actions and suits were filed – were set down in Latin. The courts took these written records quite seriously. Baker explains: “The very characteristic of Latin which made it unsuitable for oral use – the precision of its grammar – made it ideal for exact statement. By our standards it made it too ideal, because human slips unrelated to the merits of the case might be fatal.”\textsuperscript{88} That is to say, courts read the plea rolls absolutely literally: any mistake, however outrageous, was taken at face value, and litigants sometimes won or lost life and property because of grammatical slips.

The courts of law were not considering real facts, which they could not know, but allegations of fact as formulated in the Latin of the plea rolls. What was not in the Latin was not in issue and was irrelevant. What \textit{was} in the Latin was to be taken as fact, for the purpose of the case, unless it was both denied by the other party and found untrue by a jury. Hence the importance of correct Latin. If two people were indicted for felonious abduction, and the count said \textit{cepit et abduxit} (in the singular), both had to be discharged because the court could not know which of the two defendants was being accused of the offence. But, far more important than this, stereotyped formulae could prevent questions of law from arising at all. If all direct personal injuries were expressed as being done with sword and staves, so that the plaintiff’s life was despaired of – and that was the invariable form in the count for assault and battery – there could be no development of the concept

\textsuperscript{87} Baker, “Three Languages,” 229.

\textsuperscript{88} \textit{Id.}, 232.
of battery, or even of negligence, unless the facts cold be brought out in pleading, and that was only sparingly permitted. The interpretations of the plea rolls were exercises in extreme philological punctiliousness. Linguistic quibbling took precedence over the actual disputes the documents were supposed to articulate so precisely. Legal pleading detached itself from the facts of the matter and became a cruel language game; but that game then became asserted as law and fact, supplanting whatever reality existed before the plea rolls were drawn up. A construct of a learned language, a kind of fiction, took priority over lived experience.

Even more curious is the fact that this philological severity coexisted with weird distortions of language to serve the law – indeed, it went hand in hand with the creation of a language that was entirely the law’s own. Peter Goodrich explains that in the course of developing their words of art, lawyers often departed from the example of good Latin to forge their own shortcuts and neologisms.

Law Latin, while it certainly adopted the unitary characteristics of the general Latinate culture and equally made use of the mystical symbolics of writing and the clerical culture of the book, developed certain idiosyncracies and usages of its own. *Indebitus assumpsit* (being indebted he undertook), for example, would in classical Latin mean that he was *not* in debt, the prefix *in* meaning *not*. Other usages were coined from Latin; *fieri facias* (cause to be made), *habeas corpus* (have the body), *mandamus* (we command), *subpoena* (under a penalty) being early and legally obvious examples. However, the development of a Latin that was specialist even to the general Latin culture served only to re-emphasize the restricted guild character of

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89 *Id.* 234-235.
early legal writing. [Edward] Coke in *James Osborne’s Case* referred to “words significant, and known to the sages of the law, but not allowed by grammarians”. Coke’s ‘false and incongruous Latin’ was explained by [William] Blackstone as being in reality “a mere technical language, calculated [nonetheless] for eternal duration, and easy to be apprehended both in present and future times; and on those accounts best suited to preserve those memorials which are intended for perpetual rules of action”.90

Something of a paradox emerges: the law was obsessed with linguistic accuracy, even as it flouted linguistic norms in order to forge its own hermetic vocabulary. This is clearest in the development of “Law French.” The language has a mysterious history. According to J.H. Baker, the first evidence of the use of French — not Norman French, which many legal historians had assumed as part of a false belief in a strong tie between the development of Law French and the Norman conquest, but rather “a hybrid dialect with strong Picard and Angevin influences”91 — in oral pleading and debate dates from the mid thirteenth century.92 Its use in oral arguments began at least to die away after 1362, when a statute was passed (in French, naturally) abolishing oral proceedings in French because of its unfamiliarity to the public, and ordering all pleading and argument to be done in English and written records to be drawn up in Latin.93 Some formal pleading continued in French, but the real future of Law French was in its use for legal training and the writing of law reports: the moots of the Inns of Court and the “year books,”

92 *Id.*, 235.
93 *Id.*, 242.
published digests of important law cases, continued in Law French into the eighteenth century.\textsuperscript{94}

Increasingly, Law French was divorced from any kind of spoken French: it became a written technical language. Baker observes “to a Frenchman, coming to London from Normandy in 1592, our lawyers’ dialect was wholly foreign.”\textsuperscript{95} The major jurists of the period were not embarrassed by any of this; they were rather proud, it seems, of the exact fit between Law French and English legal traditions. Edward Coke, in the preface to the third part of his \textit{Institutes}, explains unapologetically that Law French’s purpose was to maintain control over the distribution of legal expertise: “It was not thought fit nor convenient, to publish either those, or any of the Statutes enacted in those dayes in the vulgar tongue, lest the unlearned by bare reading without right understanding might sucke out errors, and trusting to their owne conceit might endamage themselves, and sometimes fall into destruction.”\textsuperscript{96}

In Sir John Davies’ preface to his \textit{Irish Reports} (1615), Law French received its most lavish defense. For Davies, Law French is the necessary textual embodiment of the “custom” of English law. As J.G.A. Pocock has demonstrated, that word, custom, is at the very heart of the “common law mind.” It stands for a myth of the common law’s foundations. And that myth is nothing if not contradictory.

\[T]\textit{he concept of custom is ambiguous…We may regard it as that which is in constant adaptation, and to do so will give rise to ideas that}

\textsuperscript{94} Id., 242-245.

\textsuperscript{95} Id., 244.

\textsuperscript{96} Edward Coke, Preface to The Third Part of the \textit{Institutes, The Selected Writings of Sir Edward Coke}, vol 1, ed Steve Sheppard (Indianapolis: The Liberty Fund, 2003), 76.
are unmistakably historical. But it is equally possible to regard it as that which has been retained throughout the centuries and derives its authority from its having survived unchanged all changes of circumstances; and once we begin to think of custom as unchanging, we must remember that it is also immemorial, for if it were known to be the work of some founder it would be written or statute law and not custom at all. The political thought of the age underlined this point heavily.\textsuperscript{97}

In Davies, the common law is somehow customary in both ways: at once the product of an infinite number of minute adaptations through time, and therefore perfectly adjusted to the present; and yet also immemorial, originating and fixed from a point “time out of mind,” before the age of records. Davies claims that the common law is “\textit{Jus non scriptum}: for it cannot be made or created either by Charter, or by Parliament, which are Acts reduced to writing, and are always matter of Record; but being onely matter of fact, and consisting in use and practice, it can be recorded and registered no-where but in the memory of the people.”\textsuperscript{98} At the same time, Davies claims it has been brought to perfection by a process of experiment: “But, as it is said of every art or Science which is brought to perfection, \textit{Per varios usus Artem experientia fecit}; so may it properly be said of our Law, \textit{Per varios usus Legem experientia fecit}, Long experience, and many trials of what was best for the common good, did make the \textit{Common Law}.”\textsuperscript{99}

\textsuperscript{97} Pocock, \textit{Ancient Constitution}, 36.


\textsuperscript{99} \textit{Id}. 
Davies also blends immemoriality and experimental endurance in his praise of Law French. The language was developed, he claims, by William the Conqueror, who after discovering the perfection of English custom, “as that he thought it not fit to make any alteration in the fundamental points or substance thereof; the change that was made was but in formulis Juris.” The substance of the law has remained unchanged; indeed, if anything Davies’ seems intent on arguing that in its hybrid of French, Latin, and English, Law French is the perfect means by which to express the timeless principles of the common law.

Onely our Reports of the Cases, resolutions and judgments in the Law, whereof our books of the Law do consists, have ever until this day been penned & published in that mixt kind of speech which we call the Law French; differing indeed not a little from the French tongue, as it is now refined & spoken in France, as well by reason of the words of Art and Form, called the Terms of the Law, as for that we do still retain many other old words and phrases of speech which were used 400 years since, and are now become obsolete and out of use among them, but are grown by long and continual use so apt, so natural, and so proper for the matter and subject of these Reports, as no other language is significant enough to expresse the fame, but onely this Law French wherein they are written.

And this is the true and onely cause why our Reports and other Books of the Law for the most part are not set forth in English, Latine, or the modern French, for that the proper peculiar phrase of the Common Law cannot be so well exprest, nor any Case in law be so

100 Id.
succinctly, sensibly, and withal so fully reported, as in this speech, which is indeed mixt and compounded of all these 3 languages.\footnote{Id.}

Perhaps the weirdest moment of Davies’ argument is his assertion, \textit{contra} Coke, of the accessibility of Law French: it is “so plain, so significant, and in a Tongue so soon learned by any man,” and its precision and wealth of terms of art are such that the law would only be obscured by translation into English.

There is, throughout Davies, a bewildering dialectic between art and nature. The common law is at once timeless and ratified by its constant survival through the tests of time. Law French is the perfect textual embodiment of \textit{jus non scriptum}. Repeatedly, the artificial forms of legal language get folded into the stability of the timeless. As Bradin Cormack puts it, in Davies legal language “[overpowers] the unwritten even as it attempts to assume the aspect of the unwritten,” as “the customary became the interpretation that the dominant law ascribed to its own power: an institutional form fictively assumed by the imperial and by the statutory.”\footnote{Cormack, \textit{A Power to Do Justice}, 158.}

Cormack’s emphasis on the fictionality of Law French is crucial. It is an inescapably made thing; created by humans as all languages are, but more than that too: a professional language cultivated outside the ordinary language of the community as a sign of bureaucratic competence and power. Its words of art shape experience into certain readymade forms; indeed, they often go beyond mere shaping and deform the facts of a case. Into the fourteenth century a litigant might specify a trespass \textit{vi et armis} (with force and arms) in an obviously fictitious manner in order that the king’s courts would hear the case; if it were heard in the local court, the possible recovery for the litigant was limited.
Even after this was reformed, litigants had to think carefully about whether to file a normal writ of “trespass” or “trespass on the case,” a technical distinction that spawned dubious substantive distinctions after the fact.\textsuperscript{103} As the language perfectly suited to the common law’s immemorial traditions, terms of art stand for a much larger fiction, too. In all of these aspects, we see fiction moving beyond the boundaries we intuitively draw around it: into fact, into substantive law, into a myth of culture.

All this did not go unchallenged. Indeed, the rhetoric surrounding Law French in legal reports such as Coke’s and Davie’s can be explained at least in part by the considerable criticism to which legal language was subjected in the period. Humanists such as Polydore Vergil, Sir Thomas Elyot, and Sir Thomas Smith took English law to task for its linguistic perversities.\textsuperscript{104} To such learned men, the bastardized Latin and French of the plea rolls and the year books were probably something of an embarrassment: inelegant, self-satisfied, provincial. Cormack suggests that these critiques were evidence of “a shared sense that Law French was undesirable because it distanced

\textsuperscript{103} Moglen gives an example of a “fourteenth-century case in which plaintiff wishes to sue in the royal courts for allegedly watered wine purchased (not surprisingly) without a contract under seal, and is forced by the circumstances to plead that the defendant vintner ‘with force and arms against the peace of the King, to wit with swords and bows and arrows,’ put water in the wine.” J.H. Baker, in \textit{An Introduction to English Legal History}, (London: Butterworths, 1979), 56-59, explains how the action of \textit{vi et armis} gave way to writs of trespass and special writs of trespass “on the case.” Baker notes that “[t]he difference of form seems to represent nothing more than an accident of history” (58).

\textsuperscript{104} On Polydore Vergil’s criticism of the language of English law, see Pocock, \textit{Ancient Constitution} 27, 42-43. Cormack discusses Elyot and Sir Thomas Smith’s criticisms of Law French in \textit{A Power to Do Justice}, 194-196.
the law, not from the English vernacular, but from the Latin through which English law could be linked to an authoritative classical past.\textsuperscript{105}

For a criticism of technical language from the perspective of the vernacular, we must turn to the poets. In his Defense of Poesy (ca. 1579), Sir Philip Sidney argues vigorously for a vernacular poetry. Sidney pits poetry against history and philosophy, arguing that poems can trace more perfect patterns of virtue than the former and can trace those patterns more vividly than the latter. Poetry is not bound to the murky facts of history, nor to the dry abstractions of philosophy. Part of its superiority comes also from its linguistic freedom, or maybe more precisely, from its linguistic ordinariness. Poetry has but does not need any particular specialist vocabulary. While Sidney makes this point in his discussion of poetry’s superiority to philosophy, one can hear a larger scorn for the language of technique, of which Law French was one of the period’s most egregious examples.

Nay truly, learned men have learnedly thought that where once reason hath so much overmastered passion as that the mind hath a free desire to do well, the inward light each mind hath in itself is as good as a philosopher’s book, since in nature we know it is well to do well, and what is well and what is evil, although not in the words of art which philosophers bestow upon us; for out of natural conceit the philosophers drew it. But to be moved to do that which we know, or to be moved with desire to know – hoc opus, hic labor est.\textsuperscript{106}

\textsuperscript{105} Cormack, A Power to Do Justice, 194.

Sidney not only drives a wedge between artificial and natural knowledge, he also argues that the great challenge is not so much knowledge of the good as desire to know or to do good. And that, as the quotation of Virgil confirms, is the province of poetry. Law French and custom, in Davies and Coke, point backward, toward the immemorial and a continuity of experience. Poetry, for Sidney, points forward, toward imitation and action, toward new worlds and new language.

The Gravedigger’s *se offendendo* needs to be heard amidst these debates over legal language, and as part of the vexed relationship between poetry and technique. The phrase is not a buffoonish mistake, but rather a brilliant parodic stroke. For one thing, it *sounds* like legal language: it does the same work as the real legal phrase *felo de se* (“felon of himself”) in the *Hales v. Petit* case as reported by Plowden.107 Both suggest a self-inflicted crime: one hardly need be a classicist to hear it. Indeed, part of *se offendendo*’s brilliance is its obscure, probably dubious provenance: it’s hard to find evidence of the phrase in law or anywhere before *Hamlet*. *Se offendendo* sounds like it has the authority of Latinity, but is in fact a piece of artifice, a word of art made by and for the law. In this too the play’s phrase resembles *felo de se*. What sounds like a Latin phrase is in fact a bastardized form. *Felo* is what the OED describes as “Anglo-Latin”: “de se” might pass for Latin, but “felo” is something else, a word the etymology of which is uncertain; it could even derive from a Latin obscenity.108 It is one of those phrases in

107 See, e.g. Plowden, *The Commentaries*, 258: “And for the same Reason he cannot be a *felo de se* until the Death of himself be fully had and consummate.”

108 "felon, adj. and n.1," *OED Online*, <http://oed.com/view/Entry/69119> (accessed 8 November 2011). “The ultimate etymology is uncertain. Of the many conjectures proposed the most probable is that *fellōne-m* is a derivative of Latin *fell-, fel* gall, the
the Latin pleas rolls and in the Law French reports that would have made humanists
wince.

So *felo de se* and *se offendendo* have the same sense, and the same philological
illegitimacy. The only difference between them is that one expresses legal doctrine and
the other does not: if you used the latter in the plea rolls or uttered it at moots in the Inns
of Court, you would be uttering nonsense. But that seems entirely arbitrary – for all the
claims of the natural fit between the law’s words of art and English custom, one phrase
would probably do as well as another. If acted in the theater, those untrained in the law
would probably hear *se offendendo* as a credible bit of ugly legal jargon. Those who

original sense being ‘one who, or something which, is full of bitterness’ (or ‘venom’, the
two notions, as many linguistic facts show, being closely associated in the popular mind).
In support of this view it may be pointed out that the n. has had the senses of ‘an
envenomed sore’ and ‘cholera’ (see felon n.2); moreover, this etymology accounts
perfectly for the strangely divergent senses which the adj. has in the Romance languages:
‘wicked’, ‘angry’, ‘brave’, ‘melancholy, sad’ (Italian *fellone*), ‘intensely painful’. Of the
other suggestions that have been made the most plausible is perhaps that of Prof. R.
Atkinson of Dublin, that *fello* was originally a term of obscene abuse, < Latin *fellāre*
as used in a peculiar sense by Martial and Catullus. Some scholars think that *fello* is
from Old High German *fillo*, an unrecorded derivative of *fillen* to scourge (compare
medieval Latin *fillo* rascal); others have sought to connect it with the obscure second
element in the Old English words *waelf* (< *wael* carnage; occurring only once, as an
epithet of the raven) and *ælfele*, *ealfelo* (usually supposed to be < *eal* all; only twice, as
an epithet of *āttor* poison). The modern Danish *fæl* horrible, disgusting, has also been
compared; the Middle Dutch *fel* is adopted < French. The Celtic words often cited are out
of the question; the Old French word cannot have come from Wales or Ireland, and
Gaulish appears not to have possessed the sound *f*; the Welsh *ff* and the Irish *f* do not
correspond etymologically” (my emphasis).
knew the law would have had a more complex and uncomfortable reaction, I suspect: an easy understanding of what the phrase means, perhaps amusement at its bad form, and, as the allusion to Plowden becomes clear, a sense of discomfort at its irreverent accuracy. It makes one hear the artifice of legal language, and the fiction behind its status as the language of custom.

The joke goes further, I think, and suggests that Shakespeare’s drama has an attitude toward language fundamentally opposed to the law’s. For whether *se offendendo* is part of Shakespeare’s manuscript of *Hamlet*, or whether it belongs on the stage or the page, is an unanswered, probably unanswerable question. It all depends on which source you consult, or which editorial theory you might subscribe to. In the earliest printed version of the play, the so-called First Quarto (1603), the phrase and the speech to which it belongs do not exist. Indeed, in the First Quarto there are no ambiguities about the Gravedigger’s attitude toward the legal ruling:

*Enter Clowne and an other.*

*Clowne* I say no, she ought not to be buried in Chrisan burial.

2. Why sir?

*Clowne* Mary because shee’s drownd.

2. But she did not drowne her selfe.

*Clowne* No, that’s certaine, the water drown’d her.

2. Yea but it was against her will.

*Clowne* No, I deny that, for looke you sir, I stand here, If the water come to me, I drowne not my selfe: But if I go to the water, and am there drown’d,

*Ergo* I am guiltie of my owne death:

Y’are gone, goe y’are gone sir.

2.I but see, she hath Christian burial,

Because she is a great woman.
Clowne Mary more’s the pitty, that great folke
Should haue more authoritie to hang or drowne
Themselves, more than other people:
(Three-Text Hamlet 214 and 216).

In the next printing, the so-called Second Quarto, we get the speech, but with “so offended” rather than *se offendendo*. Only in the version of the play printed in the First Folio edition of Shakespeare’s works (1623) does *se offendendo* appear. Would we have heard *se offendendo* in the Globe, or on another London stage in Shakespeare’s lifetime? Perhaps – it would be a natural to think that Q2’s “so offended” seems better made for the stage, and F’s “*se offendendo*” is more literary, more suited to the page and to the First Folio’s claim to textual seriousness. But many scholars believe that the First Folio *Hamlet* has a closer relation to contemporary performance than the Second Quarto, and that the Second Quarto comes more directly from Shakespeare’s “foul papers,” his manuscript version of the play.109 So perhaps *se offendendo* had a certain flair that worked in the theater. Moving backward in time, we go from the First Folio’s homemade term of art (*se offendendo*) to something like a homophone and synonym in English (so offended) in the Second Quarto to a blank between the lines in the First Quarto. One can hear all sorts of relations and disjunctions between the source texts: interchangeability or incompatibility, a trail fraught with implication, or a dead end.

If anything is truly Shakespearean, it is this indeterminacy. Stephen Orgel argues persuasively that “[o]ne indisputable fact about [Shakespeare’s] plays is that they were written not for publication but for performance: they are, in their inception at least not

books but scripts, designed to be realized on the stage”; and Margreta de Grazia contends that the very idea of a stable, “authentic” Shakespearean text emerged from an Enlightenment editorial and intellectual “apparatus.” For readers trained in the fine points of close reading, the idea that there might not be a single authoritative way to settle a passage in Shakespeare’s plays never stops being disconcerting. But that is the risk and the liberation of texts as radically alive to performance as these.

And perhaps this casualness with which se offendendo drops in and out of Hamlet is the final point of the parody, even more than the witty formulation itself. Nothing could be more different from the law’s textual self-regard. The language of the common law, like the fictions it enshrines, masks itself as myth and history: a language fitted time out of mind to immemorial principles. It claims the authority of the past and of the a priori; artificial and hermetic, it demands absolute textual fidelity. The language of Hamlet points insistently away from the page and into the future, toward new performances and adaptations. No form can fix its essence. Its attitude is irreverent and improvisational: a lot of vocabulary is made up as it goes along. One word might do as well as another. As art, the play seems comfortable not just as something made, but something that can be unmade and remade too. Its fictionality is not restrictive, but rather enabling.

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I have been tracking, through a single allusion in *Hamlet*, an opposition between poetic and legal attitudes toward language, and toward the fictions that language enshrines. A more general skepticism toward the language of technique is diffused through the play. Polonius, that paragon of ministerial idiocy, speaks often in bureaucratic jargon. Keeping tabs on his son Laertes’ behavior, he charges a flunky, Reynaldo, to invent stories about his son’s licentiousness and see if they seem plausible to his schoolmates: “[…]or perchance / ‘I saw him enter such a house of sale,’ / Videlicet a brothel” (2.1.57-59). The legalisms and a faith that fiction is compatible with justice – “By indirections find direction out” (2.1.53) – come easily to Polonius, even when the subject is his son’s morals, or when he is spying on a confrontation between the mad prince and his mother: “Behind the arras I’ll convey myself / To hear the process” (3.3.28-29). He imagines family drama as a legal proceeding. It’s not hard to sympathize with Gertrude’s impatient command that Polonius get to the point: “More matter with less art” (2.1.95). The play’s villain, Claudius, also thinks like a lawyer in moments of crisis. Brooding on his fate after death, he figures divine judgment as a writ: “There is no shuffling, there the action lies / In his true nature” (3.3.61-62). He trusts that his “sovereign process” cannot be ignored by the subdued English, even when he asks them to murder his son-in-law. Later, as his popularity in Denmark deteriorates, he worries of “buzzers” who “[w]ill nothing stick our person to arraign / In ear and ear” (4.5.93-94).

Hamlet’s rather different attitude can be heard in his antipathy to “custom.” He snarls at the notion almost as soon as he begins speaking in the play, and it helps frame his famous assertion of interiority:

‘Seems’, madam – nay it is, I know not ‘seems’.
‘Tis not alone my inky cloak, cold mother,
Nor customary suits of solemn black,
Nor windy suspiration of forced breath,
No, nor the fruitful river in the eye,
Nor the dejected haviour of the visage,
Together with all forms, moods, shapes of grief,
That can denote me truly. These indeed ‘seem’,
For they are actions that a man might play,
But I have that within which passes show,
These but the trappings and the suits of woe.

(1.2.76-86)

And Hamlet continues to snipe at custom through much of the play – in his rueful detachment from drunken revels (“it is a custom / More honoured in the breach than the observance” (1.4.15-16)), in his disgust at his mother’s easy erotic trade between brothers (“damned custom” (3.4.35); “That monster Custom” (3.4.159)). There is a real sense of anarchy in this hatred of custom, not just aristocratic disdain or frustrated expectation.

One hears it confirmed when a messenger describes to Claudius the popular revolt lead by Laertes:

The rabble call him lord
And, as the world were now but to begin,
Antiquity forgot, custom not known,
The ratifiers and props of every word,
They cry, ‘Choose we: Laertes shall be king!’

(4.5.102-106)

And one hears it too in Hamlet’s irreverence for that most infamous custom of English legal thought, the fiction of the king’s two bodies: “The body is with the King, but the King is not with the body. The King is a thing” (4.2.25-26).
The allusion to *Hales v. Petit* and its acidic skepticism towards legal language, then, points toward a complex of problems in *Hamlet* about language and fiction, and their power in the world. The battle of generations in the play in turn opens onto poetry’s struggle come to terms with the problem of “custom,” the fiction that underwrites the law’s words of art, its hermetic authority.

2

“It must be *se offendendo;* it cannot be else.”

The Gravedigger’s pronouncement is markedly decided. Much of that impression comes from the set, square-jawed determination of the modal verbs: *must be; cannot be.* This is the language of certainty, of actuality: it makes a claim about how or what the world *really is.* It can be explained in part by the fact that the Gravedigger is giving a stagy answer to his own rhetorical questions: “Is she to be buried in Christian burial, when she willfully seeks her own salvation?”; “How can that be unless she drowned herself in her own defense?” Surely Ophelia drowned herself willingly, he says. The official account is pure fiction. But even as it reverses the likely legal verdict on Ophelia’s suicide, the Gravedigger’s pronouncement preserves the attitude of legal judgment. It gets to the heart of what Peter Goodrich calls law’s “modality of enunciation,” the way law orients itself and its fictions to the world. This section considers the modality of the law’s fictions against that of poetry’s.

In order to understand the resonances of what I’m going to call the legal modality of the Gravedigger’s statement, one needs to keep in mind an important change to the

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legal culture of Elizabethan and Jacobean England. J.H. Baker describes the change as a “shift of emphasis from doctrine (or common learning) to jurisprudence (or judge-made laws),” a shift registered above all in what Bradin Cormack calls the “rapidly developing textuality” of English legal authority. As Baker and Cormack both note, over the course of the sixteenth century, the form of legal case reporting changed. Traditionally, English law cases were published in the “year books,” collections that emphasized the way cases were argued: the various tactics employed by either side, the rhetorical and procedural skills displayed by the various lawyers. The year books were thus “a guide not to legal precedent, but rather to how a lawyer might best approach a question when pleading the case: the decision, if reported at all, was to that extent irrelevant to the genre.” The year books thus participated in the more general dynamic described by Joel Altman as the “Tudor play of mind,” a concern for the rhetorical detachment, flexibility, and witty poise of in utramque partem disputation. But, just as Altman and Victoria Kahn have noted that in this period rhetorical flexibility gave way to skepticism and a need for method, logic, and certain knowledge in the culture of humanism, so too legal writers felt the increasing attraction of authority. Beginning

115 Id., 253.
with Plowden’s *Commentaries* and culminating in Coke’s *Reports*, law reports began focusing on cases that could provide clear examples of legal precedent and principle. That this occurred simultaneously with the common law’s consolidation over alternative jurisdictions and the centralization of English royal authority is hardly a coincidence. Uttered at the historical center of this shift, the Gravedigger’s verdict takes on an unusual and critical relevance: one can hear in it the hardening of legal forms of thought in the period, the need for law to close the gap between its fictions and reality.

It also captures elements important not only to the English common law, but also to law’s very structure as a discourse. The law is especially invested in making decisions that have force in the world. As John Hollander puts it, law is distinguished from other forms of rhetoric by virtue of its being enforceable.\(^\text{118}\) That enforceability has costs that further separate law from its rhetorical cousins. In order to act effectively in the world, it must suppress other possibilities: competing jurisdictions, values, and interpretations. Robert Cover suggests that legal authority is “jurispathic”:

> Legal interpretation, therefore, can never be “free;” it can never be the function of an understanding of the text or word alone. Nor can it be a simple function of what the interpreter conceives to be merely a reading of the “social text,” a reading of all relevant social data. Legal interpretation must be capable of transforming itself into action; it must be capable of overcoming inhibitions against violence in order to generate its requisite deeds; it must be capable of massing a sufficient degree of violence to deter reprisal and revenge.\(^\text{119}\)


Legal pronouncements differ categorically from other rhetorical acts: they are effects of power rather than eloquence; they command rather than persuade. The kind of interpretive agility cultivated by rhetoric is, if anything, dangerous to legal decisions, which strive to rise above interpretation or hypothesis and achieve the status of truth and fact – by violence as often as by anything else. Hence Cover’s sense of the “jurispathic” function of law: once made it is to be suffered, and it does not brook competing interpretation. Writing of legal decisions and citing Mikhail Bakhtin, Peter Goodrich claims “where discourse performs as authoritative discourse it no longer performs as information, direction, rules, models and so forth but rather strives to determine the very bases of our ideological interrelations with the world, the very basis of our behavior.”

This is part of the problem with the traditional move to join law and literature through rhetoric. Law’s interest in persuasion is limited. It claims an authority that might find rhetoric useful, but ultimately can do without it. Poetry’s claims are also perhaps not circumscribed by rhetoric’s; but be that as it may, enforceability, the promise of state violence behind its decisions, is not what we mean by “poetic authority.” Which is not to say that the power of the law does not have its attractions to poets and to critics. Criticism, not to mention poetry, is saturated with the language of violence (we “deploy” and “interrogate” arguments; the antihero of so many of our studies, and indeed of my own, is “power” itself); and so perhaps it is easy or convenient to forget the very real differences between legal and poetic violence. Cover reminds us:

[Judges] are different from poets, from critics, from artists. It will not do to insist on the violence of strong poetry, and strong poets. Even the violence of weak judges is utterly real – a naïve but immediate reality, in need of no interpretation, no critic to reveal it. Every prisoner displays its mark. Whether or not the violence of judges is justified is not now the point – only that it exists in fact and differs from the violence that exists in literature or in the metaphoric characterizations of literary critics and philosophers.\(^\text{121}\)

It must be the judge’s verdict; it cannot be else.

Poetry, by contrast, is always about what might be, what would be; its difference from the law in this respect is important to Sidney in his *Defense of Poesy*. Students of Sidney’s *Defense* are familiar with the main “competitors” the text sets against poetry: moral philosophy and history. But the law, while less conspicuous, is hardly less important to “show the poet’s nobleness.”\(^\text{122}\) Law serves in some ways as a model for poetry. Kathy Eden has demonstrated how “Sidney…defends both the logical and psychological powers of fiction by comparing them to legal methods and procedures.”\(^\text{123}\) In particular, the *Defense* draws on two different legal-rhetorical strands of Aristotelian thought: the first, stemming from the *Rhetoric* and *Poetics*, establishes a common structure to legal and dramatic proofs; the second, drawing from the *De Anima*, joins law and poetry in their shared rhetorical power to “[feign] images designed to inspire the will to virtuous action.”\(^\text{124}\)

\(^{121}\) Cover, “Violence and the Word,” 1609-1610.


\(^{124}\) *Id.*, 158.
But those affinities have their limits. While Sidney advocates for poetry by drawing from elements of the rhetorical heritage it shares with law, he distinguishes poetry by critiquing law’s unusually rigid mode of decision. “The lawyer,” Sidney writes, “saith what men have determined.” Law lives in the present perfect: stuck with the facts of the case, with how men are. As a result, law can only have a restraining power over moral life: “And for the lawyer, though ius be the daughter of justice, and justice the chief of virtues, yet because he seeketh to make men good rather formidine poenae than virtutis amore, or, to say righter, doth not endeavour to make men good, but that their evil hurt not others, having no care, so he be a good citizen, how bad a man he be.” Amidst the decorous good cheer of his prose, with its classical balance and its Latin tags, Sidney registers the violence that separates law absolutely from literature.

Sidney’s defense, then, makes a distinction within law that clarifies its relationship to poetry. On the one hand, law is a mine of eloquent resources: forms of proof tailored made for drama; rhetorical enargeia capable of moving stones to action. But law is violent and conservative: it hews to established values, to “what men have determined”; it works finally by threat, not by enticement, or explanation, or seduction. This split has historical dimensions relevant to Sidney, who probably wrote his defense only a few years after the publication of Plowden’s Commentaries, which signaled the shift in legal culture I have described: the emphasis on the judicial decision at the expense of more flexible rhetorical modes.

125 Sidney, “Defense,” 8
126 Id., 15.
Sidney’s *Defense* aligns poetry with the rhetorical energies of law; but it registers, perhaps, a protest against the more authoritarian model emerging in this period. The distinction between law’s rhetorical possibilities and its violent difference from poetry is evident in another legal allusion in the *Defense*, this time to an element of legal fiction making:

If then a man can arrive to that child’s age to know that the poet’s persons and doings are but pictures what should be and not stories what have been, they will never give the lie to things not affirmatively but allegorically and figuratively written; and therefore, as in history, looking for truth, they may go away full fraught with falsehood, so in poesy, looking but for fiction, they shall use the narration but as an imaginative ground-plot of a profitable invention. But hereto is replied, that the poets give names to men they write of, which argueth a conceit of an actual truth, and so, not being true, proves a falsehood. And doth the lawyer lie then, when under the names of ‘John of the Stile’ and “John of the Nokes’ he puts his case? But that is easily answered: their naming of men is but to make their picture the more lively and not to build any history. Painting men, they cannot leave men nameless. We see we cannot play at chess but that we must give names to our chessmen, and yet methinks he were a very partial champion of truth that would say we lied for giving a piece of wood the reverend title of a ‘bishop’. The poet nameth Cyrus or Aeneas no other way than to show what men of their fames, fortunes, and estates should do.\(^{127}\)

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\(^{127}\) *Id.*, 34-35.
Sidney is elaborating a central claim of the *Defense*, that poets do not lie because they “never affirmeth”: their stories do not make claims to historical truth. We recognize even as children the particular logical claims of fiction, its way with things “not affirmatively but allegorically or figuratively written.” Here he stages an objection: what of fictional characters with names drawn from life or history? His response is that poetry “paints” persons the way lawyer does “when under the names of ‘John of the Stile’ and ‘John of the Nokes’ he puts his case.” As Bradin Cormack observes, this is an allusion to the practice of “moots” at the Inns of Court, “a formal exercise in legal pleading in which, before the gathered members of an inn, a lawyer considered a problem as given by a set of hypothetical facts that, taken together, issued in some legal question to be put into conceptual order and so resolved.” Poetry is like this exercise, then, in its patently hypothetical nature, its movement from the particular to the abstract, the counterfactual, the axiomatic. The point might be to settle a question, or to determine a point of doctrine; but the method’s open curiosity and release from the pressures of experience seem essential to both the poetry and the legal activity under comparison.

An easy mistake would be to read this passage as a folding of legal and poetic fiction making into each other. But note that it is a *particular* kind of legal fiction making – the naming practiced in the hypotheses of moots at the Inns of Court – that Sidney references here. And think of the next object of comparison: the bishop in chess. The passage emphasizes games and play. There is range of legal fictions that do not fit in this world – in particular, the procedural tricks whereby the facts of a case are twisted to meet

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128 *Id.*, 34.
the demands of procedure, what now tends to fall under the label “legal fiction.” Such fictions differ from the family brought together in the Sidney passage by virtue of their forceful action in the world. They are not hypothetical; they use a lie or a technical slight of hand to affirm something: It must be x; it cannot be else. They do more than “paint” men. Once again, Sidney makes an at least implicit distinction between different aspects of English law – between doctrine, the in utramque partem rhetorical play of training in the Inns of Court, and jurisprudence, the increasingly powerful and authoritarian model of judicial decision making epitomized by Plowden and confirmed by Coke. The characteristic mode of the former – counterfactual suspension, imaginative distance from the world – seems deeply sympathetic to the work of poetry and of fiction, while the mode of the latter – decisive and prescriptive – seems inimical to it.

Sidney argues that fiction needs a certain distance from the world in order to maintain its proper character as fiction. More recent philosophical accounts of fictions confirm this. Gottlob Frege believed that fictions are illogical: neither true nor false. Thomas Pavel puts it somewhat differently: fictions are “existent without existing,” “a sophisticated property” that he observes is:

- equally shared by mathematical entities, unfinanced architectural monuments, spiritual emanations in Gnostic systems, and fictional characters. We do not, however, want to see all nonempirical beings

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130 Gottlob Frege, Posthumous Writings, ed. Hans Hermes, Friedrich Kambartel, and Friedrich Kaulbach, with the assistance of Goffried Gabriel and Walburga Rodding; trans. Peter Long and Roger White, with the assistance of Raymond Hargreaves (Chicago: University of Chicago Press, 1979): “In myth and fiction thoughts occur that are neither true nor false. Logic has nothing to do with these. In logic it holds good that every thought is either true or false, tertium non datur” (198).
granted the same status; the ontology of fiction needs objects that look
closer to those of the everyday universe than to mathematical entities
and yet cannot be literally admitted to the real world, like unrealized
projects and utopias.\textsuperscript{131}

One can hear the same balancing act performed in Sidney’s \textit{Defense}: fictions are at once
very much like reality, while clearly not a part of it. To try to be “literally admitted to the
real world” violates the peculiar logical or illogical character of fictions. One might say
the legal fictions that have force in the world are not \textit{neither} true nor false, but rather \textit{both}
true and false: obviously false in their distortion of the facts as we know it; true in their
capacity to impose that distortion and its corollaries on reality. In another clarifying
moment, Pavel reminds us that “the frontiers of fiction separate it on one side from myth,
on another from actuality.”\textsuperscript{132} The Gravedigger’s pronouncement, the decision it
skewers, and the English common law to which it refers, operate on either side of
fiction’s borders. They draw ideological strength from a myth of immemoriality, and they
use the violence of state force to make their decision effective. It has always been this
way; it must be this way; it cannot be else.

The Gravedigger’s pronouncement, then – it must be \textit{se offendendo}; it cannot be
else – crystallizes an anxiety about the shift of legal thinking in the English Renaissance
from a rhetorical to an authoritarian model. It opens pressing questions about the
modality of law and its fictions, and the contrast between that modality and the one
characteristic of poetry and other fictional discourses. And the line echoes more broadly
through the whole play’s vexed relationship to modality. “O that this too too sallied flesh

\textsuperscript{132} \textit{Id.}, 81.
would melt, / Thaw and resolve itself into a dew, / Or that the Everlasting had not fixed / His canon ‘gainst self-slaughter” (1.2.129-132); “Would I had met my dearest foe in heaven / Or ever I had seen that day, Horatio. / My father, methinks I see my father” (1.2.181-183). Hamlet begins the play appalled at his world and in imaginative flight, conjuring wishes and possibilities. He seems acutely aware of the distance between his imagination and the world he lives in, even as there is a queasy sense that the distance between his imagination and reality might be uncomfortably close (“My father, methinks I see my father”). This dynamic only intensifies as the play continues – Hamlet is repeatedly shocked at how easy volition becomes action for many around him, while haunted by the possibility that his own grip on the boundaries between thought and actuality have decayed. These agonized crosscurrents of doubt are part of what make the play and its prince the complicated, inescapable problems they are.

In counterpoint to this, or as sporadic resolution, Hamlet sometimes shifts to a mood of passive acceptance or obedience. When he is discovered by Horatio and Marcellus after his encounter with the Ghost and his impassioned soliloquy in response to the Ghost’s command “Adieu, remember me,” Hamlet’s first words are “So be it.” The statement is a kind of command: something modally close to a judicial decision. But the command Hamlet issues here – whatever he seems to want to bring into being with the statement, presumably his task to remember the Ghost and to heed its call for revenge – is strangely ineffective. At this, and in such moments as when he wonders at the Player’s capacity to be moved by his fictional role or at the Norwegian army’s foolhardy willingness to die for a dubious cause, Hamlet expresses a desire to become an agent in the world, capable of real and immediate action. But his desire turns out to be less for
agency than for possession, by a devil or by an angel; he wishes to become an engine of justice. Part of Hamlet’s pathos is his longing to be merely instrumental. Heard as a variation of this larger theme, “So be it” sounds like an intimation of the quietism Hamlet articulates to Horatio in a famous passage from Act V: “If it be, ‘tis not to come. If it be not to come, it will be now. If it be not now, yet it will come. The readiness is all, since no man of aught he leaves knows what is’t to leave betimes. Let be” (5.2.198-202). “So be it” modulates to “Let be.”

I have been teasing out threads of an old, knotty question about Hamlet: his inability to act. At least part of his paralysis registers at the level of modality: he is always musing or fuming about what would or should or could be; or he wishes to give himself up to some providential or demonic force: so be it; let be. These are orientations to the world conspicuously at odds with the law’s – or, to borrow Goodrich’s phrase once more, with the law’s modality of enunciation, the kind of authoritative speech parodied by the Gravedigger’s sentence. The law’s decisions become brute facts: it must be so; it cannot be else. Those who think otherwise must contemplate the violence with which the law maintains its version of the truth. Hamlet famously complains of “the law’s delay” (3.1.71), presumably with a glance at his displacement in the succession by Claudius – but considering that he seems doomed to “lose the name of action” (3.1.87), what he lacks is the law’s power to act with immediacy, its ability to collapse or ignore the distinction between fiction and reality that so troubles Hamlet.

Hamlet’s opposite in this respect is Claudius. Plotting to kill Hamlet after the Prince’s return to Denmark, Claudius flames Laertes’ fury at the death of Polonius by asking “Laertes, was your father dear to you? / Or are you like the painting of a sorrow, /
A face without a heart” (4.7.105-107). “Why ask you this?” (4.7.107) is Laertes’ outraged response. Claudius explains:

Not that I think you did not love your father
But that I know love is begun by time
And that I see in passages of proof
Time qualifies the spark and fire of it.
There lives within the very flame of love
A kind of wick or snuff that will abate it,
And nothing is at a like goodness still,
For goodness growing to a pleurisy
Dies in his own too much. That we would do
We should do when we would, for this ‘would’ changes
And hath abatements and delays as many
As there are tongues, are hands, are accidents,
And then this ‘should’ is like a spendthrift’s sigh
That hurts by easing.
(4.7.108-121)

Claudius’ speech is, like Hamlet’s great “to be or not to be” soliloquy, an attack on the destructive power of the “abatements and delays” of thought, the gap between imagination and action. Here, the very modal verbs of the counterfactual or the imagined – would and should – become the agents of frustration. Claudius shifts cunningly across his speech from “would” to “should” (“for this ‘would’ changes / / …and then this ‘should’ is like a spendthrift’s sigh”) – desire turns into a dry question of ethics or obligation (I would do x; should I?), or of prudence (I would do x; but should I do x, then y? z?). Claudius and Hamlet agree on at least one thing: conscience makes cowards.

The modality of legal decision, then, points to the troubled, central problem of modality in Hamlet, the play’s vexed and obsessive attention to the gap between
imagination and reality, desire and action, counterfactual and factual. In a sense, one might say, the Gravedigger’s mock pronouncement points to a way out of the problem. The law, or at least that form of jurisprudence developed in works like Plowden’s *Commentaries*, can substitute its fictions for reality; the distance between the two becomes invisible, for a legal decision asserts its version of things as fact. And this is the way of some characters in the play – Claudius, perhaps Fortinbras. It is precisely what Hamlet desires and can never achieve, except accidentally, haphazardly, disastrously (killing Polonius; accomplishing his revenge practically by chance). On some level, poets too would like their art to have the power of law – Shelley called poets the original legislators, and Sidney spent his life wanting to be of more use to his country, until he got his fatal chance. It is, perhaps, the fate of those who never affirm.

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I have called the conversation between the Gravedigger and his assistant a parody of *Hales v. Petit*, and of certain aspects of legal thought and culture more generally. And, as I’ve suggested at various points in the chapter, it’s a parody that is particularly hard for critics to make sense of. Editors tend to gloss *se offendingo* as a mistake rather than a deliberate choice, even though the latter seems more plausible given the context of the whole conversation, the course it takes and the conclusions it reaches. It strikes me at times that there is a kind of critical embarrassment at such a passage: why does the most obvious allusion to a legal case in Shakespeare have to be such a mess? Why does it have to surface in a seemingly peripheral moment, a comic interlude in the most famous of all tragedies? At the end of the last section, I suggested that the law’s authority has its
attractions for Hamlet, and perhaps for poets. It has attractions for literary critics, too; it’s not hard to imagine why. Law not only has in its very essence powers regularly, perhaps necessary excluded from the arts, but also a far more central place in our cultural imagination. Critics feel pressure to answer this hierarchy of values, and that means making literature fit for the law. The weird mix of pointed criticism, humor, and nonsense in the graveyard scene is hardly congenial to criticism that wants to demonstrate some fundamental collaboration between law and literature. Indeed, I’d argue that the very act of parody in this scene points to some of the asymmetries between the two discourses. As a conclusion to this chapter, I want to consider the implications of a parody of the law, in this scene, in Shakespeare, and in the critical study of law and literature.

First, it might be useful to sharpen my terms. The stylistic and tonal pressure applied to Hales v. Petit in Hamlet V.1 exemplifies a fundamental literary quality, what Gerard Genette calls “transtextuality...defined roughly as ‘all that sets the text in a relationship, whether obvious or concealed, with other texts.’”133 In this respect, legal writing is just as much an object of poetics as literature itself. Now and in the Renaissance, laws, judicial opinions, and legal memos are endlessly referential forms of discourse, quoting other opinions, testimony, dicta, and even poetry. But here a useful distinction can be made. The transtextuality of legal writing is of a type Genette labels metatextual, a form of commentary, “the critical relationship par excellence.”134

134 Id., 4.
Literature, to be sure, exhibits metatextuality, but it also traffics in relationships conspicuously absent from legal writing. Genette groups these relationships under the name of hypertextuality, explaining: “By hypertextuality I mean any relationship uniting a text B (which I shall call the hypertext) to an earlier text A (I shall, of course, call it the hypotext), upon which it is grafted in a manner other than commentary.”\textsuperscript{135} What does this difference amount to; what does it look like in practice? Genette gives some clarifying examples:

\[\ldots\]\textsuperscript{[L]}et us posit the general notion of a text in the second degree…i.e., a text derived from another preexistent text. This derivation can be of a descriptive or intellectual kind, where a metatext (for example, a given page from Aristotle’s Poetics) “speaks” about a second text (\textit{Oedipus Rex}). It may yet be of another kind such as text B not speaking of text A at all but being unable to exist, as such, without A, from which it originates through a process I shall provisionally call \textit{transformation}, and which it consequently evokes more or less perceptibly without necessarily speaking of it or citing it. The \textit{Aeneid} and \textit{Ulysses} are no doubt, to varying degrees and certainly on different grounds, two hypertexts (among others) of the same hypotext: the \textit{Odyssey}, of course. These examples demonstrate that the hypertext is more frequently considered a “properly literary” work than is the metatext.\textsuperscript{136}

Aristotle’s metatextual discussion of \textit{Oedipus Rex} in his \textit{Poetics}, and the transtextual imitation of the \textit{Odyssey} in the \textit{Aeneid} and \textit{Ulysses}, illustrate a divide between commentary and transformation. The first is that commentary tends to be localizable or specifiable: one can usually register where, when, how and why text B

\textsuperscript{135} \textit{Id.}, 5.
\textsuperscript{136} \textit{Id.}
might be commenting on text A. The relationship tends to be discursive and to resolve itself toward judgment: text B might quote text A as a source of authority in a controversy; or it might take issue with A; or it might hold up A as a model, good or bad. Transformation is something more diffused and inexplicit. It might suffuse the structures of a text (B uses the same narrative arcs as A) or it might color its surface (B takes up some aspect of A’s style, its diction or tone or syntactic quirks). The end is less judgment than some sort of intuitive or holistic recognition. Once more, we come back to the fact that poetry does not affirm.

Parody is born from a hypertextual impulse to transformation; as Genette notes, parody’s etymology denotes a kind of singing beside or along (para “along” + ode “chant”), “deforming, therefore, or transposing a melody.” In Genette’s taxonomy, Hamlet V.1 would probably be categorized as an instance of burlesque travesty, something a bit different from parody proper. “[B]urlesque travesty,” Genette explains, “modifies the style without modifying the subject; “parody,” conversely, modifies the subject without altering the style.” Here the subject is maintained, or even amplified: the judges in Hales v. Petit debate the suicide of a judge, and whether his lands should pass to his wife or revert to the crown. The Gravedigger and his assistant speculate about the death of a minister’s daughter and whether she can be buried on church ground, a matter of great political sensitivity (Laertes has become a popular threat to Claudius’ authority in Denmark) and of interest to the relationship between temporal and spiritual power. The political tensions are there in Hales v. Petit – Sir John Hales was a Protestant

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137 *Id.*, 10.
138 *Id.*, 22.
during the reign of the Catholic Queen Mary, and his suicide is recorded in Foxe’s *Acts and Monuments* (1563); moreover, his land belonged ultimately to the Archbishop of Canterbury, so it might be thought of as a kind of temporal encroachment on church land – but they stay under the surface of the case. It is transformed in *Hamlet* into something more noble and more consequential. But the language is deformed, and the speakers are degraded: instead of judges, we have gravediggers. Instead of Plowden’s report and its byzantine, hermetic legal jargon, we have shameless mockery and nonsense. Terms of art get reversed (deliberately, I’ve argued), syllogisms implode into tautology, “argal”s replace ergo, “willy-nilly” creeps into the Gravedigger’s exposition. The routine would probably get laughs from contemporary audiences: those who didn’t get the allusions would still enjoy the absurdity of legal quibbling between two Gravediggers, and lawyers have their own pleasure as they recognize the goofy distortion of a major case. And when the two clowns condemn the unfairness of the law:

*2 Man.* But is it law?

*Gravedigger.* Ay, marry is’t. Crowner’s ‘quest law.

*2 Man* Will you ha’ the truth on’t? If this had not been a gentlewoman she should have been buried out of Christian burial.

*Gravedigger.* Why, there thou sayst[…]

The laughs probably turn to snickers; they might die in the throats of some of the lawyers.

But all this seems obvious – of course the scene is a parody, and of course parody works differently from, say, the polemical turns of a commentary. But some of this obviousness seems to baffle critics. The parodic nature of the scene frustrates any attempt to make serious legal sense out of it; and the frustration is doubled when one considers
the importance of the allusion, its status as the most direct reference to an English law case in Shakespeare. The problem is, I think, at once obvious and rather deep. Law is incapable of performing parody. And when, as I’ve suggested, the object of criticism is to make literature answer the law on the law’s territory, then the discursive differences between law and literature tend to blur.

Parody is one place in which those differences come into sharp focus. In the previous section, I considered law’s peculiarly forceful bearing toward the world: its tendency to frame judgments in a kind of purely factual, epistemic modality; its need to be enforceable, its use of violence to impose its decisions. At that moment of judgment, the law cannot brook laughter. Indeed, as Peter Goodrich points out, those who fail to show the solemnity due to a legal space are held “in contempt of court.”

The sign of success in a scene with clowns is the sign of breakdown in a court.

This anxiety about laughter in the court suggests something about the formal flexibility of Shakespeare’s theater. Though a tragedy by title and design, Hamlet, like all of Shakespeare’s great tragedies, blends a considerable amount of comedy into its more serious material. The beginning of Act V, scene 1 is an outstanding example. But Hamlet is full of comedy, often when it seems least appropriate: from his very first line (“A little more than kin, and less than kind” (1.2.65)), Hamlet makes tactless jokes, a habit that merely intensifies once he assumes his “antic disposition.” The undertow of morbid, irreverent comedy in Hamlet sits oddly with its status as a tragedy, but never really threatens it, either. And in this respect it is entirely typical of Shakespeare’s work, and perhaps also of Renaissance attitudes toward tragic genre generally. Stephen Orgel has

139 Goodrich, Languages of Law, 229.
pointed out that Renaissance notions of generic categories were more generous and open than later definitions: Renaissance theoreticians might criticize a play for disobeying various generic rules, but they do not exclude them from belonging to some taxonomy of tragedy or comedy. For Orgel, Shakespeare is representative of this larger critical attitude: “Shakespeare thought of genres not as sets of rules but as sets of expectations and possibilities. Comedy and tragedy were not forms: they were shared assumptions.” Indeed, Shakespearean tragedy seems to need not just the comic, but also something of the ridiculous: even *Hamlet* and *Lear* would end with jigs. In Shakespeare, high and low forms are always weirdly close.

And not just high and low forms, but also high and low persons. Part of the parodic nature of *Hamlet* V.1, and of the generic mixing so typical of Shakespeare’s tragedies, is the presence of common figures in what should be an aristocratic world. The Gravedigger and his assistant are “clowns” because they are funny, yes; but also, as Margreta de Grazia reminds us, “they are…clowns in the older sense, representing the lowest stratum of society.” No small part of the scene’s comic frisson comes from the scandal of hearing two commoners use, however imperfectly, the language of the law and of high politics. And to hear them, ultimately, replace the “immemoriality” of the common law to which they allude, and of the land-based class system it protects, with an alternatively immemorial myth:

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140 Orgel, “Shakespeare and the Kinds of Drama,” in *The Authentic Shakespeare*, 158.
141 *Id.*, 154.
Gravedigger. There is no ancient gentlemen but gardeners, ditchers and grave-makers. They hold up Adam’s profession. (5.1.30-31)

Here low workers are granted an original relationship to the land, and the aristocratic status that comes with it.

Typical as it is on the Renaissance stage, this genre-bending class instability does not go unnoticed in the play. Hamlet is bemused, and maybe a little disgusted, when he and Horatio arrive on the scene to find the Gravedigger singing in an open grave:

Hamlet. Has this fellow no feeling of his business, that he sings at grave-making?
Horatio. Custom hath made it in him a property of easiness.
Hamlet. Tis e’en so. The hand of little employment hath the daintier sense. (5.1.61-65)

Note the soupcon of lawyerly language Horatio uses to describe the Gravedigger’s tasteless casualness: Custom hath made it in him a property of easiness. There is, latent in Horatio’s language, a sense that the Gravedigger is disturbing as much for performing above his station as for acting like a clown in a consecrated space. De Grazia informs us that, while the grounds might not yet be specifically legal, Horatio and Hamlet, hearing the Gravedigger’s song, have some reason to sense transgression:

The “judicious” in the audience might have noted that Delver’s song has a rather posh provenance. Its three stanzas closely match up with a well-known courtly lyric first printed in 1557 under the title “The aged louer renounceth love” in the anthology Songs and Sonettes, written by the right honourable Lorde Henry Howard late Earle of Surrey, now known as Tottel’s Miscellany.143

143 Id., 135-136.
De Grazia goes on to suggest that even “[t]he asyntactical “O” and “a’s” included in all three texts [Hamlet Q1, Q2, and F]…generally taken as cues for boorish grunting given out during the exertion of digging,” could very well instead be a form of “musical notation,” cuing the sexton to “[pitch] his voice into a high falsetto in imitation of court madrigals.” This is a moment, then, of parody now barely audible to a modern audience: the Gravedigger singing as melancholy courtier, his “o”s and “a”s by turns elegant trills or coarse grunts.

The hint in Horatio’s sentence that the Gravedigger’s transgressions involve legal as well as aristocratic qualities gets picked up a bit later in the scene. After an exchange with the Gravedigger, in which, for once, it is Hamlet whose relatively straightforward speech gets sent up by the Gravedigger’s quick wit, Hamlet exclaims to Horatio

> How absolute the knave is! We must speak by the card or equivocation will undo us. By the Lord, Horatio, this three years I have took note of it, the age is grown so picked that the toe of the peasant comes so near the heel of the courtier he galls his kibe – How long has thou been grave maker? (5.1.129-134)

Equivocation, as the editors of the Arden Hamlet point out, means “quibbling – an element common to both legal arguments and comic dialogue.” The bawdy, tasteless jokes of the Gravedigger remind Hamlet of nothing so much as the rhetorical ingenuity and in utramque partem adaptability of the training associated with the Inns of Court and the legal profession. The legalistic virtuosity of the Gravedigger’s quips, and his shamelessly playful tone with the prince, seem dangerously above his place.

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144 Id., 136.
145 Ann Thompson and Neil Taylor, notes to the Arden Hamlet, 419.
It hardly needs to be said at this point that the class anxieties and generic instabilities go hand in hand:

There may be more to offend Hamlet’s “dantier sense” in the Gravedigger’s generic mixing of what Sidney with like-minded aesthetic sensibility termed “hornpipes and funerals.” As Sidney also knew, generic mongrelization broke down class divisions through its “mingling kings and clowns.”

And yet, in *Hamlet*, parody, generic mixing and class confusion move in both directions. Critics have been increasingly attentive to Hamlet’s conservatism: his aristocratic contempt for revelry; his attachment to the memory of his father, and perhaps the values lost with him; his distaste for clownish improvisation and insolence; his seeming lack of the common touch – though it should be noted that Claudius sweats over “the great love the general gender bear” Hamlet (4.7.19), perhaps from paranoia, but perhaps also for good reason, given the Gravedigger’s stress on the importance of Hamlet’s birth to the nation’s reckoning of time (5.1.139).

To a certain degree, this is a welcome corrective to the idealization of Hamlet as a prototype of the romantic intellectual hero, or Hamlet as a disaffected countercultural. But De Grazia, who gives a powerful antimodernist reading of the play, also draws out elements of the play that suggest Hamlet’s relationship to class is far stranger than a simply conservative reading could comprehend. For an early modern audience, “[Hamlet’s] hyperactivity would have linked him more with the roustabout clown of medieval folk tradition than with the introspective consciousness acclaimed by the

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146 De Grazia, Hamlet *without Hamlet*, 135.
modern period.”¹⁴⁷ That this should come as a shock is odd indeed: with his antics and his prurient, triggerhappy wit, who else does the prince resemble so much as a clown or fool? And not just Hamlet – De Grazia notes that the songs Ophelia sings in her mad scene (4.5.23-40, 58-66) are bawdy street ballads, so clearly indecorous that into the eighteenth century editors felt the need to sanitize her lines.¹⁴⁸ The flower of Denmark’s youth descend into the gutter when they go mad. If one could play a bit with Genette’s terms, Hamlet and Ophelia enact something like a reverse travesty – they treat subjects (revenge, the war between generations, sex and death) comprehended by aristocratic speech, but in the language of the street and of clowns.

_Hamlet_ not only demonstrates Stephen Orgel’s point that Renaissance genres tended to be “inclusive and analytic,” rather than “exclusive and definitive”¹⁴⁹ – the play points toward a capacity for fictional social imagination radically different from the law’s. The play’s comfort with its own fictional status allows it to deform seemingly firm distinctions of class and power, putting the language of the judge and advocate in the mouth of the clown, and that of the fool and the harlot in the those of the well born. It can imagine things being otherwise.

Law does not have this luxury: its decisions resolve into actuality, and its tendency, as Sidney perceived, is toward preservation rather than change. The law relies on fictions, only to disavow them: the English common law is an _a posteriori_ process that managed to mask itself as an _a priori_ principle, a central insight of J.G.A. Pocock’s work

¹⁴⁷ _Id._, 9.
¹⁴⁸ _Id._, 115-116.
on immemoriality and Bradin Cormack’s study of jurisdiction. Were law to allow itself the social detachment and transposition of parody, it would lose its capacity for enforceability, that primary seriousness and power in the world that distinguish it from other forms of rhetoric; and it would expose an arbitrariness in the social order of which it is the pillar.

The deformation of social representation in *Hamlet* moves in the opposite direction: the *a priori* comes to seem precariously contingent, *a posteriori*. The process is important to Jacques Ranciere’s recent account of the politics of aesthetics. Ranciere writes that

[A]esthetics can be understood in a Kantian sense – re-examined perhaps by Foucault – as the system of *a priori* forms determining what presents itself to sense experience. It is a delimitation of spaces and times, of the visible and the invisible, of speech and noise, that simultaneously determines the place and the stakes of politics as a form of experience…It is on the basis of this primary aesthetics that it is possible to raise the question of ‘aesthetic practices’ as I understand them, that is forms of visibility that disclose artistic practices, the

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150 Pocock’s classic *The Ancient Consitution and the Feudal Law* describes how the common law mind’s myth of immemoriality was threatened in the seventeenth century by scholarship that suggested the common law’s language of land tenure was imported after the Norman conquest: the *a priori* foundation of the law turns out to be historical, foreign, and *a posteriori*. Cormack, in *A Power to Do Justice*, writes that “[j]urisdiction…can be construed as the sign under which literary and legal aesthetics are legible in a non-Kantian sense as the system of *posterior* forms “determining what presents itself to experience” (5).
places they occupy, what they ‘do’ or ‘make’ from the standpoint of what is common to the community.\textsuperscript{151}

Aesthetics and politics are both distributions of the sensible, and a change of one makes possible a change in the other. When art makes available forms of sensation and speaking normally denied to some community, it takes political power out of the hands of what Ranciere calls the “police” and redistributes it to the disenfranchised community.\textsuperscript{152}


\textsuperscript{152} See Gabriel Rockhill’s note on “Distribution of the Sensible (\textit{Le Partage du sensible})” in the appendix to his translation of Ranciere’s \textit{The Politics of Aesthetics}:

> “Occasionally translated as the ‘partition of the sensible’, \textit{le partage du sensible} refers to the implicit law governing the sensible order that parcels out places and forms of participation in a common world by first establishing the modes of perception within which these are inscribed. The distribution of the sensible thus produces a system of self-evident facts of perception based on the set horizons and modalities of what is visible and audible as well as what can be said, thought, made, or done. Strictly speaking, ‘distribution’ therefore refers both to forms of inclusion and to forms of exclusion. The ‘sensible’, of course, does not refer to what shows good sense of judgement but to what is \textit{aestheton} or capable of being apprehended by the senses.

In the realm of \textit{aesthetics}, Ranciere has analysed three different \textit{partages du sensible}: the \textbf{ethical regime of images}, the \textbf{representative regime of art}, and the \textbf{aesthetic regime of art}. In the political domain, he has studied the relationship between the \textbf{police}, a totalizing account of the population, and \textbf{politics}, the disturbance of the \textbf{police} distribution of the sensible by the \textbf{subjectivation} of those who have no part in it” (85; emphasis original to the text).

A few things are worth noting here. The first is that I’m not sure Ranciere would agree with my recruiting his aesthetics for such an anarchic reading of \textit{Hamlet}: according to Ranciere’s scheme of art history, the play belongs strictly to the so-called “representative regime of art,” with its Aristotelian forms and hierarchies. My suspicion,
Hamlet’s confusions of class, its anarchic redistribution of the language of expertise and of power, capture some of what Ranciere sees as the political potential of art. The play, through a parodic scrambling of speech, pries open the forms of language and experience the law codifies – the *a priori* comes to seem *a posteriori*, myths and facts turn to fictions.

There is a sense in which Hamlet craves the law: he wants his original place in the succession restored; he wants justice for his murdered father. But there is also a revulsion to law in Hamlet and in his play. De Grazia reminds us that by putting on his “antic disposition,” Hamlet removes himself from legal responsibility; Coke in his

though, is that these separate “regimes” of art are heuristic rather than definitive: they might dominate different periods, but they are not without exceptions.

The second is that Bradin Cormack cites part of the same passage of Ranciere’s Politics of Aesthetics (*A Power to Do Justice* 4-5; Ranciere, *Politics of Aesthetics*, 13). But Cormack takes issues with Ranciere’s distinction between the political energies of art and the law, which Ranciere identifies with “police” authority (*A Power to Do Justice*, 5). Cormack’s argument is that law and literature reveal similarly contingent, historical, *a posteriori* forms, and therefore contain a mirroring potential for apprehension and change. Cormack concludes his study with the notion that literature offers a “radical jurisprudence…that looks within the law for what the law does not see” (329). My reading of Hamlet’s prying open the fictionality of legal language and thought resembles closely Cormack’s work on jurisdiction. But I want in this essay to leave open the possibility that poetry’s power, even in the realm of politics, is not confined to operating “within the law.” Through encounters with the law, I suggest, poetry apprehends more fully the ontological and epistemological possibilities proper to itself and impossible under the law.
Institutes wrote “he that is *non compos mentis*…cannot commit High Treason.”\(^{153}\) Part of Hamlet’s problem with the law is practical, then: he needs to bypass it to accomplish his revenge. Or so he believes; in fact, it is only after he disavows his insanity (5.2.204-221) that Hamlet avenges his father’s death. But I think there is indeed revulsion to the law in the character and in the play, and it runs deeper than the imperatives of revenge. Hamlet is acutely aware of the boundaries between fiction and reality, and of the fragility of those boundaries. He cannot bring himself, like the player, like Fortinbras’ army, to forget those boundaries, to let fiction move him to act in the world. But this is precisely what the law requires from its subjects: that its convenient fictions have the power of custom, of myth, of truth itself. Hamlet’s detachment gives him little power; indeed, it renders him unsuitable even for the action he seems desperately to want to perform. This is poetry’s predicament, too: it does not affirm. But that weakness is also its power. It may not make anything happen, as the law does; but it does return us to our imagination, where laws and poems both are born. And poetry can help us understand better the place of imagination in the world – how it might be used and abused in the interests of power; how it might help us resist, escape, or think outside the law; how it might be diminished when law and poetry are mistaken for each other.

Chapter 2
Suspicion: The 1590 Faerie Queene

Suffisante pour notre bien est cette vie illusoire que donnent...notre soupçon, notre jalousie.
- Proust, Le Temps Retrouvé

As often as not, Faerie Land is a crime scene. Most of the “Legends” recounted in the books of Edmund Spenser’s The Faerie Queene center around responses to some infraction: of a state’s integrity (as in Books I and V) or of a code of social values (as in Books II and VI). Half of the six complete books of the poem begin in the wake of an apparent injustice - to Amavia and Ruddymane in Book II, to the anonymous Squires of Books V and VI - and they are propelled by an urgent momentum to comprehend and to redress wrongs. This crime-solving imperative is a prime mover of the Spenserian perpetuum mobile, the first launch in a pinball game of digressions, dilations, and erring that make up much of the poem’s extended plots.

Indeed, crime occupies not just the dynamic heart of The Faerie Queene, but also the structural center of the poem as it has been left to us. It is easy to forget that a suspected crime is one of the crucial storylines that spill across the 1590 and 1596 editions of the poem. I am thinking of an episode in Book III, canto viii. Satryane, a particularly wry and adaptable traveler through the poem, accompanied at this point by the rakish Squire of Dames, crosses paths with Paridell, a philandering knight. Satryane and Paridell exchange news about Florimell, a fair and beloved maid who has disappeared from the faerie court in pursuit of her love, Marinell, after hearing news of his apparent injury; since her departure, the knights errant of the faerie court have been searching for Florimell.
Ah gentle knight (said then Sir *Satyrane*)
Thy labour all is lost, I greatly dread,
That has a thankelesse seruice on thee ta’en,
And offrest sacrifice vnto the dead:
For dead, I surely doubt, thou maist aread
Henceforth for euer *Florimell* to be.
That all the noble knights of *Maydenhead*,
Which her ador’d, may sore repent with me,
And all faire Ladies may for euer sory be.

Which words when *Paridell* had heard, his hew
Gan greatly chaunge, and seem’d dismayd to bee;
Then said, Faire Sir, how may I weene it trew,
That ye doe tell in such vncertaintee?
Or speake ye of report, or did ye see
Just cause of dread, that makes ye doubt so sore?
For perdie else how mote it euer bee,
That euer hand should dare for to engore
Her noble bloud? the heauens such crueltie abhore.

These eyes did see, that they will euer rew
T'haue seene, (quoth he) when as a monstrous beast
The Palfrey, whereon she did trauell, slew,
And of his bowels made his bloudie feast:
Which speaking token sheweth at the least
Her certaine losse, if not her sure decay:
Besides, that more suspition encreast,
I found her golden girdle cast astray,
Distaynd with durt and bloud, as relique of the pray.

Ay me (said *Paridell*) the signes be sad,
And but God turne the same to good soothsay,
That Ladies safetie is sore to be drad:
Yet will I not forsake my forward way,
Till triall doe more certaine truth bewray.
Faire Sir (quoth he) well may it you succeed,
Ne long shall *Satyrane* behind you stay,
But to the rest, which in the Quest proceed,
My labour adde, and be partaker to their speed.

(*FQ* III.viii.45-50)\(^{154}\)

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The conversation turns on a matter of inference: whether Florimell should be judged dead; whether the search is worth continuing. Satryane has his doubts, his “dread,” which he articulates through the presentation of evidence: Florimell’s slaughtered palfrey; even more powerful, “that more suspition encreast,” the “speaking token” of the maid’s cast-off girdle. Surely she is dead, Satryane laments, as if convincing himself. Paridell himself seems moved to assent (“Ay me…the signes be sad”), but not quite: Florimell’s “safetie is sore to be drad,” but is also to be doubted, to be suspected, and so left uncertain until better proven. Paridell will go on searching, perhaps a bit out of a courtly refusal to despair, but also more simply because the case isn’t settled. Satyrane agrees that the “Quest” is not only worth Paridell’s continuing, but also his own subscription. And so a jovial, slightly seedy fellowship forms between Satryane, Paridell, and the Squire of Dames. More importantly, the quest that unites them, incidental as it seems at this moment, becomes increasingly central. The search for Florimell, the various comic ramifications of the claims made by others to her girdle, and the reunion and marriage of Florimell and Marinell: these are some of the strongest narrative tissues that connect the vast tapestries of Books III and IV. Those threads are spun out and sustained by the need for the knights of Faerie Land to solve this apparent crime.

The word of Satyrane’s that crystallizes the dynamic I’ve located in this scene – of inference; a blend of dread, doubt, and hope; detection – is “suspiration.” It suggests an epistemological situation in which one believes something might be the case, or that it very well is the case, before one has become certain: it requires at least a minimum amount of inquiry before arriving at satisfactory knowledge. It also adds a certain affective character to what otherwise could be an abstracted inferential mode: suspicion
often entails feelings of dread (as here), and also of hope (that one may or may not be right); there might even be a stir of erotic energy, something close to jealousy, in the suspicion aroused in the men by the signs of a maiden’s mishap. And of course, the word has more than a soupcon of the legal, which in turn activates the legal and rhetorical energy running through the passage’s diction: “certaine truth,” “speaking token,” “triall,” “signes,” “Iust cause,” “report,” “aread.” The chivalrous “Quest” begins to sound like an inquest.

That such a passage and many others in the Faerie Queene turn out to be saturated with legal language would not surprise anyone familiar with Spenser’s biography or recent scholarship on his poetry. His education, his career as an administrator, and his prose work A View of the Present State of Ireland, all suggest Spenser had a practical knowledge of the law’s minutiae exceeding that of Shakespeare, the other author studied in this dissertation. This education left its mark on the poetry: Andrew Zurcher’s recent study Spenser’s Legal Language demonstrates the ubiquity of legal diction in The Faerie Queene and argues persuasively for its centrality to the poem’s exploration of Elizabethan domestic and foreign policy.\(^\text{155}\)

And the word I have underlined, suspicion, has had a special place in the recent growth of Renaissance law and literature studies. Lorna Hutson, in her book The

\(^{155}\) Andrew Zurcher, *Spenser’s Legal Language: Law and Poetry in Early Modern England* (Rochester, NY: D.S. Brewer, 2007). Through its focus on legal diction, Zurcher’s study “argues that early modern English poets expected their readers to be especially and consistently alert to the linguistic elements in verse, and that, for all the trumpeted ‘visual’ quality of Spenser’s poetry, or of Sidney’s ‘speaking pictures, this verbal analysis form the bedrock of the contemporary interpretive structure” (9).
Invention of Suspicion, makes the influential claim that “rhetorical techniques for evaluating probabilities and likelihoods in legal narratives were perceived by dramatists in the London of the late 1580s and 1590s to be indispensable for their purposes in bringing a new liveliness and power to the fictions they were writing for the increasingly successful and popular commercial theaters.”\textsuperscript{156} Suspicion, in other words, produces character: the evolving laws of evidence and the spread of jury techniques laid the groundwork for the “new mimesis” of the London stage, an “invention of the human” that culminates in the dramatic art of Shakespeare.

My thought in this chapter differs from the criticism I’ve sketched above, though it remains indebted to it. I am less interested in legal diction than I am in how the law as a form of thought interacts with what Harry Berger calls “the Spenserian dynamics,” the fundamental cognitive, hermeneutic, and artistic energies that animate The Faerie Queene.\textsuperscript{157} “Suspition” is a lens through which to perceive the law’s part in the poem’s deep structure. In turn, thinking of suspicion as an important but heretofore unelaborated current in the Spenserian dynamics entails rethinking the place of legal thought in Renaissance English literature. If suspicion and the repertoire of evidential doctrines it names are important to The Faerie Queene, then they cannot be surefire ways for producing psychologically complex, dramatically realistic character; or at least, they cannot just be good for that. For no poem is more stubbornly resistant to psychological realism, to character as interiority, or to dramatic values as The Faerie Queene. The poem can comprehend those representational modes, but it usually suggests them by their

\textsuperscript{156} Lorna Hutson, \textit{The Invention of Suspicion}, 2.

absence; they are the impossible others of the daimonic personifications that populate Faerie Land, sometimes longed for, more often chastelyforgone by the poem’s didactic rigors and chaotic romance dilations. Suspicion’s prominence in *The Faerie Queene* suggests the category is more complicated, more Janus-faced than we suspected.

Finally, I will take the opportunity to think about this chapter as a case study in the current debates over the “hermeneutics of suspicion.” The phrase is Paul Ricoeur’s, originally used to label a specifically modern habit of reading, inaugurated by Marx, Nietzsche, and Freud, in which “the fundamental category of consciousness is the relation hidden-shown or, if you prefer, simulated-manifested.” But the phrase “the hermeneutics of suspicion” has become coextensive with criticism itself; or at least, that has become a worry of recent criticism, which has labored to find alternatives: reparative reading, surface reading, etc. There is no better text to learn from about this problem than *The Faerie Queene*, both because the whole issue is at once strictly speaking foreign to it (the poem predates by several centuries the “hermeneutics of suspicion” as defined by Ricoeur), and yet, as I argue, it is difficult to read the poem without suspicion, for allegory is in some sense the suspicious mode *par excellence*. Thinking about suspicion in *The Faerie Queene* is an opportunity to consider the stakes of a hermeneutic debate outside its familiar context, and to ponder how law inflects the debate.

My largest and most pressing question in this chapter concerns how suspicion might be thought of as a fiction, in the law and in *The Faerie Queene*. In my previous chapter, I started from a relatively focused definition of legal fiction as a moment when

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the law distorts its procedures to achieve some substantial end. In Hamlet V.1, the Gravedigger’s legalese parodies Plowden’s report of Hales v. Pettit as a way of exposing the royal manipulation of law to ensure Ophelia’s sanctified burial; this in turn afforded me an opportunity to think about the different roles of technical language in legal and poetic fictions. Here my notion of “fiction” will be looser and more heuristic. I will be interested in fiction in the sense of making a world, as a way of inventing in the broadest sense, from particular inferences to whole categories of persons, relations, and knowing. More specifically, I will compare the often contradictory assumptions built into the English law of evidence to the presuppositions that animate the “darke conceit” of The Faerie Queene. Isabel MacCaffrey has called The Faerie Queene “a model of the mind’s life in the world.”159 I want to think about the poem and the law as two different models of the mind and its life in the world. What scope do these different fictions or models have? What kind of commitments do they ask from us in our everyday lives? How do they solicit or command those commitments? What degree of self-consciousness do they have about their fictionality? And are they differently open to challenge, revision, or even unmaking?

In what follows, I will examine these questions by moving back from the latter cantos of Book III through to the beginning of the 1590 Faerie Queene, with occasional thoughts about suspicion in the grander architecture of the whole poem. I will try, abstracting from my various readings, to compare my analysis of suspicion to a few key concepts of modern criticism, paranoia and ideology. In a coda, I will glance forward

into the 1596 *Faerie Queene.* By weaving back and forth through specific close readings to larger speculations, following the poem’s crazy-quilty narrative in different directions, and oscillating between detail and structure, I have in mind Gordon Teskey’s insight about the “entanglements” of thought in *The Faerie Queene.* By “entanglements” Teskey means the “continually widening contexts” of the poem, the way any single theme, incident, or idea in the poem becomes dizzyingly implicated in a whole host of others:

the logic of the entangling of the moments is a plurality that leads away from the one, branching out unexpectedly in all directions, but re-entangling with one another later on, in fantastic complexity, and with no common destination in view – indeed with no destination for any particular filiation or path, like the vast entanglement of neuronal dendrites on the brain. ¹⁶⁰

Suspicion is an especially apt case study of entanglement in *The Faerie Queene:* as my reader will quickly see, for better or worse, any one moment in which the poem analyzes suspicion ripples out to many others, creating an extraordinary intellectual counterpoint, sometimes harmonious, sometimes dissonant, always strange and beautiful. Indeed, suspicion might be another name for such entanglements, for it is, I will argue, the poem’s main epistemological device.

Before getting to *The Faerie Queene,* though, I want to sketch the legal context for Spenser’s analysis of suspicion. A grasp of the crucial but conflicted place of “suspicion” in the English law of the period is essential to illuminating the even stranger way the category works in Spenser’s poem.

Legal Suspicion

“Suspicion,” as Barbara Shapiro has demonstrated, is a precursor to the modern Anglo-American legal concept of “probable cause.” It named the sufficient conditions to arrest, charge, and try a person for a crime. As such, it had a necessary relationship to legal standards for conviction at trial, or what is now called the “beyond a reasonable doubt” standard. In the sixteenth century, the standard was put in the language of a satisfied “conscience,” and later, in the seventeenth century, “moral certainty,” phrases that indicate the lasting power of theological categories in the development of this legal vocabulary.\(^{161}\) “Suspicion” and “satisfied conscience” both concern epistemological questions inevitably raised by arrest and conviction. How much does one need to know before arresting, accusing, and trying someone for a crime? And how much more does one need to know when determining the guilt or innocence of the accused?

During the Renaissance these legal categories (suspicion, conscience) and their related epistemological problems shifted from a fideistic to a rational model. By the mid-thirteenth century, trials by ordeal, in which the accused, after being charged with “suspicion” by a “presentment jury,” was subjected to various irrational tests such as combat to confirm God’s judgment, were being replaced by trials by jury.\(^{162}\) By the late seventeenth century, a set of probabilistic and evidential criteria needed for a “satisfied conscience” – an epistemological state stricter than opinion or mere probability but looser than scientific demonstration, in which any rational person evaluating the evidence would


\(^{162}\) Id., 2-7.
be expected to assent to the verdict, and which closely resembles our current standards of “beyond reasonable doubt” - were set in place.\textsuperscript{163}

Suspicion followed a similar path: away from kind of irrational or absolute standard toward something rational and empirical. As Lorna Hutson notes:

In 1360-1, English Justices of the Peace were given power by statute to ‘arrest all they may find by indictment or suspicion’. Statutes passed in 1554 and 1555 forced a transformative refinement in the older legal concept by requiring Justices to take written examinations of those arrested to record the grounds on which they decided to detain a suspect in prison, or, alternatively, to grant bail.\textsuperscript{164}

Shapiro identifies another transformation around the mid-seventeenth century, when jurists begin to stress that judges must evaluate a Justice of the Peace’s or a concerned citizen’s “suspicion” based on probability and evidence before issuing a warrant for arrest: this is the origin of the “probable cause” standard.\textsuperscript{165}

One might say, then, that the late sixteenth century is a transitional moment for “suspicion” and the related notion of “conscience” from irrational and religious forms to empirical, rational, secular ones. And so the contradictions within these legal categories, some of which continue to haunt the law to this day, are especially intense at this moment. The first to note is an epistemological instability in the degrees of certainty marked out by “suspicion” and “satisfied conscience.” Shapiro gets to the heart of the problem:

\begin{itemize}
  \item Id., 7-8; 40-41; 44; 112; 147
  \item Hutson, \textit{Invention of Suspicion}, 2. The statutes cited by Hudson are 34 Edw. II. c.1 (1360-1); 1 & 2 Philip & Mary c. 13 (1554-5); and 2 & 3 Philip & Mary c. 10 (1555).
  \item Shapiro, “\textit{Beyond a Reasonable Doubt}”, 135-136.
\end{itemize}
The realm of probability is a clearly intermediate one between absolute certainty and mere opinion or rumor, but it contains no clear steps, degrees, or levels of probability in the scale of just above opinion to just below certainty, and it has no agreed upon measure of quantities of probability. We have seen the difficult struggle to achieve just one such step that was finally labeled “moral certainty” or “beyond a reasonable doubt.” In the range below moral certainty, lawyers and judges simply have not been able to construct steps. So if a grand jury asks simply, “how probable must guilty be before we act?” no one can answer, “You need step 3 probability or six BTUs of probability.” Purely epistemological discussion of grand jury standards is inherently unstable. It constantly moves up the scale toward “satisfied conscience,” “moral certainty,” and “beyond reasonable doubt,” or down the scale toward “suspicion” or “opinion” because there is no fixed intermediary spot at which to rest.166

When certainty is a matter not of mathematical demonstration but of conscience, or of beyond reasonable doubt, the question “When is it reasonable to stop doubting?” stubbornly resists a sure answer or formula. So, too, with the demarcations of categories between opinion and certainty: when does suspicion or probable cause end, and satisfied conscience or beyond reasonable doubt begin? In order to distinguish suspicion from opinion, criteria of evidence and probabilities have to be introduced. But at some point, a strict standard of probable cause begins to look like a “trial before the trial,”167 and the distinctions between accusation and conviction, suspicion and satisfied conscience, collapse; the whole epistemological current short circuits.

166 Id., 44.
167 Id., 143.
This problem is further complicated by the traditional association between suspicion and rumor, which can be traced at least as far back as an oft-quoted passage from Henri de Bracton’s *On the Laws and Customs of England* (ca. 1220-1250):

We must now speak of those indicted by popular rumour. From rumour suspicion arises, and from rumour and suspicion a strong presumption, which must stand until the man indicted has purged himself of such suspicion, since it admits of proof to the contrary, that is, purgation. Suspicion may be of many kinds. It arises when rumour originates among good and responsible men…It is clear that the rumour which begets suspicion ought to arise among worthy and responsible men, not among those who wish and speak evil but wise and trustworthy persons, and it must be not once but repeatedly that complaint arises and ill-repute is made manifest. For uproar and public outcry are at times made of many things which in truth have no foundation, and thus the idle talk of the people is not to be heeded.168

As with the ambiguous differences in probability between suspicion and a satisfied conscience, Bracton’s gradated scale of “rumor,” “suspicion,” and “strong presumption” seems to raise as many questions as it answers. Particularly interesting for our purposes is the almost allegorical social hierarchy Bracton invokes: “good and responsible” [bonos et graves] or “worthy and responsible” [providis et fide dignis personis] men provide testimony equivalent to their social rank; the word of the people is, well, mere rumor, “idle talk” [vanae vocis populi].

Such equivalences of social, political, and moral value are an abiding concern of *The Faerie Queene*. And though I will be focusing primarily on the 1590 edition of the

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poem in this chapter, it bears remembering that the poem’s last three books become increasingly obsessed with the dangers of rumor and slander. Lawyers contemporary to Spenser continued to note the queasy association of suspicion with rumor, and struggled to distinguish the two. William Fulbeck (1560-ca 1603), who quotes Bracton on suspicion in his *Direction, or Preparative to the study of the Law* (1600), writes

*Fama*, is a common report, proceeding from suspicion, and published by the voices of men, and it differeth from rumour, because that is a divers whispering, which is not so effectual as fame. *Fama constans*, is that which is dispersed abroad neither by men unknown, nor of light credit, *nec ignotis nec improbis.*

There is something strange about a writer educated at Oxford (BA and MA) and Gray’s Inn pitting rumor against *Fama*, the name of the famously destructive personification from Book IV of Virgil’s *Aeneid*. And what of that word “published,” fraught with dangerous and degrading connotations in an age uncertain about the social role of print? Though lawyers tried to raise suspicion above mere rumor through an allegorical relation between class and moral trustworthiness, the very stuff of their allegory works against them. Spenser would not have known this passage; but it indicates that the legal culture surrounding him was struggling with tensions (between rumor and good report, between aristocratic virtues and legal professionalism, between allegory and empiricism) important to his poetry.

Another tension inherent in this epistemology is a split between objective and subjective models of suspicion, and of the degree of personal entanglement in any instance of suspicion. Even as law and law enforcement were increasingly

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professionalized, suspicion continued to suggest an ideal of citizen’s arrest well into the English Renaissance. As Shapiro observes:

When suspicion is inserted in the early English context, it necessarily must take on far more subjective overtones because it becomes a standard for judging the conduct of lay persons immediately involved in the events and the social context in which they make the decision to arrest. As police arrest and arrest warrants issued by magistrates come to replace citizen’s arrest, causes of suspicion again become a more objective tool of officials – but now with an overlay of several centuries of English experience with citizen’s arrest.¹⁷⁰

Though it might well not have reflected the practical reality of justice at the time, lawyers emphasized the unmediated and personal nature of an arrest on suspicion into the seventeenth century. The great jurist Sir Edward Coke, in his report of “Sir Anthony Ashley’s Case,” writes:

But in this Case three Things are to be observed.

1. That a Felony be done.
2. That he who doth arrest, hath Suspicion upon probable Cause, which may be pleaded, and is traversable.
3. That he himself, who hath the Suspicion, arrest the Party.

For he cannot command another to do it, for Suspicion is a Thing individual and personal, and cannot extend to another Person than to him who hath it.

Also it was resolved, that if Felony be done, and the common Fame and Voice is that one hath committed it, this is good Cause for him who knows of it to arrest the Party, to the Intent that he may be brought to Justice; but none can arrest the Party suspected by the Command of him who hath the Suspicion.¹⁷¹

¹⁷⁰ Shapiro, “Beyond a Reasonable Doubt”, 130.
¹⁷¹ Sir Edward Coke, The reports of Sir Edward Coke Kt. in English, in thirteen parts
Even as Coke grounds suspicion in “probable Cause,” he claims that “Suspicion is a Thing individual and personal, and cannot extend to another Person than to him who hath it.” It is difficult to square the universal, objective criteria of probable cause with something so individual that its experience and responsibilities are not transferrable to another or a community. Equally curious is the assertion that “none can arrest the Party suspected by the Command of him who hath the Suspicion” even though the suspecting party in this example acts from “the common Fame and Voice”; shouldn’t “common Fame and Voice” lead to an equally common suspicion in a community?

Coke is not the only eminent legal writer who registers the subjective tug against a more communal, objective, and rational construction of suspicion. A lawyer for the prosecution in the case *Wimbish v. Tailbois* (ca. 1541) collected in Edmund Plowden’s *Reports* (1571), compares suspicion to “Covin,” the technical name for a secret plot between persons to harm another, used especially for plots to disinherit, which is indeed the issue in *Wimbish v. Tailbois* (suggestively, conspiracy is also the issue of *Sir Anthony Ashley’s Case*, from which I quoted Coke’s thoughts on the subjective character of suspicion). In a startling moment, the lawyer argues: “So a man may justify

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172 Edmund Plowden, *The commentaries, or reports of Edmund Plowden, Of the Middle-Temple, Esq; An Apprentice of the Common Law, containing divers cases upon matters of law, argued and adjudged in the several Reigns of King Edward VI. Queen Mary, King
Imprisonment for Suspicion of Felony, without shewing any Suspicion, for Suspicion, like Covin, lies secretly in the Heart of Man.”173 It’s hard to know what to make of the plausibility of this argument in the context of the case: suspicion doesn’t really come up again (Covin remains the center of attention), and Plowden informs us that “no judgment was given” for this case. An eighteenth-century English edition of Plowden attaches a footnote to the remark listing an impressive number of contrary opinions from legal authorities (many of which seem to come from at least more than a half century after the case).174 Regardless of whether the argument would have sounded normative or eccentric, the very fact that a lawyer would have tried it suggests that suspicion retained, well into the sixteenth century, a personal, secretive, and affectively charged character that resists the rationalization or cool objectivity we normally associate with legal standards. And this is crucial to appreciating what Spenser does with the category.

In a moment, I want to return to Spenser. As I track it back through the first three books of *The Faerie Queene*, “suspition,” unlike so many words in Spenser’s poetry that have a potentially legal meaning, will rarely suggest the technical meanings above. The

and Queen Philip and Mary, and Queen Elizabeth. Originally written in French, And now faithfully translated into English, and considerably improved by many marginal Notes and References to all the Books of the Common Law, both ancient and modern. To which are added, the Quæries of Mr. Plowden, Now first rendered into English at large, with References, and many useful Observations. In two parts. With two new tables, more compleat than any yet published, the one, of the names of the cases, the other of the principal matters. (London: 1761). Eighteenth Century Collections Online. <http://find.galegroup.com/> (accessed 24 July 2012).

173 Id.
174 Id.
word will most often crop up in contexts that seem further form a legal context than the rough-and-tumble world of chivalric justice and order I began with: Malbecco’s castle, Archimago’s cottage, Errour’s den. I argue that this is significant: Spenser is not so much engaging here in witty play with legal diction as he is digging beneath a concept to reveal structural conflicts that are essential to his poem’s “darke conceit.” I have devoted some time to sketching out legal suspicion in the period because when Spenser invokes suspicion, even in contexts far from the law, the epistemological tensions I have located in this section – the gray area between opinion and certainty; the proximity of suspicion to rumor and slander; the friction between objective, communal models and subjective, affectively intense personal states – are brought into relentless, disorienting focus.

**Gealosie’s Suspicion**

The encounter in between Satyrane and Paridell with which I began the chapter comes just before the most extensive analysis of suspicion in *The Faerie Queene*, the Malbecco story in cantos ix and x of Book III. At the end of canto viii, having formed their jaunty fraternity, Satyrane, Paridell, and the Squire of Dames seek lodging at a nearby Castle, but find that:

They restrained were
Of readie entrance, which ought evermore
To errant knights be commun: wondrous sore
Thereat disppleasd they were, till that young Squire
Gan them inform the cause, why that same dore
Was shut to all, which lodging did desire:
The which to let you weet, will further time require.
(III.viii.52)

The castle, the Squire of Dames tells us in the next canto, belongs to “‘a cancred Crabbed carle’” (III.ix.3), an old miser whose concern is not honor or the common good, but
rather for his “mucky pelfe” and his indecorously young, attractive, and flirtatious wife.

One can almost hear the Squire of Dames snicker when he suggests that Malbecco has good reason to worry about his wife:

But he is old, and withered like hay,  
Unfit faire ladies service to supply;  
The privie guilt whereof makes him always  
Suspect her truth  
(III.ix.5)

At the beginning, then, the story is boisterously comic. Malbecco shares an antipathy to the chivalric code that links him to many other villainously bad hosts in the poem, but he seems less a threat to honor or civil order than an object of aristocratic contempt. Violence flairs up – in a spat between Paridell and Britomart, newly arrived on the scene; in death threats from the knights that force Malbecco to let them in – but real combat seems foreign to this atmosphere. Once Paridell is introduced to and begins courting Hellenore, Malbecco’s wife, we are in the decidedly low and merry generic realm of the fabliau, and of mock epic (Paridell and Helenore, as their names declare, travesty Helen and Paris, the lovers who launch the first of all epics). We are in the world of romance. We are also in the world of suspicion and of guilt. The language isn’t technical by the poem’s standards, and the legal cadence is barely audible, just enough to make a reader pause and wonder: what do “suspicion” and “priuie guilt” have to do in this comic interlude?

Any answer to the question has to be found at the end of the story, in the final stanzas of Book III, canto x. Malbecco has lost everything: Hellenore has been taken by Paridell, then discarded by him in the woods, where she becomes the happy sex slave of the local satyres, uninterested in returning to her ruined husband; the last of Malbecco’s
treasure was filched by Trompart and Braggadochio, his ersatz courtly champions in the cause of recovering Hellenore. In the aftermath of these disasters, Malbecco finally loses himself: With extreme fury he became quite mad, / And ran away, ran with himself away (III.x.54). Or perhaps it would be better to say he becomes Himself; for upon reaching a cliff overlooking the ocean, he undergoes a startling, perfecting transformation:

But through long anguish, and self-murdring thought
He was so wasted and forpined quight,
That all his substance was consum’d to nought,
And nothing left, but like an airy Spright,
That on the rockes he fell so fit and light,
That he thereby reciu’d no hurt at all,
But chaunced on a craggy cliff to light;
Whence he with crooked clawes so long did crall,
That at the last he found a caue with entrance small.

Into the same he creepes, and thenceforth there
Resolu’d to build to his balefull mansion,
In dreye darkness, and continuall feare
Of that rockes fall, which euer and anon
Threates with huge ruine him to fall vpon,
That he dare neuer sleep, but that one eye
Still ope he keepes for that occasion;
Ne euer rests he in tranquility,
The roring billowes beat his bowre so boystrously.

Ne euer is he wont on ought to feed,
But toades and frogs, his pasture pysonous,
Which in his cold complexion do breed
A filthy bloud, or humour rancorous,
Matter of doubt and dread suspitious,
That doth with cureless care consume the hart,
Corrupts the stomacke with gall vitious,
Croscuts the liuer with internall smart,
And doth trasnsfixe the soule with deaths eternall dart.

Yet can he neuer dye, but dying liues,
And doth himselfe with sorrow new sustaine,
That death and life attonce vnto him gues.
And painefull pleasure turnes to pleasing pain.
There dwels he euer, miserable swaine,
Hateful both to him selfe, and euery wight;
Where he through priuy griefe, and horrour vaine,
Is woxen so deform’d, that he has quight
Forgot he was a man, and Gealosie is hight.
(III.x.57-60)

Even in a poem full of metamorphosis, Malbecco’s fate is unique: he is the only character in *The Faerie Queene* to become a personification, *Gealosie* itself. There is perhaps no more dramatic or visceral a moment in the whole poem of what Gordon Teskey calls allegorical “capture,” a “moment of instrumental meaning” “in which the materials of narrative are shown being actively subdued for the purpose raising a structure of meaning.” Malbecco’s transformation is probably the most self-consciously extreme moment of allegorical meaning making in the whole poem: a story and a character’s life are condensed into an emblem, a name, a judgment. One might object to the claim for Malbecco’s exceptionalism and note that all the material of *The

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175 Probably the closest thing to Malbecco’s metamorphosis is Adicia’s transformation into a tiger at the end of V.viii; but Adicia’s *name* does not change to a fully allegorical label, and so the sense of ontological and model shift, of allegorical capture, is different. I will discuss Adicia’s transformation at greater length in my fourth chapter.

Faerie Queene is an occasion both for allegorical meaning making and for self-reflection on the part of the heroes and of the poem’s readership in their related educations. But there is something especially reflexive about Malbecco’s fate, in its extremity, in the degree to which it is bound up with an extraordinary instance of personification. Other critics of the poem have had similar impressions: Paul Alpers writes that “[t]hroughout The Faerie Queene, our relation to evils is established in the way represented by the verses on Sansloy or the transformation of Malbecco – by language evoking feelings and attitudes that we acknowledge to be true of ourselves.”

And the structure of this whole episode, and not just the fate of its central characters, is remarkable: in the space of a couple cantos, the poem stages a dramatic modal shift, from the light and shade of romance to the hard moral clarities of allegory.

The unique character of Malbecco’s transformation in the poem implies a weird but compelling relationship between jealousy and the work of allegory. What, in turn, does this say about suspicion? What is the relationship between suspicion, jealousy, and allegory, in this episode and in the poem? And how might this intensely self-conscious moment in the poem – in which a single episode seems to expose and apply maximum pressure to the special strains in the polymodal structure of the poem – be drawing on the law’s conflicted understanding of suspicion?

The first thing to note is that, though the law seems far from the mind of the poem here, Malbecco’s story contains the whole range of epistemological complexity I identified in legal notions of suspicion in the period. Malbecco’s suspicion begins at the

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bottom of the epistemological ladder: it is, at best, a wary disposition, a tendency to think
the worst of his wife and his guests. It ends with horrifying certainty. Not only does
Malbecco get all the confirmation he needs of Hellenore’s guilt (if her running away with
Paridell wasn’t bad enough, Malbecco spends a night spying on her while she has
unremitting sex with a satyr), but as Gealousy his world is reduced into a space over
which he can exercise total vigilance: he is circumscribed by the “balefull mansion” of
his cave, perpetually ready for the “occasion” of the rocks’ inevitable collapse upon him.
Suspicion has slid into certainty, doubt into dread.

The reduction of Malbecco’s world to Gealousie’s cave entails an increasingly
lonely, antisocial experience. The “priuie guilt” Malbecco experienced even when he was
still with his wife and playing the reluctant host becomes the externalized and perfected
in the isolation of his final tableau.

Ne euer is he wont on ought to feed,
But toades and frogs, his pasture poysoneus,
Which in his cold complexion do breed
A filthy bloud, or humour rancorous,
Matter of doubt and dread suspitious,
That doth with cureless care consume the hart,
Corrupts the stomacke with gall vitious,
Croscuts the liuer with internall smart,
And doth trasnsfixe the soule with deaths eternall dart.
(III.x.59)

Here the “matter of doubt and dread suspitious” is humoral: it literally consumes
Malbecco’s heart. There is an implicit contrast between the humoral inwardness of
Malbecco’s jealousy, on the one hand, and the blithe, courteous suspicions traded
between the community of Paridell, Satyrane, and the Squire of Dames a few cantos
before this. This contrast recalls the questions I raised in my discussion of Plowden and
Coke: is suspicion something objective, based on communal standards of evidence and
reasoning; or is it unmediated, subjective, and affective, something that, to borrow Plowden’s phrase, “lies secretly in the heart of Man?”

One might say that the Malbecco episode holds up for inspection the conflicting poles of legal suspicion and relates them in turn to the modal crosscurrents of Spenser’s poem. On the one hand, suspicion operates as part of a carefully gradated standard for action and judgment (arrest, conviction, etc.), and it contributes to a shared, objective process. On the other hand, suspicion is a passionate conviction, stubbornly personal and subjective, inextricable from emotional and sexual investment. Similarly, Malbecco’s story moves between two characteristic modes of representation in the poem: from the narrative flux of romance, carried out in and through time, to the particular and absolute fixity of allegory. One might say that the poem is performing a schematic analysis both of legal suspicion and of its own poetic forms, pairing one pole of the legal thought (concerned with a communal, objective, epistemologically gradated model) with romance and the other (involved with certainty, particularity, affect) with allegory.

The scheme is fraught with irony. Whereas one might expect that intensely inward, personal, and affectively charged suspicion would generate something like *character*, Spenser associates it with the schematic rigors of personification. And the more objective, communal form of suspicion appears when the poem comes as close as it ever does to giving us characters: knights like Satyrane and Paridell, with their humane, comic variety and flexibility. Which is to say that this neat dichotomy, useful and important as it is (and I do think it is one thought Spenser offers up to us, one voice we can listen to and keep our footing with in the midst of his poem’s incomparably dense counterpoint), doesn’t seem quite right.
Nor is it. Romance and allegory are never so far apart as they seem in *The Faerie Queene*, even in so analytically charged a story as Malbecco’s; and the legal paradigms of suspicion the episode sets in high relief prove hard to disentangle as one moves back through it. Take, for example, Paridell’s seduction of Hellenore over dinner during the first evening the knights spend at Malbecco’s:

And euer and anone, when none was ware,
With speaking lookes, that close embassage bore,
He rou’d at her, and told his secret care:
For all that art he learned had of yore.
Ne was she ignoraunt of that leud lore,
But in his eye his meaning wisely redd,
And with the like him amswerd euermore:
Shee sent at him one fyrie dart, whose hedd
Empoisnd was with priuy lust, and gealous dredd.

He from that deadly throw made no defence,
But to the wound his weake heart opened wyde;
The wicked engine through false influence,
Past through his eies, and secretly did glyde
Into his heart, which it did sorely gryde.
But nothing new to him was that same paine,
Ne pain at all; for he so ofte had tryde
The power thereof, and lou’d so oft in vaine,
That thing of course he counted, loue to entertaine.

Thenceforth to her he sought to intimate
His inward griefe, by meanes to him well knowne,
Now *Bacchus* fruit out of the siluer plate
He on the table dasht, as ouerthrowne,
Or of the fruitfull liquor ouerflowne,
And by the dauncing bubbles did diuine,
Or therein write to lett his loue be shown;
Which well she redd out of the learned line,
A sacrament prophane in mistery of wine.

And when so of his hand the pledge she raught,
The guilty cup she fained to mistake,
And in her lap she shed her idle draught,
Shewing desire her inward flame to slake:
By such close signes they secret way did make
Vnto their wils, and one eies watch escape;
Two eies him needeth, for to watch and wide,  
Who louers will deceiue. Thus was the ape,  
By their faire handling, put into Malbeccoes cape.  
(III.ix.28-31)

All the features of Malbecco’s jealousy are present in this bit of debased courtly love: “secret care,” “priuy lust,” “gealous dread.” Taking place in the midst of a sociable gathering, it is nonetheless intensely private, a secret matter of the heart. And though clearly part of the fabliau character of the larger episode, the moment teems with an ironically allegorical resonance. The communication between the two lovers takes the form of allegorical sign-making, a parody of Christian hermeneutics: it is “leud lore” and “[a] sacrament prophane in mistery of wine,” which must be “redd” by the two lovers. And the suspicion or “gealous dread” here resembles less the inferential calculations exchanged between Paridell and Satyrane than Malbecco-as-Gealosie’s inward, affective, visual resolution from doubt to certainty.

Perhaps the worlds and suspicions of Paridell and Malbecco are not dichotomies; perhaps they are mirrors images. For all its clarity and rigor, the poem keeps eroding seemingly sure distinctions both between forms of suspicion and between its own forms, revealing abiding contradictions. The tensions manifest in the Malbecco episode and its treatment of suspicion and jealousy radiate out into the rest of the poem. In light of my reading of Malbecco, I turn next to suspicion’s role in earlier sections of the 1590 Faerie Queene.
The Malbecco story of Book III recalls the poem’s earlier representations of suspicion and jealousy. In particular, it reanimates the tangled role of suspicion in Redcrosse’s painful education in Book I. Redcrosse’s loss of faith in Una is also a failure of proper love. Many readers of the poem recognize that there is more than a hint of jealousy and sexual confusion in his response to the temptations of the Archimago’s false Una:

In this great passion of vnwonted lust,
Or wonted feare of doing ought amis,
He starteth vp, as seeming to mistrust,
Some secret ill, or hidden foe of his:
Lo there before his Face his Ladie is,
Vnder black stole hyding her bayted hooke,
And as halfe blushing offred him to kis,
With gentle blandishment and louely look,
Most like that virgin true, which for her knight him took.

All cleane dismayd to see so vncouth sight,
And half enraged at her shamelesse guise,
He thought haue slain her in his fierce despight,
But hastie heat tempring with sufferance wise,
He stayd his hand, and gan himself aduise
To proue his sense, and tempt her faigned truth.
(I.1.49-50)

This passage ends with suspicion: an inferential test of the circumstances (“To proue his sense, and tempt her feigned truth”). But it begins with jealousy, audible in the cutting ambiguity of the syntax and diction: “In this great passion of vnwonted lust, / Or wonted feare of doing ought amis, / He starteth vp, as seeming to mistrust, / Some secret ill, or hidden foe of his.” The “or” offers equally damning possibilities: action not from moral clarity but from “passion” and “lust,” or from a fear of control over those energies. And that “seeming” casts a shadow over the indignation: is Redcrosse just going through the
outward motions, “seeming to mistrust” what he in fact wants to enjoy? The genitive construction at the end (“Some secret ill, or hidden foe of his”) suggests the danger is himself, or some part of himself made uncomfortably present by the scene. For a moment, before collecting himself and tempering his reaction to the cool calculations of “proue”ing his suspicion, Redcrosse is at the brink of panic. The moment contains, in its perilous balance between suspicion and jealousy, many of the energies found on a larger scale in the Malbecco episode.

There is more than a thematic resemblance between Malbecco and the tempted Redcrosse. A few stanzas after where I have quoted, after Redcrosse has listened to the false Una’s excuses, we read “Her doubtfull words made that redoubted knight / Suspect her truth” (I.i.53). The Squire of Dames’ description of Malbecco at the beginning of Book III, canto ix (But he is old, and withered like hay, / Vnfit faire Ladies seruice to supply; / The priuie guilt whereof makes him always / Suspect her truth) echoes the passage from Book I in the enjambed phrase “Suspect her truth.” Unlikely as it seems, the two moments and the two characters, Redcrosse and Malbecco, ask to be read together.

178 This moment closely precedes what Jeff Dolven identifies as the first moment of moral panic in the poem. See Jeff Dolven, “Panic’s Castle,” Representations 20.1 (Fall 2012): 1-16. Dolven describes panic as “an annihilating surplus, a coincidence of meanings experienced as an intolerable contradiction” (10), and he tracks its suffusion of the poem, at the levels of local events (of flight and spasmodic action), of interpretation (rash, pressured judgments and changes of sympathy by the narrator), of structure (the movements between books not as architectonic progress but rather of “violent alternations” (11)), and finally of creative temperament (panic as the ever-present sign of Spenser’s shame in ideological investment).
The echo has a reciprocal influence: the repetition of the phrase in Book III links the avarice and jealousy of Malbecco to Redcrosse’s wavering faith; it also moves in the other direction, forcing us to consider how Malbecco might deepen our understanding of Redcrosse’s suspicion. We find in Redcrosse’s temptation a set of qualities similar to those I have drawn out of the Malbecco episode: a distinction between the cool inferences of suspicion and the immediate, passionate conviction of jealousy; the same epistemological spectrum and tensions, parallel to those of legal suspicion, are present.

The modal conflicts staged in the Malbecco episode are also present here. Redcrosse’s fall into jealousy is a fall into romance, away from allegory and the hero’s epic, providential trajectory. The romance character of Redcrosse’s temptation is not only thematic (its emphasis on error; narrative torque of the allegorical and epic telos; and relative psychological realism and sexuality), but also embedded in the language of Redcrosse’s suspicion. Faced with temptation, he “gan himself aduise / To proue his sense, and tempt her faigned truth.” Theological ironies aside, “proue” and “tempt” belong to the language of empirical experiment, of the related term (especially close in the period) experience, of the kind of trial and error virtually constitutive of romance.

Above all, this lurch from allegory and epic to romance is a result of Redcrosse’s doubts, about Una and about himself. One hears this in the play on doubt in the lines “Her doubtfull words made that redoubted knight / Suspect her truth.” As A.C. Hamilton points out in the notes to his edition of the poem, “redoubted” is ironically inappropriate here as a description of Redcrosse; untested at the opening of the poem (“Yet armes till that time did he neuer wield” [I.i.1]), he will not have earned a reputation until he has
fulfilled his pledge to save Una’s community from the dragon.\textsuperscript{179} Suspicion, then – Redcrosse’s propensity to suspect Una’s truth, \textit{the} truth – is part of a strong undertow of sexual jealousy, theological doubt, and romantic error pulling Redcrosse away from his task.

But even to put it this way simplifies the moral and epistemological complexity here. The ironies of “doubtful” and “redoubted” in the passage above go deeper. Even if one accepts Hamilton’s view as normative – that “doubtfull” undercuts “redoubted” – one feels a nagging suspicion that the opposite is true: if Redcrosse is to be “redoubted,” it will only be because he doubts. There is, of course, the fact that Redcrosse in some sense should be “doubtfull” here: he is confronted with the false Una, after all. His error is not to be “doubtfull,” but rather his response to the pressure of doubt: to abandon Una, rather than to distinguish the true Una from the false. The fact that at this moment he “suspects” the false Una’s “truth” is entirely right; suspicion is not, therefore, \textit{in itself} blameworthy, here or in the poem more generally.

This is even clearer when one considers what Redcrosse has been taught earlier in this first canto of the poem. Seeking shelter from a storm, Redcrosse, Una, and her dwarf become lost in a forest, and eventually come upon “a hollow caue, / Amid the thickest woods” (I.i.11), at which point Una begins to have her own “doubt”s:

\begin{quote}
Be well aware, quoth then that Ladie milde,  
Least suddaine mischeife ye too rash prouoke:  
The danger hid, the place vnkowne and wilde,  
Breeds dreadfull \textbf{doubts}: Oft fire is without smoke,  
And perrill without show: therefore your stroke
\end{quote}

\textsuperscript{179} “[Redcrosse] does not deserve this title [“redoubted”] until xii 29.7 for slaying the dragon. Through her words, he is again assailed by doubt” (Hamilton, notes to \textit{The Faerie Queene}, 43).
Sir knight with-hold, till further tryall be made.
Ah Ladie (sayd he) shame were to reuoke,
The forward footing for an hidden shade:
Vertue gies her selfe light, through darkenesse for to wade.

Yea but (quoth she) the peril of this place
I better wot then you, though nowe too late,
To wish you backe returne with foule disgrace,
Yet wisedome warnes, whilst foot is in the gate,
To stay the steppe, ere forced to retrate.
This is the wandring wood, this Errours den,
A monster vile, whom God and man does hate,
**Therefore I read beware.** Fly fly (quoth then
The fearefull Dwarfe:) this is no place for liuing men.
(I.i.12-13; my emphasis)

This is perhaps the primal scene of the poem, even more crucial than the nuanced tableau that opens the canto. It is Redcrosse’s rough-and-tumble introduction into allegory and the hermeneutic complications of the poem’s world. This is where he learns to read allegoricaly. Una’s fateful words contain everything: “Therefore I read beware.”

Allegory will be for Redcrosse a matter of *reading*, of interpreting his surroundings as a legible system of signs; this despite the fact that the first object of allegorical reading, the monster Errour, spews books along with venom, giving us the first hint of the poem’s sustained skepticism toward print and reading. Most interesting for our purposes is Una’s injunction to *wariness*, a state of alert and skepticism. Una’s justification of her warning emphasizes the prudential value of doubt (“Be well aware… // The danger hid, the place vnknowne and wild, / Breeds dreadful doub...”) and of experimental, inferential tests (“therefore your stroke / Sir knight withold, till further tryall be made”) – both activities that Redcrosse’s temptation scene seems to condemn. So Redcrosse’s success on his journey requires not just faith, but also an active, poised defense against the enemies of faith, the capacity to read the always allegorical and often hostile surroundings. And the
tools of that defense – wariness, doubt, canny inference, allegorical reading – bear a strong resemblance to suspicion.

After this crucial scene, wariness remains a central component of the often painful education into experience and allegory undergone by the heroes of the first two books of the poem. The disasters in these books are almost always the result of inattention of relaxation, as when, in I.vii, Redcrosse, escaped from the House of Pride, disarms himself by an enchanted fountain and dallies with Duessa, “carelesse of his health, and of his fame,” only to be surprised and kidnapped by the giant Orgoglio. After rescuing Redcrosse and defeating Orgoglio, Arthur advises Una and Redcrosse

But th’only good, that growes of passed feare,  
Is to be wise, and ware of like agein.  
This daies ensample hath this lesson deare  
Deepe written in my heart with yron pen,  
That blisse may not abide in state of mortal men.  
(I.viii.44)

“[T]o be wise, and ware of like again”: wariness is a form of wisdom in the poem. It is perhaps the most basic lesson Redcrosse must learn, and the one he never seems to be able to get right. The poem continually returns to this basic axiom, reaffirms it, and questions it. The variant of wise wariness in Book II is what Jeff Dolven has observed as the Palmer’s tuition to Guyon in making examples. Guyon begins his adventures with an admirable but possibly dangerous propensity to sympathetic identification. By turning the experiences and persons around him into examples, he seals himself off from their affective claims, “saving [himself] again and again from exposure, involvement, entanglement.”

libidinous Bower of Bliss suggest that his wary self-regulation has a panicked, repressive edge. These problems are not destroyed with the Bower of Bliss: the obsession with slander’s taints in the 1596 *Faerie Queene* is a mutation of them; at times, during the second half of the poem, one feels they are on the verge of overwhelming and exhausting the poem.

Redcrosse’s temptation makes suspicion seem like a corrosive effect of romance, a distraction from the knight’s central mission and a mark of sexual and spiritual imperfection. But suspicion, or something awfully close to it – wariness – is essential to successfully navigating the complexities and dangers of allegory, for Redcrosse and Guyon both. One might argue that jealousy distinguishes the two, that the latter examples are untainted by the conflicted sexuality of the former. And yet Guyon’s example suggests that wariness is necessary precisely because of the knight’s worryingly strong affective and sexual energies. The contradictions that emerge parallel what we’ve already seen in the Malbecco episode. The poem condemns suspicion and relates it to jealousy; it plays the two legal models of suspicion against each other as part of the larger model instabilities of the poem. But the distinctions do not hold up for long: suspicion seems as central to allegorical capture and reading as it does to the trial and error of romance. The jealous sexuality that the poem seems to target, isolate, and cast off in Redcrosse’s temptation scene and in Malbecco’s transformation contaminates everything around them.

The quicksilver nature of Spenser’s representations of suspicion in *The Faerie Queene*, their matchless mutability, creates a special feeling of cognitive paralysis. At the instant one seems to arrive at a stable perspective on suspicion, that perspective is
revealed as partial or illusory. Any claim about suspicion seems true one moment, and false the next; or perhaps any claim is true and false at the same time, and this paradox is part of suspicion’s especially vertiginous quality. And one feels paralyzed too because the poem always seems ahead of its reader, accommodating first one reading of suspicion, then another, and always hedging its position.

In the next section, I want to consider two theoretical accounts of suspicion from modern criticism. The first, paranoia, will help us to think through the totalizing impression of suspicion, the way it seems always to anticipate and outmaneuver any one interpretation, position, or criticism. The second, ideology, addresses the paradoxical sense of suspicion producing claims that are both true and false. I will conclude the section by examining how paranoia and ideology might not only clarify suspicion in the poem, but also distinguish the poem’s treatment of the concept from the law’s.

**Suspicion, Paranoia, Ideology**

In the past decade, suspicion has become a chief object of suspicion among literary critics. A great deal of ink has been spilled over the question of whether criticism can think around or beyond fundamentally suspicious methods of reading, which often go under the label “critique,” or, even more common, the “hermeneutics of suspicion.” The latter phrase, as I noted at the beginning of this chapter, was originally used by Paul Ricoeur to describe distinctly modern habits of interpretation shared by Marx, Nietzsche, and Freud. A representative statement of this new critical trend, and one whose language is especially suggestive for *The Faerie Queene*, can be found in Rita Felski’s 2009 *Profession* article “After Suspicion”: “the hermeneutics of suspicion promotes a
sensibility that prides itself on its uncompromising wariness and hypervigilance.” As alternatives, theorists have attempted to describe forms of “post-critical” or “reparative” reading. One might say, then, that the critics have finally caught up with Spenser, or at least that they face the same dilemma the poem poses some 400 years earlier: while recognizing their historical dependency on suspicion, they are uncomfortable with it, and some even repudiate it.

The reaction against suspicion, in general and in its details (the reliance on Ricoeur’s phrase, the interest in “reparative reading”), can be traced in large part to Eve Kosofsky Sedgwick’s essay “Paranoid Reading, Reparative Reading,” a chapter of her 2003 book *Touching Feeling*. Crucial for our purposes is Sedgwick’s virtual identification of Ricoeur’s “hermeneutics of suspicion” with the psychoanalytic concept of paranoia: she claims that “the methodological centrality of suspicion to current critical practice has involved a concomitant privileging of the concept of paranoia.” Her argument proceeds by outlining the key structural features of paranoia and locating them in suspicious readings. Paranoia, according to Sedgwick, is “anticipatory”; it “is a strong theory”; and it “places its faith in exposure.” Paranoia is anticipatory because it always finds precisely the evil it predicts to find (“The first imperative of paranoia is There must be no bad surprises”); it is a strong theory in its capacity to anticipate and explain all the elements of the world according to its theory; and it justifies itself by exposing the

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183 *Id.*, 130 (italics in text).
184 *Id.* (italics in text).
evils it has already predicted, the bad surprises it promises to neutralize. Similarly,
suspicious reading eliminates the possibility of negative surprise by always approaching
the text with the assumption that it manifests the signs of a concealed and hostile or
undesirable element (e.g. ressentiment, forces of socioeconomic inequality, psychic
repression) that a responsible reading must expose. The hermeneutics of suspicion is a
hemeneutics of paranoia. As a form of paranoia, suspicious reading aims to consume its
world, or at least to eliminate the external world’s mystery: the world can contain no
mystery to the paranoid, no bad surprises; it is entirely managed by the paranoid’s
system, and its purpose is merely to confirm what the paranoid already knows about it.

On first blush, for all the seeming anachronism of the application, Sedgwick’s
analysis of suspicion resonates powerfully with Spenser’s, nowhere more so than in
Malbecco’s story. Searching for the eloped Hellenore and Paridell, Malbecco comes
across what appears to be two lovers:

One day, as hee forpassed by the plaine
With weary pace, he far away espied
A couple, seeming well to be his twain,
Which houed close vnder a forest side,
As if they lay in wait, or else them selues did hide.

Well weened hee, that those the same mote bee,
And as he better did their shape auize,
Him seemed more their maner did agree;
For th’one was armed all in warlike wize,
Whom, to be Paridell he did deuize;
And th’other al yclad in garments light,
Discolourd like to womanish disguise,
He did resemble to his lady bright,
And euer his faint hart much earned at the sight.

And euer faine he towards them would goe,
But yet durst not for dread approchen nie,
But stood aloofe, vnweeting what to doe,
Till that prickt forth with loues extremity,
That is the father of fowle gealosy, 
He closely nearer crept, the truth to weet:
But, as he nigher drew, he easily
Might scerne, that it was not his sweetest sweet,
Ne yet her Belamour, the partner of his sheet. 
(III.x.20-22)
The couple, it turns out, is Braggadochio and Trompart, the buffoonish, ersatz knight-and-squire team who provide comic relief through much of the poem. What could explain Malbecco’s extraordinary misperception? Certainly, one should count this among the many gender-bending, queer moments of the poem, akin perhaps to the erotically feminized young men that decorate it (Adonis, Verdant), or the great scene of Ovidian androgyny that concludes the original 1590 edition. What could Braggadochio and a cross-dressing Trompart be doing “vnder a forest side”? Whatever the answer, equally important to the tongue-and-cheek fun of the passage is the difficulty disentangling the reality of the situation from Malbecco’s jealousy-haunted mind. He sees what he wants (his hearte “earned at the sight”; he is “faine” to approach them); he gets the disaster he has already imagined and predicted.

Malbecco’s paranoia is perfected when he becomes Gealosy. Everything about him is dramatically reduced: hardly substantial himself (all his substance was consum’d to nought (III.xi.57)), just “an Aery spright” (III.x.57), he is confined to a small cave. His jealousy might not have been able to control its previous objects (Hellenore, his wealth), but now he and his world are virtually coextensive: a paranoid’s dream come true. Malbecco’s existence has become entirely one of negative affect and sadomasochism: Yet can he neuer dye, but dying liues, / And doth himself with sorrow new sustaine, / That death and life attonice vnto him giues. / And painefull pleasure turnes to pleasing pain (III.x.60). And it is entirely one of anticipation and exposure:
Malbecco lives in “continuall feare / Of that rockes fall, which euer and anon / Threates with huge ruine him to fall vpon, / That he dare neuer sleepe, but that one eye / Still ope he keepes for that occasion” (III.x.58); there can be no bad surprise for Malbecco, because his demise is completely apparent, predicted and laid bare in advance. Put in more modern terms, Spenser’s allegory of jealousy is an allegory of paranoia.

The resemblance between Spenserian jealousy and paranoia has implications that reach beyond this scene. As I noted earlier, Malbecco’s transformation is exceptional: no other character in the poem becomes a personification. I argued that it is also unusually self-conscious: the most dramatic, naked act of allegorical capture in the poem, it connects the episode to one of the poem’s most fundamental processes. It is as if the poem were suggesting an uncomfortable proximity of allegory to jealousy. By forcing us to consider the relationship between allegory and jealousy, Spenser raises the possibility that his allegory is a form of paranoia, a delusion as claustrophobic and sad as Malbecco’s final tableau.

The question of allegory’s relationship to paranoia appears anachronistic. But if one takes seriously Sedgwick’s argument about the paranoid character of suspicious reading, then it is deeply relevant. Sharon Best and Stephen Marcus, in a 2009 essay on “Surface Reading,” a contribution to the growing critique of suspicious reading following Sedgwick, note that the “hermeneutics of suspicion” can hardly be restricted to the past two centuries. Indeed, the hermeneutics of suspicion (or, in Best and Marcus’s preferred phrase, “symptomatic reading”) has a long pedigree that includes allegory:

The notion underlying all forms of symptomatic reading, that the most significant truths are not immediately apprehensible and may be veiled or invisible, has a very long history. Umberto Eco traces it back to the
Gnostics in the second century CE, who, in contrast to Greek philosophers who defined reason as noncontradiction, posited truth as secret, deep, and mysterious, and language as inadequate to meaning. Eco might have noted, however, the equally Greek roots of the idea that truth does not lie in evidence directly available to the senses, since this was the point of Plato’s parable of the cave, which influenced not only the Gnostics but also Christians such as Paul, and lead to their emphasis on allegory.\textsuperscript{185}

Allegory is perhaps the original suspicious, paranoid, symptomatic reading.

Thinking along these lines, it seems natural to view \textit{The Faerie Queene} as a paradigmatically paranoid work. It would be hard to imagine a poem more fully structured around anticipation. Spenser’s “Letter to Raleigh,” appended to the end of the 1590 edition of the poem, promises not only a complete allegory of the virtues, but also a convergence of all its narrative currents in its projected final book:

\begin{quote}
The beginning therefore of my history, if it were to be told by an Historiographer should be the twelfth booke which is the last, where I deuise that the Faery Queene kept her Anuall feaste xii. Dayes, vppon which xii. Seueral dayes, the occasions of the xii. Seueral aduentures hapned, which being vndertaken by xii. Seuerall knights, are in these xii books seuerally handled and discoursed.\textsuperscript{186}
\end{quote}

The “darke conceit” of the poem creates a hermeneutic atmosphere in which everything contributes toward the revelation of concealed truth, and Harry Berger has argued influentially that even the “conspicuous irrelevance” of the poem’s rich and digressive


\textsuperscript{186} Hamilton, notes to \textit{The Faerie Queene}, 717.
detail work to reinforce its larger architecture. The poem is, in theory, a complete system, the *kosmos* or “total figure” Angus Fletcher claims to be the goal of allegory generally. Sedgwick notes that “as a strong theory, and as a locus of reflexive mimeticism, paranoia is nothing if not teachable”; and *The Faerie Queene*’s didactic project aims not just to shape its world into a total ethical system, but also to introduce the reader into that world and to mould her into its image.

And *The Faerie Queene* is undoubtedly a poem of negative affects, more so with each episode and book. Arthur’s grim, chastely beautiful advice to Redcrosse and to Una – But th’onely good, that growes of passed feare, / Is to be wise, and ware of like agein (I.viii.44) – gradually becomes a consuming obsession. Many critics have noted the increasing tone of disillusionment that takes over *The Faerie Queene* and the way its concern to escape the taint of slander and corruption threatens to overwhelm its ostensible didactic purpose. The aching wish for rest, retreat, and withdrawal that imbues the second half of the poem, particularly Book VI, with its special sense of melancholy and nostalgia, gives one the impression that Spenser has succumbed to Despair’s (that greatest of lawyerly orators in Faerie Land) suicidal temptations of Redcrosse: Then do no further goe, no further stray, / But here ly down, and to thy rest betake, / Th’ill to

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The poem comes to view the world as a place of loss, suffering, and frustration; and it becomes increasingly seduced by the possibility of forestalling or foregoing the world’s disappointments in a hermitage or quarantine.

And yet to call The Faerie Queene paranoid is to mistake a part of the poem, one of its possibilities, for the whole. For all the systematic order and anticipatory control of its allegory, Spenser’s poem is nothing if not digressive, ambiguous, and surprising. The work’s investment in the narrative spirals and amplifications of romance counter and balance its allegorical certainties. There are palpable, if sometimes brief, moments of unreserved and guileless happiness, in communities such as the satyrs who save Una from Sanloys’s clutches in Book I, canto v: Their harts she gheseth by their humble guise, / And yieldes her to extremitie of time; / So from the ground she fearelesse doth arise, / And walketh forth without suspect of crime (I.vi.13; my emphasis). One thinks here too of the scattered patches of what Jeff Dolven calls “ordinariness” in the poem’s texture, in which an allegorical epistemology is momentarily suspended in a depiction of spontaneous, free, unmediated feeling and action. The poem offers suggestions of a deeper, more fundamental consolation in its visionary moments, such as the “allegorical

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190 Hamilton, in his notes to the final cantos of III.x (387), notes a number of parallels between Malbecco’s transformation into Gelosy and Despaire: the subterranean home, the “immortality” of their fates (Despaire: But death he could not work himselfe thereby; / For thousand times he so him selfe had drest, / Yet nathelesse it could not doe him die, / Till he should die his last, that is eternally (I.x.54); Malbecco: Yet can he neuer dye, but dying liues (III.x.60).

191 See Dolven Scenes of Instruction, 236.
core” of Book III, the Garden of Adonis, which describes cyclical regeneration free from jealousy or suspicion:

But were it not, that Time their troubler is,
All that in this delightfull Gardin growes,
Should happy bee, and haue immortall blis:
For here all plenty, and all pleasure flowes,
And sweete loue gentle fitts amongst them throwes,
Without fell rancor, or fond gealousy;
Franckly each Paramor his leman knows,
Each bird his mate, ne any does enuy
Their goodly merriment, and gay felicity.

There is continuall Spring, and harvest there
Continuall, both meeting at one tyme:
For both the boughs doe laughing blossoms beare
And with fresh colours decke the wanton Pryme,
And eke attonce the heauenly trees they clyme,
Which seeme to labour under their fruities lode:
The whiles the joyous birdes make their pastyme
Emongst the shady leues, their sweet abode,
And their trew loues without suspition tell abrode.
(III.vi.41-42)

Leaving aside the poems various releases from suspicion, Sedgwick’s equation of suspicion with paranoia is arguable. If I have devoted considerable energy in this essay to suggesting that the boundaries separating wariness, suspicion, and jealousy in *The Faerie Queene* are alarmingly thin, those boundaries nonetheless exist. Suspicion is most accurately described as a category between wise wariness and self-destructive jealousy. It possesses some of the poised alert of the former; it also suggests the personal, affective and sexual passions of the latter. The poem sometimes holds the three apart; sometimes it lets them bleed together; but it never lets one forget the difficulty of distinguishing the ultimate goods of suspicion from its potential evils. Suspicion is perhaps a necessary but

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not sufficient condition of both wariness and jealousy, of what *The Faerie Queene* needs and of what it rejects. The poem illuminates this difficult structure with extraordinary honesty. Similarly, we might say that suspicion is a necessary but not sufficient condition of paranoia. A suspicious hermeneutics might *become* paranoid if handled with insufficient delicacy or excessive zeal. But the possibility that it might succumb to paranoia does not obviate its potential for ethical and critical insight; if anything, its insights become more precious. This is what I take to be the full meaning of Freud’s observation, noted by Sedgwick, that psychoanalysis and philosophical systems bear an unnerving resemblance to psychotic delusions.\(^{193}\) Indeed they *do*; but resemblance is not identity.

The other major feature of suspicion that I observed in the last section, its strange propensity for producing contradiction, or positions that seem at once true and false, might be understood by recourse to another term of modern criticism, *ideology*. I am thinking in particular of Theodor Adorno’s elaboration of that concept. For Adorno, ideology is an explanatory system that is, seemingly paradoxically, both true and false:

> As a consciousness which is objectively necessary and yet at the same time false, as the intertwining of truth and falsehood, which is just as distinct from the whole truth as it is from the pure lie, ideology belongs, if not to a modern economy, then, in any case, to a developed urban market economy. *For ideology is justification*. It presupposes the experience of a social condition which has already become problematic and therefore requires a defense just as much as does the idea of justice itself, which would not exist without such necessity for

apologetics and which has its model the exchange of things which are comparable.\textsuperscript{194}

Adorno’s basic point is that ideology is a justification, a way of explaining or defending some given set of conditions through imposing theoretical coherence or consistency on unruly facts. Such a justification is false on the surface, but it also contains the potential for disclosing truth, because close scrutiny of ideology betrays a gap between its consistent, logical totality and the reality of the conditions it describes; it intensifies the persistent disjunction between ideals and social facts. Ideology, for Adorno, is an object of immanent critique, something one can best think past or against by thinking through it, inhabiting its presuppositions and exploiting its internal contradictions.

Again, it seems anachronistic to apply such a critical term to Spenser’s poem, especially given Adorno’s insistence on the relationship of ideology to modern capitalism. And yet, as with paranoia, ideology is a strangely apt tool for understanding suspicion in \textit{The Faerie Queene}. Or perhaps this is not so strange as it appears. No less an authority than Angus Fletcher has argued for the fundamentally ideological character of allegory; indeed, it is the final note sounded in his great study of allegory:

> The strengths of the mode [allegory] are equally clear. It allows for instruction, for rationalizing, for categorizing and codifying, for casting spells and expressing unbidden compulsions, for Spenser’s “pleasing analysis,” and, since aesthetic pleasure is a virtue also, for

romantic storytelling, for satirical complications, and for sheer ornamental display. To conclude, allegories are the natural mirrors of ideology.¹⁹⁵

Undoubtedly Fletcher’s sense of “ideology” is different from Adorno’s, probably less technical and less directly indebted to the traditions of Hegel and Marx. But the term retains the basic shape I have already given it via Adorno: it is a form of justification, a system of explanations and defenses for a given set of facts. And indeed, given what Fletcher notes as its strength “for instruction, for rationalizing and codifying,” what form of art could be better adapted to the expression of ideology than allegory? There can be no doubt that Spenser’s allegory has its own ideological investments: an analysis of Aristotelian private and public virtues, and a celebration of Elizabeth and her regime.

Granted all this, it remains to specify how suspicion itself might be thought to function ideologically. Suspicion seems to be as far as possible from anything that could be described as Spenser’s ideology. I have already devoted much space to demonstrating the poem’s discomfort with suspicion and its association of suspicion with jealousy; and Spenser himself, in his letter to Raleigh, explains the poem’s allegory as a means “for auoyding of gealous opinions and misconstructions,”¹⁹⁶ and claims to have chosen for his subject the ancient legend of king Arthure “as most fitte for the excellency of his person, being made famous by many mens former workes, and also furthest from the daunger of enuy, and suspition of present time.”¹⁹⁷ But I have also argued that there is a stubborn connection between suspicion and the essential processes of the poem: the crime-solving

¹⁹⁵ Fletcher, Allegory, 368.
¹⁹⁶ Spenser, Letter to Raleigh, in The Faerie Queene, 716.
¹⁹⁷ Id., 715.
imperatives of its romance narratives; its ethos of wise wariness; above all, the allegory’s
demand that everything in the poem’s world points to or corresponds with larger
conceptual truths. Suspicion is the technique by which the phenomena of poetic ornament
converts to allegorical noumena. It is the inescapable form of reading the poem demands;
the pockets of resistance to it, of ordinariness or irrelevance, are the exceptions that prove
its rule.

And yet to describe suspicion in The Faerie Queene as merely ideological seems
inadequate. Or perhaps it would be more accurate to say that the easy slip from pointing
out the ideological aspects of suspicion to concluding that The Faerie Queene as a whole
is a product of ideology is a mistake. Borrowing again from Adorno, it might be useful to
think of Spenserian suspicion as a sign of The Faerie Queene’s “authenticity.” In
Adorno’s philosophical lexicon, “authenticity” describes an artwork’s relationship to
ideology; an authentic work of art restages, in the conflict between its own internal
consistencies and discontinuities, the larger structural paradoxes of the society to which it
belongs. Writing of late Beethoven, Adorno claims:

Art works of the highest rank are distinguished from the others not
through their success – for in what have they succeeded? – but through
the manner of their failure. For the problems within them, both the
immanent, aesthetic problems and the social ones. . . . are so posed that
the attempt to solve them must fail, whereas the failure of lesser works
is accidental, a matter of mere subjective incapacity. A work of art is
great when it registers a failed attempt to reconcile objective
antinomies. That is its truth and its ‘success’: to have come up against
its own limit. In these terms, any work of art which succeeds through
not reaching this limit is a failure. This theory states the formal law
which determines the transition from the ‘classical’ to the late
Beethoven, in such a way that the failure *objectively* implicated by the former is disclosed by the latter, raised to self-awareness, cleansed of the appearance of success and lifted, for just this reason, to the level of philosophical succeeding.\(^{198}\)

This seems to capture some of the special power of suspicion in *The Faerie Queene*: tracking suspicion helps show the poem “com[ing] up against its own limit”; it illuminates precisely those moments at which Spenser seems least able to “reconcile the objective antinomies” of his epic. Following suspicion in the poem, we have identified the manner in which the poem fails – which is to say, what makes it art.

But even Adorno’s subtle analysis of ideology does not exhaust *The Faerie Queene*’s unique sophistication. For Adorno’s model may allow for a formal self-consciousness of limitation on the part of the art work, but it tends to assume that those formal contradictions manifest an unconscious knowledge of social contradictions. This is where Spenser is exceptional. *The Faerie Queen* is equally conscious of the contradictions of its formal and social systems, for the two are inextricably bound: the fashioning of a virtuous gentleman, the celebration of Elizabeth, the chivalric nostalgia all depend on the polymodal structure of the poem, and vice versa. This is why many of the poem’s best critics have returned over and over to the uncanny self-consciousness that permeates *The Faerie Queene*. Harry Berger, for example, has recently made preliminary steps toward “an ideological reading of *The Faerie Queen* as a critique of the

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cultural discourses it represents.” Similarly, Jeff Dolven has observed that the poem “is preeminently restless about the kinds of reading brought to bear upon it, and therefore the kinds of explanation. As soon as you think you have the key, it changes the locks.” Dolven has taken this as evidence of the poem’s unwillingness to fulfill its didactic obligation (how can a poem teach if one cannot pin down its lesson), and of its governing panic, its tragicomic careening from one ideological position to another, and its shame at those ideological crutches.

I have great sympathy with these interpretations; indeed, I could hardly imagine my reading of the poem without them. I also want to register a small space of difference from them. I share Berger’s sense of the poem’s ideological self-consciousness; but I do not think that self-consciousness resolves into critique, critique alone. And I sense the same hermeneutic negative capability in The Faerie Queene that Dolven writes about so eloquently; I am not so sure, though, that this amounts to ideological schizophrenia. Rather, thinking about suspicion in The Faerie Queene suggests that there might be yet another paradox here: the poem’s self-consciousness and interpretive capaciousness is a result of a kind of ideological consistency.

To put it in the more specific terms of this chapter: the poem is built such that it requires suspicion for a number of crucial ethical and modal activities (the hide-and-seek of romance; allegorical reading; wise wariness). These activities do not always cooperate; sometimes they seem antithetical. Further, the poem registers that suspicion is as much


200 Dolven, “Panic’s Castle,” 12.
destructive as productive of virtue: it is always potentially jealousy, slander, and vulgar misconception. Suspicion is an ideology; it is true and false; it is contradictory. Like any ideology, it is consistently inconsistent. The poem is not a defense or a critique of ideology: it is rather an experiment in ideology; it is a work that tries not to represent an ideology but to live with, through, and in it. The word that best captures this experience is ambivalence. *The Faerie Queene* loves and hates suspicion, that which nourishes and threatens it. It is the poem that dotes yet doubts, suspects yet strongly loves.

We seem to have strayed far from the law. And yet the theoretical claims I have made about suspicion in *The Faerie Queene* have important implications for the legal doctrines of suspicion on which the poem draws. It will be useful to move in the opposite direction than the one I have just taken, beginning by thinking about legal suspicion in terms of ideology before turning to paranoia.

I have argued that, in *The Faerie Queene*, suspicion has an ideological character. It is essential to the assumptions and structure of the poem; it also creates barely tolerable strains on those assumptions and structures. Spenser needs and condemns it; it becomes strongly associated with antagonistic modes and ideals. It is essential and contradictory. Looking back at the different versions of suspicion alive in the legal thinking of the period, the same dynamic becomes apparent. Suspicion is as central to the law as it is to *The Faerie Queene*. Without it, the law’s epistemology would collapse. Suspicion is necessary to the narrative structures surrounding criminal investigation and prosecution: it connects crimes to criminal actors and sets the various standards for the justification of arrest and conviction. It is no surprise that Spenser would use the phrase “without suspect
of crime,” for crime becomes unthinkable without suspicion; or, at the very least, the redress of crime by the law would become unthinkable. Suspicion is the *sine qua non* of criminal law.

And like all ideologies, legal suspicion is ultimately contradictory. As I described in an earlier section, the emerging modern sense of suspicion as “probable cause” is beset by epistemological anxieties. If suspicion and conviction are meant to exist at different points on a probabilistic scale, where does one fix the points or draw the boundaries? The balance is difficult to strike. If one builds too strong a standard of suspicion, one risks what Barabara Shapiro calls a “trial before a trial”: the suspect is convicted before he is tried. On the other hand, if one relaxes the standard excessively, suspicion becomes the flimsy *imprimatur* for an arbitrary exercise of power: not probability, but the merest possibility. Further, the rational basis of suspicion is at best partial and historical. As late as Coke, English jurists emphasize the “individual and personal” nature of suspicion. The difference between suspicion and rumor haunts the period. Suspicion is a less a single concept than a knot of conflicts, or a field of charged antinomies. In this sense, it reminds one of Adorno’s point that “ideology is justification”: the various legal definitions of suspicion in the Renaissance are forms of justification, ways of imposing coherence that ultimately only exacerbate the incoherence from which they are made.

One might say that these conclusions are unremarkable; it can hardly be novel to call a legal concept ideological, or to use a literary text as a case study of legal ideology. I am aware that my argument in this chapter risks the kind of chiasmus-like oversubtlety I have criticized elsewhere in the dissertation: poetry and law reproducing each other’s deep structures. But my point is not just to demonstrate the parallel ideological character
of suspicion in *The Faerie Queene* and in English Renaissance law; rather, I would argue that suspicion manifests powerful and exclusive differences between the two. For if suspicion fulfills a similar ideological role in Spenser and in English law, there could not be a greater difference between the ways in which the poet and the jurists treat that role. Spenser is maddeningly honest about the inconsistencies, contradictions, and paradoxes that emerge from *The Faerie Queene*’s surface consistencies. Suspicion is necessary and intolerable to his poem; and he seems to know that, and the poem seems to gain power from the way it harnesses this seemingly impossible tension. Perhaps this is another way of confirming Harry Berger’s argument that the “Spenserian dynamics” are those of the *discordia concors*. Suspenserian suspicion is a harmony of discords.

Rather the opposite dynamic appears in the law. The law is often contradictory: it manages competing values, intentions, and interests. Suspicion is just one example of its conflicted structure. But the law can only afford to acknowledge so much contradiction. It must ultimately adopt a standard of suspicion. I have suggested how the concept pulls in multiple directions: toward probability and toward certainty; toward the subjective and personal, and toward the communal and objective; toward rhetorical flexibility and toward axiomatic stasis. Unlike Spenser, the law cannot fully acknowledge these antinomies; in order to be enforceable, it must choose. As the common law’s doctrine of suspicion developed into a more probabilistic, empirical model tied to the modern jury system, it abandoned or suppressed the very different notion of suspicion from which it emerged: that of personal accusation, divine adjudication, and irrational, absolute certainty. Were the law simply to hold both sides of the concept in the balance, it would

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risk practical incoherence. Moreover, its choice must seem necessary and irrefutable; it must not merely be a chance or an alternative, but rather an evolution. If Spenserian suspicion is an experiment in ideology, legal suspicion is the thing itself.

If legal suspicion is an ideology, might it have some resemblance, as Spenserian suspicion does, to paranoia? Certainly, it fulfills Sedgwick’s basic requirements. Suspicion is a powerfully anticipatory form of thought. It has the capacity to produce what it looks for: suspicion makes suspects. Where one might see only meaningless violence or accident, suspicion finds motive, intent, and probable cause. It is arguably what Sedgwick would call “reflexive” and “mimetic,” which is to say that is both “a way of knowing” and “a thing known.”

There is a danger that the tautological structure Sedgwick finds in paranoia can manifest itself in suspicion. The specter of tautology lingers in legal suspicion from the legacy of ordeals, where the result automatically confirms divine judgment on the case: you are guilty because you have failed the trial, and vice versa. It lingers too in the epistemological anxieties around suspicion that Shapiro details, the way in which suspicion can become a trial before a trial, or an empty excuse for the exercise of power. And legal suspicion is a theory of negative affects: it aims not to produce pleasure but to minimize pain by identifying, punishing, and thereby containing crime. It places its faith in exposure. Certainly criticism has made arguments for the paranoid character of suspicion in the law: they can be found in the kind of critical theory, influenced by the early Foucault, that Sedgwick calls into question in Touching Feeling.

As in Spenser, however, it would be going too far here to equate suspicion with

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202 Sedgwick, Touching Feeling, 131.
paranoia. The very slipperiness of suspicion in the law might save it: prone as it is in the common law tradition to such epistemological fluctuations, legal suspicion can probably never achieve the rigid, consuming determinism of paranoia. Because suspicion is so hard to pin down, it always available for reform and revision. Just as it was important to separate suspicion from jealousy in *The Faerie Queene*, so too it is not only useful but necessary to recognize the difference between legal suspicion and a genuinely paranoid political structure, such as that of torture.\(^{203}\) Not to make such distinctions trivializes genuine instances of paranoia in law and politics; perhaps it also carries with it the irony of accepting the English common law’s own self-image as constant, total, and perfect.

So suspicion in Spenser and in the law is an intermediate and mutable category. The difference is not so much in the category itself as its treatment in *The Faerie Queene* and the common law. The poem is unnervingly insistent in its honesty: one gets suspicion in all its “entanglement,” to borrow Gordon Teskey’s description of Spenserian thought.\(^{204}\) The different possibilities and ramifications of the concept, its seeming promise of coherence and its ultimate structural contradiction, are woven through the poem’s vast intellectual texture. The law must always insist on a single and relatively stable standard of suspicion, even if that standard, and perhaps the concept itself, is in fact constantly being adjusted and debated by legal theory. In *The Faerie Queene*, we are never able to forget that the heroic *ethos* of wariness and suspicion that governs the good

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\(^{203}\) For the classic analysis of the “structure of torture,” which reveals such tyrannical exercises of power to be essentially paranoid in form (though I do not believe Scarry makes reference to paranoia), see Elaine Scarry, *The Body in Pain* (New York: Oxford University Press, 1988), 27-59.

\(^{204}\) Teskey, “Thinking Moments,” 114.
deeds of the poem’s heroic inhabitants is importantly difficult to separate from their failures and their dark mirror images, the jealousy that nearly destroys Redcrosse and that takes full possession of Malbecco. In the same period, the law was in the process of disavowing one model of suspicion in favor of another; and once the modern notion of “satisfied conscience” or “probable cause” was developed in the seventeenth century, lawyers were not eager to remind themselves the concept owed much of their past life to very different forces: to notions of certainty, faith, subjectivity, and affective intensity. That heritage was still visible to Spenser, and in The Faerie Queene he decided to keep it alive in a transposed form. It is part of his habit as what Teskey would call an “archaeological” thinker, one who does not go to radical first principles, but who rather lets his work become an “index of the passage of time.”

The related but distinct uses to which suspicion is put in Spenser and in the English common law point to a larger dynamic between legal and poetic fictionmaking. Both The Faerie Queene and the common law are extended exercises in fiction, in the sense that they both make worlds that operate at different levels of intensity and proximity to experience. And in both of these grand fictions, suspicion acts as a central epistemological principle: it is one of the most important ways by which Spenser’s poem fashions its world and its virtues, and by which the law understands crime. Without suspicion, both the poem and the law would be unrecognizably different. In both cases, suspicion seems less a tool to produce particular persons, psychologized or otherwise (which is what critics tend to argue about the category) than a systematic building block,

Teskey, “Thinking Moments, 118.
a primary element of ideological compounds.

The distinct uses of suspicion in these two systems, in turn, reveal the pervasive differences between legal and poetic fictions. Spenser presents suspicion as a productive contradiction: it drives his poem along; it also threatens it at every turn. In English law, suspicion is presented as a stable and enforceable practical tool, even as it is in fact operating in constant strain with alternative versions of itself. This is so because poetry and law use fiction in a manner that might be described as symmetrical and opposed. Philip Sidney claimed that the poet “never affirmeth, and therefore never lieth”; in other words, the fiction of poets is neither true nor false. Conversely, legal fictions, whether in the technical example of jurisdictional sleights of hand or in a more structural example like suspicion, are both false and true: false in their violation of fact and theory, and true in their power to become enforceable, institutional reality.

Elaine Scarry offers an excellent model for approaching this paradox. As Scarry observes, humanists have pointed out with increasing insistence that all the works of culture – not just works of art but also the inventions of law and medicine and science and technology, even such general notions as “the wilderness” – are fictions, things made up by the imagination. Yet most works of culture are not recognized as being products of the imagination. Scarry suggests this is because a technological breakthrough or a theory of evolution or justice passes through the stage of imaginative invention, or of “making-up,” and becomes accepted as part of the fabric of our everyday life: cultural fictions are

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“made real,” ratified into law, verified by science, rehearsed into habit and custom. Works of art, by contrast, never pass beyond the first stage of “making up”: they retain, indeed they draw their peculiar strength from, their overt fictionality. And in most circumstances, Scarry reminds us, this is how things should and must be: were we always to point out the fictionality of every cultural artifact, we would be paralyzed; and were we to collapse the distinction between art and the rest of culture, we would deprive art of its rightfully privileged role as the place where the imagination is openly celebrated, expanded, and explored. In an emergency, when the larger culture badly needs repair or reform, art, by showing nakedly the imagination at work, can teach us about how to make, unmake, or remake our world.

Suspicion shows the point at which Spenser and the law’s fictions touch; it also shows where they part, the different poles of creation from which their energies radiate.

**Coda: True Vntruely Drad**

In its close readings, this chapter has focused on the 1590 *Faerie Queene*, making occasional general remarks on the structure of the whole poem as we have it and as projected by the “Letter to Raleigh.” In conclusion, I give detailed consideration to an episode from the 1596 *Faerie Queene*: Britomart’s rescue of Artagall from Radigund in Book V, cantos vi and vii. As will quickly become apparent, the episode is relevant for the prominent role it gives to suspicion and jealousy, and for its placement in a wider context of an allegory of justice and legal interpretation.

The episode begins in the wake of a disaster for Artagall, Spenser’s Knight of Justice. In V.iv, Artagall rescues Sir Terpine from one of the many angry mobs of Book
V; this one, tellingly, is made of women. Once freed from their clutches, Terpine tells Artegall that the crowd answers to Radigund, an Amazon leader who has made it her job to take exact vengeance for her unrequited love of Bellamont by shaming knights. It is instructive to note that this story that makes up the central cantos of Book V derives, ultimately, from one woman’s jealousy – Radigund’s – and is resolved at least in part, I will argue, by another’s, Britomart’s. This is not exceptional: the challenges of the Book of Justice are shot through with sexuality from its very beginning, in the apprehension of Sir Sanglier in V.1.

Artegall’s downfall is similarly charged with sexual energy; or at the very least, it suggests a kind of displacement of rational judiciousness with emotion that bears some resemblance to jealousy and other passionate affects. After an initial, inconclusive battle, Radigund sends her “trusty Mayd” Clarin to challenge Artegall to personal combat; she also has Clarin propose “conditions” for the combat that require Artegall to submit to Clarin’s “law” if he is defeated, and vice versa:

But these conditions do to him propound,
That if I vanquish him, he shall obay
My law, and euer to my lore be bound,
And so will I, if he me vanquish may;
Whatever he shall like to doe or say.
(V.vi.49)

Artegall accepts the challenge to combat, and at least implicitly seems inclined to accept the concomitant terms. This is already a betrayal of his commitment to Justice: Radigund’s is “an improper law,” and to subject himself to its jurisdiction unwiselegitimates it.

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208 Hamilton, notes to *The Faerie Queene*, 538.
Artegall compounds the misguided scrupulousness of his adherence to Radigund’s illegitimate terms with an equally inapt leniency toward his opponent in combat. After gaining the upper hand against the Amazon, Artegall unlaces Radigund’s helmet, but stops from beheading her after seeing her exposed face:

But when as he doscouered had her face
He saw his senses straunge astonishment,
A miracle of natures goodly grace,
In her faire visage voide of ornament,
But bath’d in bloud and sweat together ment;
Which in the rudeness of the euill plight,
Bewrayd the signes of feature excellent:
Like as the Moone in foggie winters night,
Doth seeme to be her selfe, though darkned be her light.
(V.v.12)

Artegall’s “astonishment” is likely twofold: pity for a newly humanized foe, particularly a woman, regardless of her moral status and martial prowess; and attraction to Radigund. Artegall has a special weakness for women he fights and defeats in combat (this is how he met he Britomart in IV.vi), and there is more than a hint of eroticized violence in the description here, moving as it does from “A miracle of natures goodly grace” to “her faire visage voide of ornament, / But bath’d in bloud and sweat together ment.” In any case, whatever affective energies are awoken in Artegall, they are enough to move him not only to spare Radigund, but also to give himself up: he refuses to engage in anything but a defensive action against her after she recovers, and is eventually defeated:

So was he ouercome, not ouercome,
But to her yielded of his own accord;
Yet was he iustly damned by the doome,
Of his owne mouth, that spake so wareless word,
To be her thrall, and seruice her afford.
(V.v.17)
Like Radigund’s other captives, Artegall is stripped of his arms and dressed in women’s clothes. He also becomes the focus of both Radigund’s and Clarin’s erotic attentions. His capture is not just an incidental or narrative disruption; it symbolizes a structural threat to the allegory of justice. Artegall has simultaneously engaged in bad legal formalism and in bad legal realism: he has wrongly decided to enter a system of laws he should have rejected, and he has wrongly exercised equity in a moment at which justice should have been pursued rigorously. His redemption will necessarily entail the restoration of both strict construction and of equity to their proper places.

The redemption comes from Britomart, and through her suspicion. V.vi begins by assuring us of Artegall’s good behavior in prison and chaste resistance to Radigund’s and Clarin’s overtures; the poem’s narrator tells us that Britomart is not prone to believe in her beloved’s good behavior:

Yet his owne loue, the noble Britomart,
Scarse so conceiued in her iealous thought,
What time sad tidings of his balefull smart
In womans bondage, Talus to her brought;
Brought in vntimely houre, ere it was sought.
For after that the vtmost date, assynde
For his returne, she waited had for nought,
She gan to cast in her misdoubtfull mynd
A thousand feares, that loue-sicke fancies faine to fynde.

Sometime she feared, least some hard mishap
Had him misfalne in his aduenturous quest;
Someitme least his false foe did him entrap
In traytrous traine, or had vnwares opprest;
But most she did her troubled mynd molest,
Least some new loue had him from her possest;
Yet loth she was, since she no ill did heare,
To think of him so ill: yet could she not forbeare. (V.vi.3-4)
Britomart’s fears are a blend of calculated suspicion (reckoning the possibility of misfortune now that the expected date of Artegaill’s return has passed) and passionate jealousy (her “loue-sicke fancies”). They are also broadly accurate: Artegaill has in fact been oppressed by his foe; if he has not taken a new lover, he is in danger of being taken by one. All but the worst of her fears are true.

Britomart’s suspicion is accurate and useful; because of it, she literally places herself on guard, looking from a window in the direction of Artegaill’s journey, whence Talus, coming with word of Artegaill’s capture, soon appears. The minute Talus indicates with uncharacteristic embarrassment that Artegaill is in the thrall of a “Tyrannesse” rather than a “Tyrant,” Britomart cuts the iron man off; jealousy overwhelms any more prudent suspicion, and she lurches perilously close to what I have earlier described as paranoia:

Cease thou bad newwes-man, badly does thou hide
Thy maisters shame, in harlots bondage tide.
The rest my selfe too readily can spell.
With that in rage she turn’d from him aside,
Forcing in vaine the rest to her to tell.
And to her chamber went like solitary cell.
(V.vi.11)

Like Sedgwick’s paranoid reader, Britomart already knows the bad news, and therefore needn’t hear Talus’ attempts at amelioration or consolation. There is a risk that she might become another Malbecco, a feminine Gealousy: confined to a “cell,” sealed in a closed circuit of absolute negative knowledge. Were Britomart’s jealousy to prevail, there would be no need to find Artegaill: why inquire after the betrayal you already know?

But jealousy does not prevail.

But when she had with such vnquiet fits
Her selfe there close afflicted long in vaine,
Yet found no easement in her troubled wits,
She vnto Talus forth return’d againe,
By change of place seeking to ease her pain;
And gan enquire of him, with milder mood,
The certaine cause of Artegals detain;
And what he did, and in what state he stood,
And whether he did woo, or whether he were woo’d.

(V.vi.15)

Britomart’s return to a “milder mood” is also a return to suspicion. Having restrained her emotions, she is able to “enquire” after “cause[s]”, to think and to calculate. And, suspicious but uncertain, she is capable of investigation and sets off for Radigund’s keep.

The suspicious path Britomart chooses makes all the difference. By controlling her jealousy and acting on her suspicion, Britomart sets the allegory of justice aright. She finishes off the sons of Dolon; visits the Temple of Isis and has a vision of the line she will found with Artegall; defeats Radigund, frees Artegall, and restores the rule of law (and of men) to Radigund’s people. Viewing the depictions of Iris and Osiris, she sees the correct relation of equity to law disrupted by Artegall’s foolish adherence to Radigund’s conditions; returning the Amazons to their original order, she asserts the letter of the true law over the false distortions of Radigund’s regime. Suspicion saves justice.

But its triumph is equivocal, nowhere more so than at its climactic point.

Britomart, having killed Radigund, liberates Artegall and Radigund’s other cross-dressed prisoners. It is one of the strangest moments in The Faerie Queene:

At last when as to her owne Loue she came,
Whom like disguise no lesse deformed had,
At sight thereof abasht with secret shame,
She turnd her head aside, as nothing glad,
To haue beheld a spectacle so bad:
And then too well beleu’d, that which tofore
jealous suspect as true vntruely drad,
Which vaine conceipt now nourishing no more,
She sought with ruth to salue his sad misfortunes sore.

(V.vii.38)
Even at the level of paraphrase, seasoned Spenserians do not know what is happening.

Hamilton glosses lines 6-8 as

Possibly, ‘she sees now how untrue was her jealous suspicion (suspect)’; but more likely, ‘the sight of him in drag leads her to believe what before she had only suspected, that he has been unfaithful to her’. Either way, her fears are confirmed at the moment they are dismissed as vain conceit.\(^{209}\)

What exactly is the suspicion here: that Artegall has been defeated? Made effeminate? That he has betrayed Britomart with Radigund? And is the suspicion confirmed, or denied? It is impossible to know; what is certain is that Britomart finds her “Jealous suspect” “true vntruely drad.” Which is to say that is like all suspicions, in the poem and in the law: something empirical and affective; something between objective certainty and subjective fantasy; something true and false. A useful fiction. Dwelt with too long, it could cause paralysis; but if one can keep moving, as Britomart does here, it gets the job done. Though perhaps not necessary, it is sufficient for Britomart’s good, for the law’s, for ours.

\(^{209}\) Hamilton, notes to The Faerie Queene, 559 (emphasis in original).
Chapter 3
Practice and Process: The Comedy of Errors, Love’s Labours Lost, Twelfth Night

The Good Practice of Twelfth Night

For all our investigations into Shakespeare and the law, we rarely speculate about what Elizabethan or Jacobean lawyers might actually have thought about Shakespeare’s art. There is at least some evidence, what a scholar calls the “unique…contemporary review” by a lawyer of Shakespeare. It is a diary entry by John Manningham, a student at the Middle Temple in London, and is dated 2 FEBRUARY 1602, concerning a performance of Twelfth Night:

At our feast wee had a play called Mid ‘Twelve night, or what you will’; much like the comedy of erores, or Menechmi in Plautus, but much like and neere to that in Italian called Inganni.

A good practise in it to make the steward believe his Lady widowe was in Love with him, by counterfayting a letter, as from his Lady, in generall termes, telling him what shee liked best in him, and prescribing his gesture in smiling, his apparraile, &c., and then when he came to practise, making him believe they tooke him to be mad.

The passage has been most often used by critics interested in the dispositions of Shakespeare’s general audience, especially their education (Manningham, in addition to the law, seems to be well read enough to have detected Shakespeare’s classical and Continental sources) and their class attitudes (much has been made of Manningham and

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210 See Keir Elam’s notes in William Shakespeare, Twelfth Night, ed. Keir Elam (London: Arden Shakespeare, 2008), 3. All subsequent references to lines from the play and to Elam’s notes come from this edition.

211 Quoted in Elam, 3-4.
other early spectator’s pleasure at the parvenu Malvolio’s humiliation).\textsuperscript{212} I read the passage instead as an unusually intense conceptual encounter between literary and legal thought. It was not Manningham’s intention to reflect on the relation between \textit{Twelfth Night} and his own training at the Middle Temple; but I am uninterested in Manningham’s intended meaning. To my mind, the passage is most intriguing for its potential meaning, and for the implications, half-conscious or unconscious, secondary rather than primary, structural rather than surface, of its language.

That potential is most audible in Manningham’s double use of “practise.” The word first stands for the prank pulled on Malvolio by Sir Toby Belch, Sir Andrew Aguecheek, Maria, Feste, and Fabian: “A good practise in it to make the steward believe his Lady widowe was in Love with him, by counterfayting a letter…” The word next appears as an action of Malvolio’s resulting from his successfully being deceived: “and then when he came to practise, making him believe they tooke him to be mad.” “Practise” has multiple senses here. It signifies both a playful trick and a more substantial action contingent on that trick. It also means putting something into action (“when he came to practise”) and the retrospective crystallization of that action into an example, fit for recording in a commonplace book (“a good practise in it”). “Practise” has, then, three distinct senses, each with a particular relation to time and action: the deceptive plot against Malvolio realized inside the extended time of the play’s plot; a particular, decisive moment of action resulting from that plot; and the example of this entire process, deception and deceived action, as a precedent to be remembered and perhaps used again.

\textsuperscript{212}For scholarship on audience reception, particularly the questions of class implicit in the evaluation of Malvolio, see Elam, 3-10 and 123-130.
Heard with all these meanings, “practise” pivots between counterfactual and factual, between the process of time and abstraction from time.

Consciously or not, Manningham’s use of “practise” echoes a moment at the end of the play, when Olivia ruefully addresses her outraged steward:

Prithee be content;
This practice hath most shrewdly passed upon thee,
But when we know the grounds and authors of it,
Thou shalt be both the plaintiff and the judge
Of thine own cause.
(5.1.345-349)

Interesting, the appearances of practice in the lawyer’s diary and in the play move in opposite, though complementary directions. In Manningham, the word describes a series of theatrical events – a deception and the comical behavior arising from the deception – even as it pulls those events into the orbit of the law. His précis of Malvolio’s deception colors the plot of *Twelfth Night* in recognizably legal diction: it identifies Malvolio by his legal function as Olivia’s “steward” (in Renaissance England something like an estate’s legal counsel and manager); the letter to Malvolio is described as a “counterfayt” drawn up to “prescribe” in “general termes,” as if it were a forged edict or contract. On the other hand, in responding to Malvolio’s claim to “injury” (he makes the assertion in his letter to Olivia (5.1.304)), Olivia draws the law towards theater, into the happy-ever-after perfection native to comedy: once the “grounds and authors” of Malvolio’s duping have been determined, Malvolio will be “the plaintiff and the judge” of his “own cause.” This is a litigant’s ultimate fantasy: to be both prosecutor and judge, both cause and end of the complaint, to collapse the extended time and action of legal proceeding. But time does not disappear entirely: Olivia gestures toward the fantasy’s fulfillment in the future,
outside the scope of the play, a frame made at once painfully present and precarious by Malvolio’s startling response to Feste’s confession, before his abrupt exit: “I’ll be revenged on the lot of you!” (5.1.375). Law modulates to comedy, then threatens to become tragic.

It is common to note that absolute generic and formal definition elude the play at the end, and that, paradoxically, this could be said to constitute the core of Shakespearean comic practice. Less commonly noted is that the harmonies of Twelfth Night remain unresolved in part because of the law. The marriages just beyond the horizon of the play hinge, of course, on Viola’s being confirmed as a woman, which in turn depends on the retrieval of her clothes, which further depends on the almost-forgotten Captain, who has the clothes:

VIOLA
The captain that did bring me first on shore
Hath my maid’s garments; he upon some action
Is now in durance, at Malvolio’s suit,
A gentleman, and a follower of my lady’s.
(5.1.270-273)

The captain is, in other words, detained as part of a legal proceeding, an “action…at Malvolio’s suit.” A dramatic process remains incomplete, kept in productive, unstable suspension by an unfinished legal process. I am interested in this specifically legal dimension of the plot, and its relationship to the aesthetic effect Shakespeare produces here.

In the chapter that follows, I will read Twelfth Night and two earlier plays, The Comedy of Errors and Love’s Labours Lost, through the twinned concepts of practice and process. My argument is that these concepts illuminate the ambiguity that distinguishes
Shakespearean comedy in language and structure, and that the concepts open a relevant perspective on the relation in Shakespeare between legal and poetic fictions.

As in my other chapters, the scope and ground of fiction shifts slightly to accommodate my immediate focus. In my chapter on Hamlet and words of art, I took a technical approach to legal fictions as part of an investigation into the role of diction in law and poetry. In my chapter on suspicion in the 1590 Faerie Queene, I adopted a more heuristically open definition of fiction to explore Spenser’s dialectical attitude toward legal tools of detection. In this chapter, I will steer a similar course to the latter chapter: “fiction” will operate widely here, designating a category of formal making across law and poetry, rather than as a technical term within either discourse.

In my second chapter, I suggested that the association of evidential thought and the rise of jury culture with the flowering of the English Renaissance theater might make for an incomplete literary story, since those same concepts are present in Spenser’s poem, which proves an unusually inhospitable place to literary character in the modern sense.213 In this chapter, I will continue to challenge the association between legal thought and the psychological realism or individualism that has most captured the attention of Shakespeare scholars. My aim is not to invalidate the long celebration of Shakespearean character, the sense that his greatest roles are “free artists of their own selves,” as Hegel observed.214 Rather, it is to suggest that Shakespeare’s achievement is too powerful and strange to fit any given discourse’s picture of character or inwardness, whether the law’s,

213 The most powerful and influential account of this line of criticism is found in Hutson, The Invention of Suspicion.
rhetoric’s, or modern psychology’s. If any categories are going to account for that achievement, they will have to be more capacious than traditional versions of “character.” Hegel himself gestures toward this wider horizon when he writes, also in his Lectures on Aesthetics:

For what creates a universal, lasting, and profound dramatic effect is what is really substantive in action – i.e., morality as a specific subject matter, and greatness of spirit and character as form. And here too Shakespeare is supreme.  

The vivid, specific moral struggle of a character is, paradoxically, intensely abstract: the play of substance and of form.

My interest in the abstraction of Shakespeare’s art bears some resemblance to the recent interest some critics have taken in Shakespeare’s use of form. For the purposes of this chapter, I find particularly suggestive Bradin Cormack’s notion that “law emerges as a form for organizing time in the service of establishing authority,” and that Shakespeare’s poetry discovers within the law’s organization of time its own claim to authority. My readings are much indebted to Cormack’s insight that Shakespeare’s

215 Id, 1173.
works “intensify our apprehension of the law by offering an analytical view of the formal mechanisms whereby the law itself achieves a given effect, mechanisms that might otherwise be unnoticed, even by the law itself.” But whereas Cormack is animated by the interplay between literary and legal authority (as textual disciplines, as metaphysical strategies for overcoming temporal and spatial limits), I want to use his methodology to test instead how Shakespeare might draw on the law’s technical repertoire not to establish an alternative, complimentary, or mirroring authority, but rather to disrupt and suspend all authority and to suggest a space beyond authority’s reach.

Shakespeare articulates this extralegal space through an engagement with legal forms, and by doing so gestures toward an alternative concept of form. This new form that appears potentially within Shakespeare’s comedies is not, as is often argued, the promise of marriage or the restoration of order, but rather something like what Giorgio Agamben, following Michel Foucault’s late work on “a definition of life itself in relation to a never-ending practice,” calls “form-of-life”: “the attempt to realize a human life and practice absolutely outside the determinations of the law.” In Shakespeare, this remains only a possibility, something offered in the space between the plays’ concluding acts and the marriages that are never quite yet solemnized. The guiding spirit in these plays, at the level of language, of character, and of structure, is one of ambiguity, equivocation, and momentary potential.

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218 Id., 45.

I will begin my consideration of Shakespeare with *The Comedy of Errors* and *Loves Labours Lost*, both probably plays meant for a legal audience, both deeply concerned with practice and process, and only after take up *Twelfth Night* again. First, though, some more words about the two central organizing terms of the chapter, practice and process, and their life in law and poetry.

**Process, Practice, Ambiguity**

“Practice” and “process” both had particular legal meanings in the late sixteenth century, some more technical than others. To a certain degree, they could be used interchangeably, but in this chapter I will emphasize a schematic difference between them that will inform my readings of Shakespeare. The terms denote two different ways by which the law shapes action and time.

“Process” stands primarily for the rules governing the course of litigation or legal action as it goes through the courts, for what we still today call *procedure*. As the legal historian J.H. Baker puts it, “Process is the name given to that part of the machinery of justice whereby persons are brought to justice and judgments enforced.” Legal process in the sixteenth century was governed by a set of “writs” by which legal actions could be initiated; Baker lists the most common “forms of action” in this period as “assumpsit” (to

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220 The OED notes, an obsolete meaning of practice is “An action, a deed; an undertaking, a proceeding.” And “practice” can mean the kind of continuous action in time I am schematically associating with “process.” See “practice, n. 2b” and “practice, n. 2a”, *OED Online*, <http://www.oed.com>.

enforce parol agreements), trover (to protect personal property) and ejectment (to recover land).” If a defendant failed to appear in court to answer a particular charge or an original writ, a new “writ of process” would be issued authorizing the defendant’s arrest or the seizure of his property. So process signals the initiation of a question, a dispute brought into the forms of the law, as well as its working out in time through those forms; it also has the sense of compulsion, of forced interpolation into the law.

The most revealing definition of process I have found comes from a late seventeenth century text, Thomas Blount’s *Nomographikon* (1670). Blount develops his definition through citations to Elizabethan legal texts (e.g. to William Lambarde’s handbook for justices of the peace, *Eirenarcha*, first published in the 1580s):

*Process, (Processus, a procedendo ab initio usque ad finem) Is so called, because it proceeds (or goes out) upon former matter, either Original or Judicial; and, has two significations: First, it is largely taken for all proceeding in any real or personal, civil or criminal Action, from the Original Writ to the end. Britton. fo. 138. Secondly, We call that the Process, by which a man is called into any Temporal Court, which is always in the name of the King. See Lamb. in his Tractat of Processes adjoyning to his Eiren. Divers kinds of Process upon Inditements before Justices of the Peace, see in Cromp. Justice of P. fo. 134. Special Process is that, which is especially appointed for the offence by Statute.*

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222 *Id.*, 60.

223 Thomas Blount, *Nomographikon, a law dictionary interpreting such difficult and obscure words and terms as are found either in our common or statute, ancient or modern lawes: with references to the several statutes, records, registers, law-books, charters, ancient deeds, and manuscripts, wherein the words are used: and etymologies, wehre they properly occur*, In the Savoy: Printed by Tho. Newcomb, for John Martin and
The passage reveals the extraordinarily complex relationship of legal process to time. There is our ordinary sense of process as something ongoing: process “goes out,” both in the sense that it works upon material and that it works to produce a legal result. But, interestingly, Blount notes that it “proceeds (or goes out) upon former matter, either Original or Judicial.” Process may move forward in the production of legal meaning, but its material is in the past, in previous legal proceeding or in a new dispute. Process moves forward and backward, confounding time in its form. It also works in and out of time. Listen to the Latin tag Blount quotes: procedendo ab initio usque ad finem, “proceeding from the beginning continuously to the end.” Again, as our everyday sense of the word today would tell us, process is kind of continuous activity. But it also, in the legal meaning sketched here by Blount, contains the entire perfected action, “from the beginning all the way to the end.” In process, the law works in time and also abstracts it, turning an a posteriori activity into a priori form. This hermeneutic account has a historical parallel in the gradual replacement of oral pleading with a more rigidly determined set of plea writs in the sixteenth century:\(^\text{224}\) legal action in time was abstracted into a predetermined, written form.

If process names the whole “machinery of justice” as it acts in and out of time, “practice” designates pieces within that machinery; say, one particular writ within the system of writs, one legal instrument among many. As the OED puts it, the legal meaning of practice is “An established legal procedure, esp. that of a court of law; the law and

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\(^{224}\) Baker, *Introduction to English Legal History*, 71-72.
custom on which such procedure is based.” The OED lists as its first example of this meaning the title of Abraham Fraunce’s *The lawiers Logike, exemplifying the praeecepts of Logike by the practice of the Common Law.* The law for Fraunce is an example, a “practice” from which principles can be derived, as well as a set of particular forms or “practices.” We might think of practice the moves to be followed in an established field or discipline. Indeed, the practices of the law, or the “forms of action” as they were also called, entirely determined what could be brought to court, and how, as C.W. Brooks notes: “Today, we normally think of law as a set of abstract rules which can be applied to any given circumstance, but in earlier periods a remedy could be sought in the royal courts only if an appropriate form of action – debt, assumpsit, trespass, etc – could be made to apply to it.”

The forms of action were a part of common law custom, and as such “practice” shares the strange temporal character I described in my treatment of custom in “Hamlet and the Words of Art.” There, I suggested through J.G.A. Pocock’s work on the “ancient constitution” that “custom” in the common law is a seemingly *a priori* principle that retrospectively disguises *a posteriori* development. This manifests itself concretely in the way many kinds of business could be pursued through the artifice of a given practice (a particular writ, say), so that different pragmatic goals become disguised by the


226 *Id.*


228 This thesis is developed in Pocock, *The Ancient Constitution and the Feudal Law.*
uniformity of the common legal practice through which they are pursued. C.W. Brooks observes of the period that “[v]exatious litigation has been defined nicely ‘as the exploitation of legal forms to express aggressive impulses unrelated to the ostensible grounds for action.’”

Having given some detailed treatment to the two words, I’d like to make some broader generalizations about them, which should be kept in mind as I analyze their appearance in Shakespeare. Although the two words are sometimes used interchangeably, each has a general association quite distinct from the other. Process is ultimately a name for how the law forms extended time for its purposes. Practice signifies the interruption or division, perhaps even the subversion, of extended time through a particular action. In the comedies I read in this chapter, Shakespeare attends to the temporal character of both categories, the way I suggested above that both pivot between work in time and abstraction from time. He also plays on dimensions of the concepts that are unavailable or ignored by the law. Whereas “process” in law is always oriented toward the resolution of a legal problem, and controlled by particular forms of action, Shakespeare allows us to hear another meaning of the word: process as an activity in time that is oriented to itself alone, without a particular end and unanchored by a determining form. Shakespeare similarly exploits a number of alternative meanings to “practice.” Instead of an effective action in the world, practice can be the opposite: training for experience, or a game, a counterfactual exercise. This sense exists in the world of English Renaissance law through the practice of “mooting,” in which students and practitioners at the Inns of

Court would debate hypothetical or exemplary cases as part of their education.\textsuperscript{230} And as we see from the Malvolio episode of \textit{Twelfth Night}, Shakespeare also often uses the word with a meaning in mind that has disappeared from usage but was common in the Renaissance: practice as falsehood. The seriousness of the falsehood could range from a gentle joke to the most deadly betrayal. And indeed, when the word appears in Shakespeare, it tends to sound its darker registers. My favorite is from \textit{Othello}, when Ludovico, surveying the bloody scene at the end of the play, says to the broken Moor “O thou Othello, that wert once so good, / Fallen in the practise of a damned slave.”\textsuperscript{231} This communicates both the degree of treachery “practise” could signify, and also its seedy, disreputable quality: “practise” is perhaps most properly not just a betrayal, but also the work of a “damned slave” like Iago. The same word that names the rules governing England’s venerable legal system can also name of its subversion. Shakespeare refuses to let us forget this. At the level of concept and of diction, legal and ordinary meaning are brought in his plays into a significant, tense proximity.

While complicating practice and process by mixing technical and legal terms, Shakespeare uses two distinct strategies in his critique of these legal categories. In the first, aimed at process, Shakespeare takes the extended time that legal process shapes and stretches it out, deferring its completion beyond the frame of the play and intensifying its


incomplete state within the play. In the second, aimed at practice, Shakespeare seizes at the potential and alternative meanings in the language of legal actions and keeps them together, disabling the language’s legal efficacy. These two strategies – the suspension of process and the deactivation of practice – help to account for the generic instability of Shakespearean comedy, the way it mingles comic and tragic energies.

Let me step back briefly to describe the method implicit in my own practice. In my earlier chapter on Shakespeare, I focused on literature’s capacity for irony in its handling of technical language, and as a critical tool for disrupting legal artifice. Here I rely more on the concept of ambiguity, as the term was developed by William Empson in *Seven Types of Ambiguity*, where he uses ambiguity “in an extended sense” to signify “any verbal nuance, however slight, which gives room for alternative reactions to the same piece of language.”²³² Empson usefully distinguishes this from irony: irony, especially critical or mocking irony, may have a “double meaning,” but it is unambiguous in its intent; ambiguity, on the other hand, maintains a “room for puzzling,” a complexity that cannot be exhausted simply by identifying a second meaning.²³³ The sections that

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²³³ See Empson’s preface to the revised edition of *Seven Types*, in particular the following passage:

> We call [language] ambiguous, I think, when we recognize that there could be a puzzle as to what the author meant, in that alternative views might be taken without sheer misreading. If a pun is quite obvious it would not ordinarily be called ambiguous, because there is no room for puzzling. But if an irony is calculated to deceive a section of its readers I think it would ordinarily be called ambiguous, even by a
follow will consist mostly of close readings focused on such ambiguities, moments in which Shakespeare plays on multiple senses of a word, some technical, some archaic, some ordinary, in order to achieve a complex and often indeterminate effect. The point is not to choose between or to order meanings, but rather to produce something different, new and strange through their coexistence.

Ambiguity in the Empsonian sense is a feature of literary fiction making that is unavailable to the law. Laws are full of ambiguities in the sense of multiple possible meanings and cruxes, and a good lawyer of course exploits such ambiguities. But in the moment of legal argument and interpretation, ambiguities are converted into determinate meanings. A legal fiction might involve various procedural sleights of hand, but it has a final legal force and effect in the world. William Fulbeck, in his Direction, or Preparative to the Study of Law, goes so far as to assert: “To know the law is not to know the words of the law, but the force and property of the words.”

The ambiguities critic who has never doubted its meaning. No doubt one could say that even the most obvious irony is a sort of playing at deception, but it may imply that only a comic butt would be deceived, and this makes a different sort of irony. Cardinal Newman found Gibbon ambiguous, we many suppose, because some remarks by the Cardinal imply that he did not know that Gibbon meant to be ironical. But most readers would consider the ironies of Gibbon unambiguous, though possessed of a ‘double meaning,’ because they would feel feel that no one could be deceived by them. Thus the criterion for the ordinary use of the word is that somebody might be puzzled, even if not yourself. (x)

234 William Fulbeck, Fulbeck’s Direction, or Preparative to The Study of the Law, intro. Peter Birks (Brookfield, VT: Gower, 1987), 76.
Shakespeare creates in legal diction have no such force; that is the weakness and strength of the fictionality proper to poetry. It is also why I object to interpretations that treat Shakespeare’s work as if it were performing especially sophisticated legal analysis. This attitude among critics gives credence to the continuing habit of judges who convene moot courts around legal controversies in Shakespeare’s plays (e.g. the trial of Antonio in *The Merchant of Venice*), as if that could possibly be the kind of treatment those passages from Shakespeare ask for. Treating Shakespeare as properly legal material is inappropriate, given that Shakespeare does not seem interested in obeying the self-imposed limits of legal thought, even as he exploits its material for his own ends.

I argue instead that Shakespeare’s ambiguous use of the law furnishes an exemplary case study of the difference between the operation of fiction in the law and in poetry. Giorgio Agamben, in his commentary on Paul’s *Letter to the Romans*, notes that legal fictions from Roman law to the present analogize materials in order to convert them for legal purposes by “substituting a truth with an opposite accession, from which...

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235 Andrew Zurcher captures this general dynamic between legal and literary ambiguity well in his essay “Consideration, Contract, and the End of the Comedy of Errors,” *Law and Humanities* 1.2 (2007):

One of the most important fault lines in the interdisciplinary study of law and literature rifts between their opposed hermenetucial assumptions: any set of laws as a written and practiced code depends on the unambiguous interpretability of texts, whereas literary works, unlike games, are to be played rather than won or lost. The rules governing a legal interpretation must, if the law is to stand up, lead to a definite and practical outcome, but those governing a literary reading often function best when they conclude in some kind of ambiguity or aporia - one that resists social, moral, or political applications. (146)
juridical consequences may be derived (*fictio est in re certa contrariae veritatis pro veritate assumpto*).”

By contrast, Agamben argues, the Pauline tensor *hos me*, “as not,” acts to create an effect in which “the juridical-factual condition is taken up again and is transposed, while remaining juridically unchanged, to a new zone that is neither factual nor juridical, but is substracted from the law and remains as a place of pure praxis, of simple ‘use’ (‘use it rather!’).” The same effect can be observed in the difference between the properly legal use of terms and the ambiguity to which Shakespeare subjects those terms. Legal language is ambiguous at law so that it might be used adventitiously by lawyers to produce various legal facts, sometimes with no regard to or in direct contradiction of the facts outside the law. In his comedies, Shakespeare instead holds on to and intensifies the potential of legal terms, at once making their various meanings simultaneously clear and refusing to decide upon any one meaning. When he does not hone in on an ambiguity implicit in the law’s language, Shakespeare distends the time of the law’s process in order to render its final aim distant or inoperative, and to focus on the ambiguous energies within the process that are normally foreclosed by its completion. These local indeterminacies radiate out, charging the comedies with a generic ambiguity that anticipates the later romances.

Shakespeare’s way with law in the comedies I read here strike me as approaching the ideal that Agamben, commenting on Walter Benjamin’s essay on Kafka, describes as the “deactivation” of the law through “study”:

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237 *Id.*
One day humanity will play with law just as children play with disused objects, not in order to restore them to their canonical use but to free them from it for good. What is found after the law is not a more proper and original use value that precedes the law, but a new use that is born only after it. And use, which has been contaminated by law, must also be freed from its own value. This liberation is the task of study, or of play. And this studious play is the passage that allows us to arrive at that justice that one of Benjamin’s posthumous fragments defines as a state of the world in which the world appears as a good that absolutely cannot be appropriated or made juridical.  

A poetic fiction, then, goes beyond exposing a legal fiction as fiction: it can render the legal fiction inoperative, redeeming it for common use. Deactivating and redeeming legal language is one instance of what A.D. Nuttall describes as Shakespeare’s capacity to transform the historical contexts in which he created: “…the greater part of the artistic achievement of our best playwright is internally generated. It is the product, not of his time, but of his own, unresting, creative intelligence.”

The internally generated transformation of law by Shakespeare’s intelligence is what I will pursue in his comedies, to which I now turn. My analysis goes in three steps, following my readings of the plays. In *The Comedy of Errors*, practice and process enter into and charge the play as forms of legal time in unresolved conflict. *Love’s Labours Lost* picks up this conflict and intensifies it, and then gestures toward an alternative to the legal structures. Finally, *Twelfth Night* offers a full account of that alternative through its

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articulation of play in a broad sense: as an easy manipulation of practice and process; as a witty disabling of legal language; and as inhabiting a role or a form of life beyond the law’s forms.

A Formal Man

The Comedy of Errors begins in the time of process:

EGEON

Proceed, Solinus, to procure my fall,
And by the doom of death end woes and all. 240

Egeon of Syracuse desires the finality of capital punishment. From his first words, though, he lets us hear just how complex that desire is. Egeon’s trial begins with a gesture that almost shorts circuits the scene, pointing with exasperation beyond the mechanics of trial to its concluding judgment.

But that is just the start, not the end, to the entanglements, which never end in this play of “kinetic patternings.” 241 What is Egeon asking? Hearing the line, say, for the first time in the theater, one might paraphrase it as: Get on with it and pronounce my guilt. “Proceed” functions as “get on with it,” and “procure my fall” means “pronounce my guilt.” In a way, this is correct. But if one lingers over the phrase, it paraphrases less easily. I have already described how “process” contains within it a hypostasized,


241 Nutall, Shakespeare the Thinker, 57.
atemporal version of a legal event: *procedendo ab initio usque ad finem*. When Egeon says “proceed,” he is at once urging an acceleration of the trial and offering it up as a finished product, intensifying time and stepping out of it.

Procure works similarly. In its most everyday sense, it means, as the OED tells us, “to obtain; to bring about.” This sense tilts toward the produced object of desire (here, “my fall”) rather than, say, the action in time required to produce it, and thus fits well with our initial paraphrase of “procure” as the end of process. Like “proceed,” though, “procure” is not so easily disposed of; it too produces rich, arresting overtones of ambiguity. It can mean to bring something about, but well into the 1590s it could also mean to plead for some desired end, rather than simply to produce it, tilting the word away from conclusion and back toward action in time. And the word contaminates Egeon’s plea for a speedy kind of “due process” with connotations of foul play, for to procure could mean, then as now, to solicit an illegal service (say, prostitution), to suborn testimony, or to bribe a witness. Finally, procure can also mean proceed, and so has a hint of repetition, especially strange and awkward given Egeon’s headlong impatience. Heard with concentration, Egeon’s request stumbles over itself: pointing in and out of time; confusing cause, action, and effect; undermining our sense of good procedure.\(^\text{242}\) It is a tautology and a paradox.

This does not ease up as the scene continues. Duke Solinus responds to Egeon by insisting on his own desire to see the timely fulfillment of Ephesus’ laws: “Merchant of Syracuse, plead no more. / I am not partial to infringe our laws” (1.1.3-4). Yet he launches into a rather windy recitation of what everyone already knows: that any

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Syracusan merchant caught in Ephesus must be put to death unless he pays a fine; and mere exegesis for the audience’s benefit cannot explain Solinus’ halting speech (“Again, if any Syracusian born / Come to the bay of Ephesus, he dies” (1.1.18-19)). Things shift from the odd to the nearly comic as Egeon imagines his long-for end to be nigh, only to be forced to rehearse his story for the court:

EGEON
Yet this my comfort: when your words are done,
My woes end likewise with the evening sun.
DUKE
Well, Syracusian, say in brief the cause
Why thou departed’st from thy native home,
And for what cause thou cam’st to Ephesus.
(1.1.26-30)
Egeon replies: “A heavier task could not have been imposed / Than I to speak my griefs unspeaksable” (1.1.31-32); and there is indeed something more than heavy, something amusingly sadistic about Solinus’ wish that the court should know the “cause” of Egeon’s infraction when such a cause is presumab

uly immaterial to Ephesus’ “rigorous statutes” (1.1.9). In this case, the court’s process is extended beyond anything like what we might call the “due process” necessary to arrive at a fair determination; the verdict is known, and yet the court rehearses, unnecessarily, the details of the case.243

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A similar sense of superfluous experience in the face of known inevitability pervades Egeus’s tale. Of particular interest is his account of the shipwreck that separates the sets of Dromio and Antipholus twins:

My wife, not meanly proud of two such boys,  
Made daily motions for our home return.  
Unwilling I agreed. Alas! Too soon  
We came aboard.  
A league from Epidamnum had we sailed  
Before the always wind-obeying deep  
Gave any tragic instance of our harm.  
But longer did we not retain much hope;  
For what obscured light the heavens did grant  
Did but convey unto our fearful minds  
A doubtful warrant of immediate death;  
Which, though myself would gladly have embraced,  
Yet the incessant weepings of my wife,  
Weeping before for what she saw must come,  
And piteous plainings of the pretty babes,  
That mourned for fashion, ignorant what to fear,  
Forced me to seek delays for them and me.

(1.1.58-74)

As in his trial, Egeon’s account of his shipwreck has the pathos of a “tragic instance” through the perversity of extended time in the face of an inevitable end. He figures the storm, all too appropriately in the context of the trial, as a “doubtful warrant,” meaning that it is another kind of process: an instrument of compulsion. The passage gains its dramatic tension through the juxtaposition of one kind of process, extended time, against another, the process or warrant of the storm’s “immediate death,” creating what Bradin Cormack has identified elsewhere in Shakespeare as “a temporal zone that disappears
into a limit.” Egeon plays against this tragic dilemma in process at the conclusion of his speech (O let me say no more / Gather the sequel by that went before (1.1.94-95)) and his final lines of the opening scene (Hopeless and helpless doth Egeon wend, / But to procrastinate his lifeless end (1.1.157-158)). Process, in the face of another version of itself, becomes tragic procrastination. As Andrew Zurcher puts it, Egeon’s language is “scored verbally with the pessimistic pro-lepsis that leads him to assume the worst, and resign himself to it”; as a result, “the best ends to which Egeon can aspire are merely ‘delays’, and not escapes.”

So far, one might want to call the play The Tragedy of Errors, error here meaning wandering in the face of a foregone conclusion; as Frances Dolan observes, “Egeon…thinks he is in a tragedy.” But in the course of its various misadventures, the play also proposes an alternative, playful form of time. This form is also native to the atmosphere of Ephesus, as described by Antipholus of Syracuse:

They say this town is full of cozenage:  
As, nimble jugglers that deceive the eye,  
Dark-working sorcerers that change the mind,  
Soul-killing witches that deform the body,  
Disguised cheaters, prating mountebanks,  
And many suchlike liberties of sin.  
(1.2.97-102)

It is, as Dolan notes, a “magical, perhaps a bit threatening, world”: full of tricks of all sort, sorcery and anachronism (Christian sanctuaries and English debt officers in Plautan

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244 Cormack, “Decision, Possession,” 45.
245 Zurcher, “Consideration,” 149, 150.
246 Frances Dolan, introduction to The Comedy of Errors, xxxi.
It is a world, one might say, of practice, with the associations of sleight-of-hand and betrayal that I’ve suggested come with that word.

The atmosphere of “cozenage” extends to time itself. This becomes clear at the play’s extraordinary conclusion, but it is first hinted at in two obscurely comic scenes. The first is between Dromio and Antipholus of Syracuse in Act II, scene 2. Antipholus of Syracuse, enraged that Dromio of Syracuse seems to be pretending to know nothing of the money he was entrusted with (the money was entrusted, in fact, to a genuinely bewildered Dromio of Ephesus), has given Dromio of Syracuse a punitive thrashing. The point, Antipholus says, is to teach Dromio “to jest in good time.” This begins a humorous exchange of puns and allusions that are, even by the standards of this play, abstruse. The banter turns on the question of whether or not there is “a time for all things”:

DROMIO S. There’s no time for a man to recover his hair that grows bald by nature.
ANTIPHOLUS S. May he not do it by fine and recovery?
DROMIO S. Yes, to pay a fine for a periwig and recover the lost hair of another man.

... 

ANTIPHOLUS S. You would all this time have proved, there is no time for all things.
DROMIO S. Marry, and did, sir; namely, no time to recover hair lost by nature.
ANTIPHOLUS S. But your reason was not substantial, why there is no time to recover.

\(^{247}\) Id., xxxiv, xxxv.
DROMIO S. Thus I mend it: time himself is bald, and therefore to the world’s end will have bald followers.

ANTIPHOLUS S. I knew ‘twould be a bald conclusion.

(II.2.71-75, 99-108)

Antipholus’s witty observation that Dromio certainly takes his time to prove there is not time for all things (“You would all this time have proved, there is no time for all things”) sounds almost like the tragic sense of time in the play’s opening scene. Pressed to defend his position against the example of baldness, Antipholus looks to the English common law: “May he not do it by fine and recovery?” “Fine and recovery” is a legal fiction whereby a title to land could be transferred in a manner that avoided the burdensome complexities of English land law:

The common recovery was a completely fictitious suit – a pious fraud. The device went through many stages, but the simplest example is the single voucher. Suppose, for instance, that A was in possession as a tenant in fee tail and desired to convey a fee to B. B would sue him for the land, alleging that A had no legal title to it and that it really was owned by B. A would enter an appearance and call upon X (from whom, he alleged quite fictitiously, he had purchased the land) to defend the title in accordance with the warranty given by X to A. This process was called vouching to warrant. X was called the common vouchee, because he usually was the court crier and frequently acted in this capacity. X would appear but would subsequently default, whereupon judgment would be given to the plaintiff, B, against A, and the court would give another judgment to Against X, because of X’s breach of warranty in defaulting. X, of course, was in fact not expected
to give A anything. The suit resulted in the conveyance of a fee estate to B.\textsuperscript{248}

For the law, at least, there is a time for all things, including the seemingly impossible: “recovering” title to what had never in fact had been yours, until the law says it always was. The exchange between Dromio and Antipholus does not decide the question of whether there is time for everything or no thing. Instead, it “mends” the question in the sense of amending it, adjusting it to an equivocal compromise: time is “bald.” Which is to say, it is barren in one sense, but also, as one older meaning of “bald” would have it, full.\textsuperscript{249} Perhaps, looking toward the end of the play, time might be \textit{pregnant}, brimming with still indeterminate invention.

Dromio of Syracuse also gives us the other hint of the play’s ultimately comic attitude toward time in Act IV, scene 2. After Dromio of Syracuse reports the arrest of Antipholus of Ephesus for refusing to pay for a chain he never received (it was taken, of course, by Antipholus of Syracuse), Adriana, Antipholus of Ephesus’s wife, is understandably puzzled.

\begin{quote}
ADRIANA
This I wonder at,
That he, unknown to me, should be in debt.
Tell me, was he arrested on a band?
DROMIO S.
\end{quote}

\textsuperscript{248} Frederick G. Kempin, Jr., \textit{Legal History: Law and Social Change} (Englewood Cliffs, NJ: Prentice-Hall, 1963), 63-64.

Not on a band, but on a stronger thing:
A chain, a chain. Do you not hear it ring?

ADRIANA
What, the chain?

DROMIO S.
No, no, the bell; tis time that I were gone.
It was two ere I left him, and now the clock strikes one.

ADRIANA
The hours come back! That did I never hear.

DROMIO S.
O yes; if any hour meet a sergeant, a turns back for very fear.

ADRIANA
As if Time were in debt! How fondly dost thou reason!

DROMIO S.
Time is a very bankrupt, and owes more than he’s worth to season.
Nay, he’s a thief too: have you not heard men say,
That Time comes stealing on by night and day?
If a be in debt and theft, and a sergeant in the way,
Hath he not reason to turn back an hour in a day?

(4.2.48-62)

Here, again, Dromio of Syracuse expresses a cheerfully loopy sense of time through legal figures, some more subtle than others. The figures have a symmetrical or chiastic shape, moving from the abstract to the material, and then from the material to the abstract. First, there is the conversion of a legal “band” or bond to the chain. Then comes Dromio of Syracuse’s bizarre remark about the clock striking one, even though he left Antipholus of Ephesus at two. He first explains this to Adriana through a bawdy pun: “if any hour meet

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250 For a detailed reading of the band’s central role in the play’s analysis of contract in the context of the late sixteenth-century shift from actions of debt to *assumpsit*, see Zurcher, “Consideration, Contract, and the End of *The Comedy of Errors*.”
a sergeant, a turns back for very fear,” hour being of course a “pun on a similarly pronounced ‘whore’” (Dolan 49). Then things get even stranger: Time, Dromio claims, is a debtor and a thief, and will “turn back an hour in a day” in the face of arrest. Perhaps most puzzling is Dromio’s line that “Time is a very bankrupt, and owes more than he’s worth to season.” As Frances Dolan notes, “some obscure jest is intended: ‘season’ may have several meanings, including ‘the opportunity.’” Presumably that one meaning ventured, “opportunity,” depends not only on the notion of season as a given time, but also on its homophonic relationship to “seizing.” This, in turn, gives on to another possible pun: “season” as “seisin,” that peculiarly English form of possession through which all persons held rather than “owned” their real estate, ultimately through the monarch, for various durations of time. Time is both a bankrupt and thief because it is “seized” at law. Thought of as a landholder in debt to seisin itself, time might avoid that other kind of seizing, the sergeant’s arrest, by turning back the clock through a legal fiction such as recovery. Here, practice sidesteps rigorous procedure, of the law and of time.

The conclusion to The Comedy of Errors brings together the two different forms of time I’ve sketched: Egeon’s tragic time, in which process as extended time faces process as decisive end; and Dromio of Syracuse’s comic time of fictional practice

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251 Dolan, notes to Comedy of Errors, 49.
252 Id.
253 I would not have heard the possible “season / seizin” pun had not Bradin Cormack already ventured its existence in a brilliant reading of Shakespeare’s sonnet 18. See Bradin Cormack, “Decision, Possession” 54-59.
undermining, avoiding and even reversing process. With all the character’s identities clarified and her family restored, Emilia, once the Abbess, addresses all assembled:

   **ABBESS**
   Renowned duke, vouchsafe to take the pains
   To go with us into the abbey here,
   And hear at large discoursed all our fortunes;
   And all that are assembled in this place,
   That by this sympathized one day’s error
   Have suffered wrong, go keep us company,
   And we shall make full satisfaction.
   Thirty-three years have I but gone in travail
   Of you, my sons; and till this present hour
   My heavy burden ne’er delivered.
   The duke, my husband, and my children both,
   And you the calendars of their nativity,
   Go to a gossips’ feast, and go with me;
   After so long grief such Nativity!
   (5.1.395-408)

Emilia articulates the distortions of time the play has suggested earlier in a modulated key. Her metaphor, comparing her separation and reunion with her family to a distended pregnancy, is baffling but powerful.

   One hears much of this strange energy in Emilia’s word for the whole experience, “travail.” On the one hand, travail describes the extended period of struggle before the happy conclusion, the many years of wandering error Emilia, Egeon, their children and the Dromios have suffered. It is, on the other hand, as the word allows, the product of that suffering, the happy reunion. It acts like a transfigured version of Egeon’s tragic process at the start of the play: an extension faced with and organized by a decisive point.
At the same time, Emilia’s travail has some of that other version of time sketched by Dromio of Syracuse. The “delivery” of Emilia’s family seems to compress into the months of a pregnancy and transform a reunion between adults into a Nativity. For a moment, at least, the clock turns back. I hear it as the realization of a moment slightly earlier in the scene, when Adriana demands that the Abbess give up Antipholus of Ephesus “That we may bear him home for his recovery” (5.1.41), a word that recalls Antipholus of Syracuse’s joke to Dromio of Syracuse:

ADRIANA
I will attend my husband, be his nurse,
Diet his sickness, for it is my office,
And will have no attorney but myself;
And therefore let me have him home with me.
(5.1.98-101)

The Abbess insists that she will keep Adriana’s husband “Till I have used the approved means I have, / With wholesome syrups, drugs, and holy prayers, / To make of him a formal man again” (5.1.103-105). Frances Dolan glosses “formal” here as “in proper form, sane.”254 This is proper in its context, but I suggest that the play’s conclusion retrospectively charges that phrase with a specifically legal energy. To be “recovered” and made “a formal man” in the play is not a matter of drugs, prayers, or even the witchcraft that can seem hard to distinguish from it in Ephesus. Nor is it to be, say, an “attorney” as Adriana might suggest in the passage above, an agent in a procedural set piece, which is so often how we imagine the way legal forms shape characters in Shakespeare. Rather, it is the product of something more structural: time itself, or rather

254 Frances Dolan, notes to Comedy of Errors, 66.
those forms of time (process as extension and limit; actions as retrospective
reorganizations of time) peculiar to the law.

Those reformations, as we have seen, can have tragic and comic possibilities, and
it is the mixture of these at the end of *The Comedy of Errors* that gives the play that
ambiguity of tone characteristic of Shakespeare’s comedies. Even in charmed Ephesus,
the clock cannot be turned back entirely. Indeed, as she celebrates her family’s
restoration, Emilia enlarges the time of its suffering: she says she has gone thirty three
years “in travail”; yet Egeon’s testimony in the first scene suggests his sons are twenty
three (1.1.124-139). Egeon makes a similar slip, claiming at the end of the play that he
has been separated from Antipholus of Syracuse for seven years, rather than the five
years he claimed at the beginning of the play (5.1.321). It is hard to believe entirely in
Emilia’s Nativity when the griefs it is meant to erase seem only to grow. And even as the
cast exits in celebration, it is impossible to forget Ephesus’ heartbreaking lines from just
ulitually, when he is unrecognized by Antipholus of Ephesus, whom he
mistakes for Antipholus of Syracuse:

> Not know my voice! O Time’s extremity,
> Has thou so cracked and splitted my poor tongue
> In seven short years, that here my only son
> Knows not the feeble key of untuned cares?
> Though now this grained face of mine be hid
> In sap-consuming winter’s drizzled snow,
> And all the conduits of my blood froze up,
> Yet hath my night of life some memory,
> My wasting lamps some fading glimmer left,
> My dull deaf ears a little use to hear.
> All these old witnesses – I cannot err –
Tell me thou art my son Antipholus.
(5.1.308-319)
So the tragic sense of time that begins The Comedy of Errors remains at its end.
The play does not offer any definitive solution or consolation. Final determinations are not native to the comedies. As the play compresses and transforms suffering into a vivid moment of redemption, it points back, lengthening out the trials that have come before. It also points forward, with a practical good humor shorn of the intensities of either tragedy or epiphanic redemption. As the cast exits, the two Dromios quibble over their seniority, then set aside the issue with equanimity:

DROMIO E.
Methinks you are my glass, and not my brother.
I see by you I am a sweet-faced youth.
Will you walk in to see their gossiping?
DROMIO S. Not I, sir; you are my elder.
DROMIO E. That’s a question; how shall we try it?
DROMIO S. We’ll draw cuts for the senior; till then lead thou first.
DROMIO E. Nay then, thus:
We came into the world like brother and brother;
And now let’s go hand in hand, not one before another. Exeunt.
(5.1.420-438)
The exchange has a hint of the legal (“That’s a question; how shall we try it?”; the exchange might be thought of as a quaestio, a legal inquiry) before easing into its generous conclusion. The play does not offer a neat arbitration between the different forms of time – tragic and comic, process and recovery – but rather moves on, confounding judgment, profiting from rather than stumbling over its irresolution.
Anything more determinate would bring the characters back inside the legal forms they
have so beautifully confused. That beautiful confusion allows for the special radiance of the Dromios exchange, as A.D. Nuttall keenly observes:

The best line of all is “I see by you I am a sweet-fac’d youth.” In any other context “I am a sweet-fac’d youth” would be odious self-admiration. Here it is suddenly and mysteriously cleansed. To say it of one’s brother is all right. The description can pass as both affectionate and objectively true. Dromo of Ephesus is speaking of his brother and of himself at the same time.\textsuperscript{255}

The best possible redemption from the law’s determination, its rigid organizations of action and time, is the confusion afforded by ambiguity.

\textbf{Time Extremely Forms}

“Time’s extremities,” the clash between practice and process, of foreshortened and distended legal forms of time, which animate \textit{The Comedy of Errors}, seem banished from the world of \textit{Love’s Labours Lost}. Indeed, the stylized, static rhythms of King Ferdinand of Navarre’s “academe” make the fantastical Ephesus seem like a paragon of gritty realism. King Ferdinand strains to achieve this otherworldly status not primarily through the studies to which he and his retinue pledge to commit themselves for three years, but above all through the law:

\begin{verbatim}
KING
Therefore, brave conquerors – for so you are,
That war against your own affections
And the huge army of the world’s desires-
Our late edict shall strongly stand in force.
Navarre shall be the wonder of the world;
\end{verbatim}

\textsuperscript{255} Nuttall, \textit{Shakespeare the Thinker}, 60.
Our court shall be a little academe,
Still and contemplative in living art.
You three, Biron, Dumaine, and Longueville,
Have sworn for three years’ term to live with me,
My fellow-scholars, and to keep those statutes
That are recorded in this schedule here.
Your oaths are passed, and now subscribe your names,
That his own hand may strike his honour down
That violates the smallest branch herein.
If you are armed to do as sworn to do,
Subscribe to your deep oaths, and keep it too.

(1.1.8-23)²⁵⁶

The waywardness and surprise of three years’ experience resolve preemptively into the “statutes” of King Frederick’s “schedule,” an especially apt and pregnant word in this context. “Schedule” has several pertinent meanings: it means the appendix to a legal instrument, containing various technical details; it could also function as a list, say of assets subject to taxation; it could also be, the OED notes, “a blank form to be filled up by the insertion of particulars under the several headings.”²⁵⁷ It also anticipates meanings the OED asserts it gathered only after the sixteenth century: a bond, and also a program of events. Through the complex play of all these meanings, the “schedule” materializes the King’s attempt to shape his and his friends’ future time into something “still and contemplative in living art.” It obliges its signatories to observe a detailed program of terms and conditions; it might also set up a looser structure of categories meant flexibly to capture and subsume the particulars of future experience. Time in King Ferdinand’s

²⁵⁶ All references to the play are from William Shakespeare, Love’s Labours Lost, ed. G.R. Hibbard (Oxford: Oxford University Press, 2008).
academe is pure practice: repetition sealed from worldly consequence by the law’s forms. Indeed, Ferdinand’s choice of the word “academe” may itself be a reference to the Inns of Court, where lawyers practiced in the legal forms they would eventually use in the world.²⁵⁸

Form seems to protect the court even from its most obvious external temptation, romantic love. When Ferdinand insists that his courtiers agree not to see ladies during their studies, his most unruly and eloquent retainer, Biron, momentarily revolts. His glittering set pieces against asceticism meet with elegantly compact rebuttals from his friends. “Proceeded well, to stop all good proceeding” quips Dumaine (1.1.95). The chiasmus neatly folds Biron’s objections against the King’s schedule (“Proceeded well”) back into the schedule (“good proceeding”). Dissent, or at least dissent as urbane as Biron’s, is just more good proceeding. As if to confirm this, Biron pivots from being the academe’s fiercest critic to its most rigorous champion, scorning the King’s suggestion that “necessity” might allow the men to invite Princess Katherine and her ladies into their court (1.1.148-159).

This seeming invulnerability of Ferdinand’s court to the dangers of experience, and in particular to romance, becomes even clearer after Biron has swallowed his objections and subscribed to the schedule. For “quick recreation” (1.1.160), the nobles amuse themselves by taking in the quarrel between Don Armado and Costard over

²⁵⁸ Cunningham notes in Imaginary Betrayals that Sir John Fortescue described the Inns of Court as an “‘academy’” removed from London: “It is ‘not situated in the city, where the tumult of the crowds could disturb the students’ quiet, but is a little isolated in a suburb of the city, and nearer to the aforesaid courts, so that the students are able to attend them daily at pleasure without the inconvenience of fatigue’” (35).
Jaquenetta. Presented by Constable Dull to the court with Jaquenetta, Costard confesses that he was “taken with the manner” (1.1.200). When Biron asks “In what manner?”, Costard responds

**COSTARD** In manner and form following, sir, all those three. I was seen with her in the manor-house, sitting with her upon the form, and taken following her into the park, which, put together, is ‘in manner and form following’. Now, sir, for the manner – it is the manner of a man to speak to a woman. For the form, in some form.

**BIRON** For the ‘following’, sir?

**COSTARD** As it shall follow in my correction; and God defend the right!

(1.1.200-210)

Costard’s response plays off the legal tag “in the manner and form following (modo et forma)” used routinely in pleading civil cases, and uses it to give a punning anatomy of his dalliance with Jaquenetta. Erotic play folds into the neat and orderly lists of a civil proceeding.

As Costard gives a highly formalized account of his transgression, Don Armado notes in his letter that he holds Jaquenetta for the King as a “vessel of thy law’s fury” (1.1.263). In a sense, Jacquenetta is just a more emphatic example of what everyone in the court is: a container for the King’s peculiarly hermetic legal forms. The King’s final words to Costard and his retinue before he exits the scene make this clear:

**KING**

And Don Armado shall be your keeper.-

My Lord Biron, see him delivered o’er;

And go we, lords, to put in practice that

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Which each to other hath so strongly sworn.

(1.1.291-294)

There is a special irony to Ferdinand’s use of “practice” here: in effect, to put into action a retreat from action, into the forms of law. Practice, in Navarre, is a defense against experience.

Similarly, the seemingly disruptive arrival of the Princess of France and her ladies-in-waiting seems, at least initially, to be absorbed into the formal rhythms of the court. The Princess’s visit is, of course, to press home a lawsuit for the recovery of Acquitaine, which Navarre has seized as “surety” to a debt from France Frederick insists, against protests to the contrary, remains unpaid.

**PRINCESS**

You do the King my father too much wrong,
And wrong the reputation of your name,
In so unseeming to confess receipt
Of that which hath so faithfully been paid.

**KING**

I do protest I never heard of it;
And if you prove it, I’ll repay it back
Or yield up Aquitaine.

**PRINCESS**

We arrest your word.

Boyet, you can produce such acquittances
For such a sum from special officers
Of Charles, his father.

**KING**

Satisfy me so.

**BOYET**

So please your grace, the packet is not come
Where that and other specialties are bound.
Tomorrow you shall have a sight of them.
KING

It shall suffice me.

(2.1.152-165)

The Princess transforms the King’s very words into something as material as the “document” she has handed him: “We arrest your word.” As G.R. Hibbard notes, the phrase means something like “seize your promise as security,” and the OED lists Measure for Measure as the only other text that makes this figurative use of the word, although Hibbard notes a precedent in Sidney’s Arcadia.\(^{260}\) To satisfy the conditions of the promise, the Princess dispatches Boyet to produce “acquittances” and “specialities” – presumably a receipt for payments made. That “acquittances” should secure control of “Aquitaine” is appropriate. The pun reinforces one’s sense that the legal sparring bears more than a passing resemblance to the sometimes sparkling, sometimes silly, always flirtatious wordplay between the men and ladies, particularly the extended exchanges between Rosaline and Biron that frame the introduction of the land dispute. Perhaps most crucially, as Lorna Hutson notes,\(^{261}\) it is the delay in producing the “packet,” the extension of process, that provides time for the romantic complications – the misplaced letters, the overheard sonnets – that make up the better part of the play’s plot.

The romantic adventures between the two retinues borrow the language of legal practice at crucial moments. This seems especially true in the case of Biron. The elaborate formal inventiveness of Biron’s romantic set pieces go hand in hand with an


\(^{261}\) As Hutson notes in Invention of Suspicion: “No critic has, to my knowledge, commented on the curious fact that the romantic courtship of this comedy follows from the deferral of a process of litigation over a debt” (15).
ironically legal overtone to that romance. After dispatching Costard with a letter to Rosaline, he comes to terms with his feelings in a soliloquy during which he calls Cupid the “sole imperator and great general / Of trotting paritors” (3.1.178-179), paritors being “[a] shortened form of apparitors, officers who served writs summoning men to appear before the ecclesiastical courts which tried sexual offenders.”262 Listening to Biron’s stylized verse, one gets the sense that courtly love is not an escape from King Frederick’s hermetic forms, but rather the replacement of one equally formal process for another. And, indeed, once the King and his courtiers have admitted their new romantic attachments to each other (after, naturally, a whole series of overheard readings of intricately wrought sonnets), their instinct is to square their desires with their contractual obligations, rather than venture a more forthright rebellion. “O, some authority how to proceed - / Some tricks, some quillets, how to cheat the devil” Longueville exclaims; “Some salve for perjury,” urges Dumaine (4.3.284-286). “Quillets,” a Shakespearean neologism, suggests intricate legal points that will allow the men to act on their desires and yet somehow remain faithful to the letter of their “schedule.”263 This prompts one of Biron’s most impressive perorations, which culminates in the mock-Pauline tag “It is religion to be thus forsworn, / For charity itself fulfils the law, / And who can sever love from charity?” (4.3.338-340).

The playful agon between love and the law culminates in the Biron’s great speech to Rosaline in Act 5, scene 2. The women, aided by their attendant Boyet, have foiled the

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262 Hibbard, notes to Love’s Labours Lost, 141.
263 Hibbard notes of “quillets” that the “OED cites this as its first instance of the word; but Shakespeare had already used it in 1 Henry VI 2.4.17-18: ‘in these nice sharp quillets of the law / Good faith, I am no wiser than a daw’” (176).
men’s attempt to woo them in disguise as Muscovites. Realizing his and his friends’ compromised position, Biron ostensibly cuts to the chase:

Thus pour the stars down plagues for perjury.
Can any face of brass hold longer out?
Here stand I, lady, dart they skill at me,
Bruise me with scorn, confound me with a flout,
Thrust thy sharp wit quite through my ignorance,
Cut me to pieces with thy keen conceit;
And I will wish thee never more to dance,
Nor never more in Russian habit wait.
O, never will I trust to speeches penned,
Nor to the motion of a schoolboy’s tongue,
Nor never come in visor to my friend,
Nor woo in rhyme, like a blind harper’s song.
Taffeta phrases, silken terms precise,
Three-piled hyperboles, spruce affectation,
Figures pedantical – these summer flies
Have blown me full of maggot ostentation.
I do forswear them, and I here protest
By this white glove – how white the hand, God knows –
Henceforth my wooing mind shall be expressed
In russet yeas and honest kersey noes.
And to begin, wench, so God help me, law!
My love to thee is sound, sans crack or flaw.

(5.2.394-415)

Biron’s speech forsakes the ordered comforts of the academe - “speeches penned”; the “schoolboy’s tongue”; “rhyme”; “taffeta phrases, silken terms precise” – in favor of the rough and ready: “russet yeas and honest kersey noes.” The irony is obvious: it is a bravura rhetorical performance against rhetorical ornament. It comes to a head at the
beginning of the final couplet: “And to begin, wench, so God help me, law!” The line is superbly awkward: the halting rhythms of the syntax, its promise “to begin” repeatedly stalled by fumbling exclamations; the embarrassing and unconvincing use of “wench”; and the final interjection, “law!”, comically peremptory and exasperated. For a moment, it sounds as if Biron were fumbling toward his promise of “russet yeas and honest kersey noes.” But the smooth filling out of the couplet, “My love to thee is sound, sans crack or flaw,” swiftly dampens any hope of a vigorously direct address. The whole thing is superbly deflated by Rosaline’s response: “Sans ‘sans’, I pray you” (5.2.416), teasing Biron for the artificiality he so desperately tries to forsake.

Much of the irony gathers around Biron’s startling exclamation, “law!” What exactly is the word doing here? Probably it is best heard as “[a]n interjection of an asservative kind equivalent to ‘Yes, indeed.’”264 In one sense, it might be thought of as a performative utterance, the execution of the promise to foreswear artifice and to speak in a simpler language, and, as the conclusion of the couplet makes clear, to love. Here law is action in the world, escaping the “barren practisers” (4.3.300) of the academe and entering into sexual and worldly experience. But equally present is an opposite sense to the word. Some editors believe the 1598 Quarto’s “law” to be a corruption of “la,” which the OED defines as “An exclamation formerly used to introduce or accompany a conventional phrase or an address, or to call attention to an emphatic statement.”265 In this case, “law” is akin to interjections like “oh” or “ah” or “well,” an indefinite placeholder without performative force. As A.D. Nuttall observes, “[i]n this play [oaths]

evaporate instantly on contact with the real.” Biron’s exclamation condenses a larger tension in the play: between law as practice in the sense of a formal barrier to experience, and law as practice in the sense of action in the world.

That tension becomes almost tragic in the play’s final scene. The courtiers’ almost sadistic pleasure in Holofernes and company’s affectingly incompetent performance of the Nine Worthies gets cut short by the arrival of Mercade, come to announce the King of France’s death. The Princess’s anticipation of his somber news – “Dead, for my life!” she exclaims before he can make the announcement (5.2.709) – suggests that much of the comic recreation she and her ladies have indulged in during the play served to shield her from this inevitable sadness. As the new Queen orders her court to return to France (and there is an eerie, funereal irony to her repeated order that Boyet “prepare” for the departure from the academe (“Boyet, prepare”; “Prepare, I say” (5.2.715, 717)), she takes a strange leave of King Ferdinand: “Excuse me so, coming too short of thanks / For my great suit so easily obtained” (5.2.726–727). Presumably the Queen refers to a settlement of the dispute over Aquitaine. When, a reader or audience member might reasonably ask, was the suit concluded? G.R. Hibbard notes

The dispute over Aquitaine has evidently been settled in a way favourable to the Princess. Shakespeare characteristically does not – supposing he ever knew – tell us how, since the matter is no longer of any consequence.  


267 Hibbard, notes to *Love’s Labours Lost*, 227.
This is a plausible reaction: confusion over the sudden news of the suit’s resolution is likely swept away by the drama of the moment; and after all, the dispute over Aquitaine might be dismissed as a mere plot device. Then again, knowing when exactly King Ferdinand returned Aquitaine on fair terms to the Princess might color our perception of their courtship. Moreover, the sudden collapse of the legal backdrop to the play’s action intensifies a decisive shift in time within the scene from easy comic elaboration to tragic concentration. This is confirmed by King Frederick’s panicked reaction to the Queen’s imminent departure:

The extreme parts of time extremely forms
All causes to the purpose of his speed,
And often at his very loose decides
That which long process could not arbitrate.
And though the mourning brow of progeny
Forbid the smiling courtesy of love
The holy suit which fain it would convince,
Yet, since love’s argument was first on foot,
Let not the cloud of sorrow jostle it
From what it purposed; since to wail friends lost
Is not by much so wholesome-profitable
As to rejoice at friends but newly found.
(5.2.728-739)

The King has neither the “long process” of arbitration, nor the practice of his courtier’s ingenious “quillet,” neither the comforting schedule of his academe nor its virtuosic circumventions – only something more elemental, “the extreme parts of time.” “Form” takes on a grim irony: no longer the intricate niceties of the three-year oath or of the lovers’ sonnets, but rather the presence of death and its ineluctable limits.
But even as the King tries to escape the gilded cage of the academe, he remains trapped by his own eloquence. Much like Rosaline to Biron’s declaration of love, the Queen responds to King Ferdinand with disarmingly powerful simplicity: “I understand you not: my griefs are double” (5.2.740). Biron tries to make things clearer, but ends up delivering an even more conceited speech about the strange “forms” (5.2.751) by which love has distorted the courtiers into “neglect[ing] time” (5.2.743). When the King finally does manage to declare himself directly, the play’s sense of time shifts once more:

KING
Now, at the latest minute of the hour,
Grant us your loves.
QUEEN A time, methinks, too short
To make a world-without-end bargain in.

(5.2.775-777)

The queen juxtaposes two incompatible forms of time, “the latest minute of the hour” of crisis and the “world-without-end bargain” of marriage, and rejects them both. Long, endless process and sudden practice are equally unsuitable. Instead, the Queen and her retinue offer their lovers something far less categorical: the agreement that if they should endure a year of trials – a bare and naked hermitage for the King, work as a jester in hospitals for Biron – the ladies might then consider them fit to take as husbands. Their offers are deliberately hesitant, and resist more binding legalisms; the King and his court will have to “challenge” their right (5.2.793). The men must trust to the possibility of “reformation” not through the easy structure of process or the witty subversions of practice, but rather from experience, simple and hardy as the songs that close the play.

In Love’s Labours Lost, the dynamic Shakespeare explored in The Comedy of Errors finds a more radical expression. Two kinds of form, process and practice, generate
a productive friction, framing time now as an endless elaboration, now as a decisive moment; now as rigorous obedience to the letter, now as sudden legerdermain. The forms allow for comic ramifications, and for tragic chiaroscuro. Shakespeare does not offer any resolution between them; instead, he points through the play’s concluding rustic songs away from intricate form to the possibility of a simpler form of life, something not bound or determined by a particular law. His most virtuosic comedy holds many fictions up to the light, lyrical and legal, and it can even imagine the supreme fiction of forsaking them.

Golden Time Convents

Observing the way Shakespeare plays with time through and against legal forms in *The Comedy of Errors* and *Love’s Labours Lost* sheds a revealing light on *Twelfth Night*. Like *Love’s Labours Lost*, much of the play’s plot resolves around the complications of a self-imposed exile: Olivia has resolved that:

The element itself till seven years’ heat  
Shall not behold her face at ample view,  
But like a cloistress will she veiled walk  
And water once a day her chamber round  
With eye offending brine – all this to season  
A brother’s dead love, which she would keep fresh  
And lasting in her sad remembrance.

(1.1.23-31)

Valentine’s description of Olivia as a “cloistress” and the specific determination of seven years gives her withdrawal the character of a quasiformal oath of obedience. And Olivia is not the only character concerned with observing time. As Keir Elam observes:

Not surprisingly, in a comedy declaredly dedicated to a seasonal occasion, there is a good deal of concern with the passage of time.
This is sometimes perceived with anxiety, as in Olivia’s ‘The clock upbraids me with the waste of time’ (3.1.128) and the First Officer’s ‘The time goes by. Away!’ (3.4.361). The play is correspondingly full of references to clocks and watches (2.5.57, 3.1.128, etc…) and has its maniacial timekeepers, such as the priest who measures every moment of his mortality: ‘Since when, my watch hath told me, toward my grave / I have travelled but two hours’ (5.1.158).268

The figure most closely associated with a strict observance of time is Malvolio. Elam writes of his “temporal decorum,”269 as when he snaps at Sir Toby Belch, Sir Andrew Aguecheek, and Feste “Have you no wit, manners nor honesty but to gable like tinkers at this time of night?” (2.3.86-87). Later in this scene, in response to her much-commented-upon line that Malvolio “sometimes” is “a kind of Puritan” (2.3.136), Maria says of him “The devil a puritan that he is, or anything constantly but a time-pleaser” (2.3.142-143). Malvolio is the paragon of process, “constantly” a “time-pleaser,” in his observance of temporal decorum – and legal decorum as well. For Malvolio is Olivia’s steward, in Shakespeare’s England an official title for persons, sometimes formally trained lawyers and sometimes not, who managed the legal affairs of country manors, including tribunals that settled disputes over tenurial relationships. And as stewards were often judges and clerks of their manorial courts, there might just be a technical irony to Olivia’s promise at the end of the play that Malvolio might be “the plaintiff and the judge

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268 Elam, notes to Twelfth Night, 77.

269 Id.
/ Of thine own cause” (5.1.348-349). In any case, for Malvolio, strict observance of

time and strict observance of the law are closely related.

Almost paradoxically, in the same play in which everyone seems obsessed with

observing the clock, Shakespeare plays fast and loose with time, much as we observed

him do in *The Comedy of Errors*. I am referring to “the play’s notorious ‘double’ time

scheme.” In Act 1, scene 4, Valentine observes to Viola/Cesario that Orsino “hath

known you but three days, and already you are no stranger” (1.4.3-5). By the end of the

play, accidentally accusing Viola/Cesario of willfully refusing to recognize him, Antonio

claims to have been acquainted with Sebastian for three months, and Orsino claims the

same length of acquaintance with Viola/Cesario (5.1.90-95). Elam suggests that “[s]uch

discrepancies do not trouble audiences, and the temporal allusions need not be taken too

seriously or too literally,” and he argues that the “different rhythms” of time “converge in

the real time of the performance.”

I think the discrepancy is more significant than Elam allows, and that it is not

entirely resolved by performance. As in *The Comedy of Errors*, the distension of time

seems to have an expressive function. It makes the gap between all the complications of

the play – the disguises, the pranks, the revelations and realignments of desire, the

promised marriages – and their resolution seem even wider. For they have not been

resolved. All the happy determinations at the end of the play are prospective, as yet

imperfect. Everything is couched in the future or the conditional: Sebastian says to


270 For an overview of the complex role of the steward in the English legal system, see


271 Elam, notes to *Twelfth Night*, 77.

272 *Id.*, 78.
Viola/Cesario “Were you a woman, as the rest goes even, / I should let my tears fall upon your cheek / And say ‘Thrice welcome, drowned Viola.’” (5.1.235-237). Were is all important. Viola’s response is equally contingent: “Do not embrace me till each circumstance / Of place, time, fortune do cohere and jump / That I am Viola” (5.1.245-249). Similarly, the proper identities of the twins all but revealed, Olivia says to Orsino

My lord, so please you, these things further thought on,  
To think me as well a sister as a wife,  
One day shall crown th’alliance on’t, so please you,  
Here at my house and at my proper cost.  
(5.1.310-313)

This imagined resolution outside the frame of the play finds its ultimate expression when Orsino asks Fabian to track down Malvolio, so that he might release the captain from his suit and recover Viola’s feminine clothes:

Pursue him, and entreat him to a peace. [Exit Fabian.]  
He hath not told us of the captain yet;  
When that is known, and golden time convenets,  
A solemn combination shall be made  
Of our dear souls. Meantime, sweet sister,  
We will not part from hence. Cesario, come –  
For so you shall be while you are a man;  
But when in other habits you are seen,  
Orsino’s mistress and his fancy’s queen.  
Exeunt [all but Feste].
(5.1.373-381)

It is as if all the lovers at the end aren’t much interested in getting things straight, as if they want to remain in the here and now of their not quite dispelled confusion:

“Meantime… / We will not part from hence.” Orsino’s phrase for when the spell will break, “When…golden time convenets,” is beautiful and telling. “Golden time,” as Elam’s
notes indicate,\textsuperscript{273} has a ring of the otherworldly, the Arcadian – or the Elysian, where Viola thought death had taken her brother (1.2.3). The restoration of proper gender and identity, the marriages to come – these come, even in their being desired, to seem insubstantial, a fiction next to the radiant and unsettled moment in which the lovers imagine that restoration. This unreal future has a legal character, too: “convent” is a variant of “convene”\textsuperscript{,274} so the golden time will meet like a court to sanction these contracts. When it meets, if it meets, Viola will be “Orsino’s mistress and his fancy’s queen.” For the moment, though, Orsino’s fancy remains as potentially unfettered and beautifully irresponsible as it was at the beginning of the play:

\begin{verse}
O spirit of love, how quick and fresh art thou
That, notwithstanding thy capacity
Receiveth as the sea, naught enters there
Of what validity and pitch soe’er
But falls into abatement and low price
Even in a minute. So full of shapes is fancy
That it alone is high fantastical.
\end{verse}

(1.1.9-15)

For the moment, it remains that fancy alone is high fantastical. Which is to say all that comes into the world we are left with at the end of the play “[b]ut falls into abatement and low price / Even in a minute.” Elam reads “abatement and low price” as a kind of hendiadys, because he glosses abatement as “diminuition.”\textsuperscript{275} But abatement also has a technical legal meaning: the termination of a legal proceeding or writ, rendering a legal

\textsuperscript{273} Id., 351.
\textsuperscript{274} Id.
\textsuperscript{275} Id., 163.
action null or void.\footnote{Abatement, n. 2a,} In Twelfth Night love and drama make a world in which external forms of action, the law’s among them, are abated.

Nor is this just a matter of fancy; it holds for the actual legal experience of the play. The law never seems to work in Illyrium. The arrests and “motions” (this is the word for the challenges between Sir Andrew Aguecheek and Viola/Cesario) are usually mistaken or void or just plain ineffectual; even Antonio claims upon his arrest that the charge of piracy against him is inappropriate (5.1.70). The marriages are, of course, a mess: Olivia’s to Sebastian, which only ever exists in the promissory form of a sponsalia per verba de futuro, a conditional and non-binding form, was of course made by Olivia under the mistaken impression that Sebastian was Cesario.\footnote{Elam identifies the “full assurance” (4.3.26) exchanged or about to be exchanged between Olivia and Sebastian before the Priest in 4.3 as a “declaration of future intent (Sponsalia per verba de futuro)” (319). For a detailed analysis of literary treatments of the two major forms of marriage vow (de futuro and de praesenti), see Subha Mukherji, Law and Representation in Early Modern Drama,17-54.} As has already been observed, Orsino and Viola’s marriage remains entirely conditional. The only marriage that seems to go off is that between Maria and Sir Toby Belch, which is accomplished who knows when offstage and announced surreptitiously by Fabian as Sir Toby’s “recompense” to Maria for having “writ” the letter or “device” that lead to Malvolio’s humiliation (5.1.349-362). Malvolio’s deception might be the one bit of legal practice that works onstage in the play: it may not have a properly legal character, but it is described as if it did, as a “device” or legal instrument that must be subject to Malvolio’s “construction” (2.3.170). The practice that reigns in Twelfth Night is play.
In that sense, the reigning character is the one who gets the last words, Feste. His relation to language and to self is one of continual play. At the end of Act 1, when Olivia demands he be taken away after calling her a fool, he cries out “Misprision in the highest degree! Lady, *cucullus non facit monachum* – that’s as much to say as I wear not moley in my brain” (1.5.51-54). Among other things, “misprision” can mean a failure of legal duty and wrongful arrest, as well as a legal misinterpretation: in a sense, the only the two reliable things that keep happening in the play. But Feste knows not to take these things too seriously; indeed, he makes a living from misprision. His Latin phrase is a proverb that means “the hood does not make the monk.” Monks are monks by virtue of an internal rather than external habit. As Giorgio Agamben has absorbed, in certain medieval monastic communities, a monk’s status was not necessarily determined by the observance or transgression of a determinate set of rules, but rather by a more intimate and indeterminate form or rule of life (*forma Vivendi*, *regula vitae*): “The rule is not applied to life, but produces it and at the same time is produced in it.” In this way, Agamben sees monastic experience as the possibility of existence beyond the predeterminations of an external law.

Feste refuses to be identified by an external habit, or by an imposed law, because he knows that both are inoperative in *Twelfth Night*. He knows what the lovers in the play can only intuit in those moments in which they have the thrilling, uncanny sense that they are at play (“I am not that I play” (1.5.179); “That you do think you are not what you are” (3.1.137)) or that they feel they have intention, but no determined object for their

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279 Elam, notes to *Twelfth Night*, 187.
intention (Viola speaks of “the form of my intent” (1.1.52) to the Captain, but we never really know why she disguises herself to serve Orsino; Sebastian says something similar to Antonio: “My determinate voyage is mere extravagancy” (2.1.10-11)). I think Viola senses Feste’s special status during her exchange alone on stage with him in Act 3, scene 1. She is playing Cesario, he a pipe and tabor. They spar over the use and abuse of words. Feste says “indeed words are very rascals, since bonds disgraced them” (3.1.19-20). Words are disgraced by the law, and Feste does his work to redeem them as a “corruptor of words” (3.1.35). When he exits, Viola muses:

This fellow is wise enough to play the fool,  
And to do that well craves a kind of wit.  
He must observe their mood on whom he jests, 
The quality of persons and the time, 
And, like the haggard, check at every feather  
That comes before his eye. This is a practice  
As full of labour as a wise man’s art;  
For folly that he wisely shows is fit,  
But wise men, folly-fallen, quite taint their wit.  
(3.1.57-66)

It is not a coincidence that Viola’s description of Feste evokes acting and the stage, the stuff of Shakespeare’s art. For, like Feste, one gift of that art is to remind us not just that there are grand fictions underwriting the law, but also that there are other fictions we might choose to live by, other roles we might inhabit. It lets us hear something of the “practice of the self” Michel Foucault wrote of at the end of his career:

What I would like to show is that as an episode and transitory form, law itself is, rather, part of a much more general history of the techniques and of practices of the subject with regard to himself, of techniques and technologies which are independent of the form of law
and which have priority with regard to it. Basically, law is only one of the possible aspects of the technology of the subject concerning himself. Or, if you like, even more precisely: law is only one of the aspects of this long history, in the course of which the Western subject that we are faced with today was formed.\footnote{Michel Foucault, \textit{The Hermeneutics of the Subject: Lectures at the College de France, 1981-82}, ed. Frederic Gros, general eds., Francois Ewald and Alessandro Fontana, trans. Graham Burchell (New York: Palgrave Macmillan, 2005), 112.} Law can seem comprehensive, like a form sufficient to life. But there is a remainder.

Remembering that is, to borrow John Manningham’s phrase, the good practice in \textit{Twelfth Night}. 

Chapter 4
Corporations: The 1596 _Faerie Queene_

For all its schematic rigor, its endless analyses, anatomies, and didactic set pieces, every honest reader of _The Faerie Queene_, even those who love it, must acknowledge that the poem can be a blur. Rare is the connoisseur who can confidently place each savage man, or dwarf, or even personification in its proper tributary within Spenser’s endlessly ramifying environment. In this world of unceasing distinctions, things start to look the same. Nowhere is this clearer, or murkier, than in the poem’s seemingly countless battle scenes. What reader could, without the prompt of the names, recognize the following stanzas:

Yet from thenceforth more warily he fought,
As one in feare the Stygian gods t’offend,
Ne followd on so fast, but rather sought
Him selfe to saue, and daunger to defend,
Then life and labour both in faine to spend.

Which _Triamond_ perceiuing, weened sure
He gan to faint, toward the battles end,
And that he should not long on foote endure.
A signe which did to him the victorie assure.

Whereof full blith, eftsoones his mighty hand
He heav’d on high, in mind with that same blow
To make an end of all that did withstand:

Which _Cambell_ seeing come, was nothing slow
Him selfe to saue from that so deadly throw;
And at that instant reaching forth his sweard
Close vnderneath his shield, that scarce did show,
Stroke him, as he his hand to strike vpreard,
In th’arm-pit full, that through both sides the wound appeard.

Yet still that direfull stroke kept on his way,
And falling heauie on _Cambelloes_ crest,
Strooke him so hugely, that in swowne he lay,
And in his head an hideous wound imprest:
And sure had it not happily found rest
Vpon the brim of his brode plated shielf,
It would haue cleft his braine down to his brest.
So both at once fell dead vpon the field,
And each to other seemed the victorie to yield.

(IV.iii.33-35)\textsuperscript{282}

The names make things easier: this is from Book IV, canto iii of the poem, during the narrator’s recollection of the bloody beginning to the friendship of Cambell and Triamond, and their unions with Cambina and Cancee. Triamond is fighting Cambell for the hand of Canacee. If we can identify the moment, though, it is hard for us to distinguish it, to say what marks it out from so many other armed contests in the poem. It has many of the qualities that make these scenes all but interchangeable, the foremost of which is a kind of pronominal \textit{sfumato}. When we read “Which \textit{Triamond} perceiuing, weeued sure / He gan to faint, toward the battles end, / And that he should not long on foote endure. / A signe which did to him the victorie assure,” we can just barely distinguish to whom the pronouns refer: the first and second “he,” we recognize, must be Cambell, and that final one must be Triamond. But even if it feels like we know what’s going on, it might take more than one read through the syntax to parse it out exactly. The difficulty is significant, and scholars of the poem are quick to note it. In her entry on the “reader in \textit{The Faerie Queene}” for the \textit{Spenser Encyclopedia}, Maureen Quilligan writes “[t]he reading of grammar (simply deciding which is the proper antecedent to a pronoun) becomes an ethical, theological, even eschatological choice”; and these choices only get harder as the poem goes on:

\begin{footnotesize}
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There are fewer signals [than in the eschatologically organized Book I] that a given interpretation is right or wrong, just as there are fewer clear-cut victories for the protagonists. The heroes may be battling monsters and the reader the rules of grammar, but the ethical issues are comparable.\textsuperscript{283}

The pronominal haze is part of a larger ethical challenge for both the heroes and the readers of the poem, the didactic force of which is to give an adequately difficult treatment to the problem of distinguishing between forces like good and evil, providence and chance, and human and divine agency.

But, as usual with Spenser, even that sophisticated an explanation might be too simple for the reality of the poetry, or at least incomplete. The ambiguities Quilligan and others have noted in pronouns and other details of scenes such as the one I’ve drawn attention to certainly have something to do with the fine and slippery ethical distinctions ever present in \textit{The Faerie Queene}. But in the fight between Cambell and Triamond, there are no moral or theological antimonies to identify: both knights are in fact the heroes of Book IV’s “Legend.”\textsuperscript{284} The scene underscores that the ambiguities of reference and identity magnified on the battlefields of Fairie Land are not just ethical, but also epistemological and ontological. Who or what counts in this poem as a distinct person, or an entity, or an agent? As Cambell and Triamond battle to the death, they blur, and we start to wonder how much the poem cares or wants to keep them apart, in its world and in our minds. Even when they crash to the ground, seemingly dead, they form


a synchronized, symmetrical tableau: “So both at once fell dead vpon the field, / And each to other seemd the victorie to yield.” In battle, as they will later in friendship, the two knights seem as one.

And yet, even as they seem to blur, Spenser affords us brief but strong reminders of the knights’ bodies, as when Cambell strikes Triamond, while not quite successfully dodging the other’s blow. Reaching stealthily beneath his shield, Cambell wounds Triamond “In th’arm-pit full, that through both sides the wound appeard.” There is something dissonant about the mention of an armpit in the elevated atmosphere of chivalric combat; it stands out sharply, a quirky and vulgar tone in the battle’s ceremonious drone. Just as the knights are at their greatest proximity, and just as Spenser’s loopy, tactically vague grammar has us working hardest to keep them apart, we are made with a single stroke to feel them as flesh and blood men, not just dashed off miniatures flitting across the vast, maddeningly frenetic canvas of Book IV. The knights seem at their flattest and at their most vivid in the same moment.

Perhaps the special charge of the scene, what distinguishes it from other melees in *The Faerie Queene*, is its context in Book IV, canto iii. Triamond is battling Cambell under special circumstances. His foe has slain his two brothers, and he has received by “traduction” (IV.iii.13) or metempsychosis the souls of his dead brethren. As with the pronominal cloud into which the combatants disappear, this compounding of souls is another instance in which the distinction between characters seems rather fragile; what counts more, the poem seems to tell us here, are forces larger than any given individual. But as the three brothers’ vital forces consolidate in Triamond, the poetry intensifies our apprehension of the experience as something bodily:
It left; but that same soule, which therein dwelt,
Stright entering into Triamond, him fild
With double life, and griefe, which when he felt,
As one whose inner parts had bene ythrild
With point of steel, that close his hartbloud spild,
He lightly lept out of his place of rest,
And rushing forth into the emptie field,
Against Cambello fiercely him addrest;
Who him affronting soone to fight was readie prest.
(IV.iii.22)

Spenser’s simile fuses the metaphysical and physical. Triamond experiences the arrival of
his brother’s souls as something affective (he feels grief) and tangible (it feels like a
wound). The traduction of the brothers’ souls is an incorporation, in two crucial senses:
as the aggregation of multiple distinct entities into one; and as the physical manifestation
of an abstract phenomenon.

It is that word, incorporation, and the processes it describes in The Faerie Queene,
that I want to think about in this chapter. The canto I have been scrutinizing comes early
in the second half of Spenser’s poem, in his Book of Friendship. On the face of it, if one
were to invoke a technical vocabulary in this part of the poem, the process comes from
classical ethics, in particular Cicero and Aristotle’s writing on the virtues of friendship.
And the fusion of Priamond, Diamond, and Triamond most obviously draws on
Pythagorean doctrines of metempsychosis. I will have occasion to draw on the classical
precedents; but I want to center the discussion in a different context: corporate
personhood, that legal fiction whereby individuals can constitute a single entity whose
legal status and agency is distinct from its constituent members. Though not explicitly
invoked, my wager is that corporate personhood is a form of thought present in the details
I have highlighted in the stanzas above: the blurring of individual personhood; and the
eerie and insistent survival of bodily presence amidst the blurring abstraction.
The argument of this chapter is that legal fictions of corporate personhood suffuse the poetry of *The Faerie Queene*, from deep structure to local detail. As such, it continues the work of my earlier chapter on suspicion in the 1590 edition of the poem, in that it aims to show how a kind of legal fictionmaking is a powerful current in what Harry Berger has called the Spenserian dynamics.\(^{285}\) My reading in this chapter is indebted to David Lee Miller’s insight that “*The Faerie Queene* reflects a poetics of incorporation” specific to the legal and politic context of Elizabethan England, and in particular the doctrine of “the king’s two bodies” as analyzed by Ernst Kantorowicz in his classic study.\(^{286}\) I share Miller’s sense that the corporate form is central to the plan of Spenser’s allegory, and in particular to its diffuse, multifaceted celebration of Elizabeth. And I find persuasive and useful his notion of *The Faerie Queene* itself having two bodies: one, the endlessly deferred promise of formal wholeness, represented by the elusive Faerie Queene itself, a kind of poetic “body politic”; the other the poem itself, in its incompleteness, its contradictions, its modal tensions, and its erratic attempts at ascesis, a kind of poetic “body natural.” The basic point that the corporate form is at the heart of Spenser’s poetics is an invaluable insight.

But my interpretation of Spenser’s relation to corporate personhood differs from Miller’s in emphasis and temperament. Whereas Miller’s study focuses on the 1590 *Faerie Queene*, my chapter examines the 1596 additions to the poem. This is not just for


the sake of comprehensiveness; my instinct is that the corporate form is even more central to the last three books of the poem, the concerns of which center around more overtly social, political, and legal virtues: friendship, justice, courtesy. The necessarily interpersonal nature of these topics puts even more pressure on the problems to which corporations are addressed. Moreover, whereas Miller’s account focuses on the doctrine of the king’s two bodies, my chapter argues that Spenser’s poem is alive to a wider range of corporate forms, both old (classical discourses of civic friendship) and new (the joint-stock company).

I also have a different sense from Miller of what corporate personhood is doing in *The Faerie Queene*, and how. Miller basically accepts the poem’s celebratory, didactic, and ideological missions: “Spenser’s portrayal of Elizabeth is sometimes obliquely critical, as recent criticism has argued, but it remains on balance a work of glorification, specifically glorification of the body politic of Elizabeth.” That is to say, in Miller’s reading, *The Faerie Queene* is a representation of an ideology, in this case the corporate ideology of Elizabethan England. On the face of it, this makes sense: allegories are nothing if not natural mirrors of ideology, as Angus Fletcher observes. Under such an account, Spenser’s poem becomes most useful as an exemplary product of Elizabethan ideology; in other words, it is a usefully and unusually beautiful object for our own critical thought, but is itself limited to the terms of the ideology it describes. Perhaps the most compellingly and disturbingly radical instance of such a critical attitude is Stephen

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287 Miller, *Poem’s Two Bodies*, 6.

Greenblatt’s interpretation of the poem as a vast expression of repression and of the subordination of art to the worship of power.289

This critical perspective, though it has enabled criticism as fine and influential as Greenblatt’s, is inadequate to The Faerie Queene. My conviction is that Spenser’s poem is not a representation of ideology, either in the sense of an apology or glorification, though it is certainly not a repudiation of ideology either. Rather, the poem is what I called in my chapter on suspicion in the 1590 Faerie Queene an experiment in ideology, or what Adorno and others of the Frankfurt School would call immanent critique.290 Even


…one should begin by analyzing logical and epistemological categories. The task would be to subject categories like concept, judgment, subject, substantiality, essence, and suchlike to the kind of examination that was already begun in the Fragments. This should include not only purely logical but also historical and social discussions. The historical and social substance of the categories and their present status should be determined from their immanent meanings, and such an analysis would lead on to a judgment on the correct and false moments of the categories concerned. (241)

this, as I suggested in my earlier chapter, must be provisional, for the way the poem takes possession of and is possessed by its ideology is so entire and intense that the concept of immanent critique seems too tame for it.

But the basic operation of immanent critique – inhabiting the structures of a given world-view in order to clarify its internal contradictions and to redeem it for thought – is useful for understanding what I think of as Spenser’s extremism. We are not prone to think of Spenser as an artist of extremes, except perhaps in those rare moments, highlighted by Greenblatt and others, when the seemingly aristocratic and conservative moods of his poem give way to a shocking violence in a return of the repressed. The classic contrast to “sage and serious” Spenser is Milton, surely a poet of extremes if there ever was one. Gordon Teskey gets to the heart of this contrast when he claims that whereas Milton is the poet of the arche or first principle, Spenser is the poet of archeology, understood as the “index of the passage of time.” Part of that index of time’s passing, though, and perhaps primary to it, is the recording of the violence of historical forms, the law among them. For when he uses legal thought as raw material for his poem’s dynamics, Spenser pushes that legal thought to its furthest reaches. He is, as Jeff Dolven has observed, a poet susceptible to the enthusiasm of ideas, and in The Faerie Queene, he sees certain legal ideas through to their most radical conclusions. His

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292 On this element of Spenser’s artistic personality, as revealed through his correspondence with Harvey and his formal choices as a poet, see Jeff Dolven, Spenser’s Metrics, The Oxford Handbook of Edmund Spenser, ed. Richard McCabe (Oxford: Oxford University Press, 2010), 385-402.
treatment of legal fictions evinces an early, especially intense instance of the dialectical “movement between extremes” that Walter Benjamin claims became central to baroque art. This dialectical movement is what I call Spenser’s extremism. The paradoxes and polarities that emerged in my reading of Book IV, canto iii, then, will emerge repeatedly in the pages that follow, in different contexts and keys.

My chapter approaches its subject in three sections. The first part of each section is theoretical, and gives an overview of three different forms of corporate personhood in Elizabethan thought I find especially relevant to *The Faerie Queene*: the classical ideal of civic friendship; the corporation sole of English kingship; and the legal mechanism of joint stock companies. That sequence shows the corporate form in operation across a range of discourses, from political philosophy, to a general legal ideology, to an operative legal fiction. Although the last category is most pertinent to this dissertation, it is impossible to separate the more technical and specifically legal fiction of corporate personhood from the other kinds of corporate forms in the period’s political and legal thought, or to understand Spenser’s project without taking the full range of discourses into account. Each section concludes with readings that examine Spenser’s engagement with the corporate form under consideration: with civic friendship in Book IV; with the king’s two bodies in Book V; and with joint stock companies in Book VI.

Throughout these readings, I am especially concerned with how Spenser’s experiments with corporate personhood evince a complex play between particularity and generality that is central to *The Faerie Queene* as a whole. Spenser’s personifications

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have a natural tendency to abstraction: sometimes, we think less about Una and more about theological doctrines, or the history of the Church of England, or about Queen Elizabeth; we see Despetto, Decetto, and Defetto as more of a unified tableau or a malignant organism than three separate individuals. In some sense, this abstraction is an instance of what Gordon Teskey calls “allegorical capture.” At the same time, Spenser’s personifications keep bringing us back to particularity and to the bodies meant to carry the poem’s meaning: Una’s emotions, her occasional and startling imperfections (as when, after urging Redcrosse to spare Duessa, she viciously orders him to strip her at I.viii.45). Even in the most rigid of the poem’s didactic tableaus, little details make the personifications more lively, comic, or even human than their allegorical purpose seems to need: Despetto likes to “creep” around his victims, Despetto is “stout” (VI.v.20). This is the other side of “allegorical capture”: we cannot help but feel and know the material being forced into signification, and we sense that one kind of being is being suppressed in favor of another. Sometimes, what lingers in the reader’s mind is not the poem’s lesson, but rather the hints of ordinariness at the edges of its allegorical appartus.

With this in mind, I will focus especially on moments in which Spenser applies pressure to the different poles of his corporate persons. Sometimes, I will point out moments in which particular agents in the poem seem effaced in favor of some larger corporate agency; in others, I will hone in on agents and their bodies that stubbornly resist easy abstraction, or that call special attention to themselves in the process of their signification. My examples will come from all three completed books of the second half.

See Teskey, Allegory and Violence, 5-6.
See Dolven, Scenes of Instruction, 236.
of the poem (Amyas and Placidas in Book IV; Adicia in Book V; the Blatant Beast in Book VI). At different moments, I will recall different permutations of corporate personhood that I have described (civic friendship; the corporation sole of kingship; joint stock companies) and the different dynamics they exemplify (corporations across and within persons). Though I pair each example from the poem with one of the corporate forms I have sketched (Amyas and Placidas with civic friendship; Adicia with corporate sovereignty; the Blatant Beast with financial companies), different aspects of all the corporate structures are pertinent across the examples and elsewhere in the poem. Ultimately, I want to capture a some of the extremism of Spenser’s poem: the way it tests its own structures to its limits, the way it pushes the corporate model to maximum abstraction and maximum particularity.

The Commonwealth of Friendship

The OED records that “corporation” in sixteenth-century English included the meanings “The act of incorporation; the condition of being incorporated,” and among its examples is a reference in a fifteenth-century legal document including the phrase “As touching the corporation of Plymouth”; the term could also refer to “a number of persons united, or regarded as united, in one body; a body of persons,” and the examples tend to refer to the ecclesiastical polity, as in the earliest instance, from Thomas More’s Treatise on the Passion: “He [Christ] doth …incorporate all Christen folk and hys owne bodye together in one corporacyon mistical.”296 Both secular and spiritual organizations, then, shared the same structure of absorbing a group of persons into a single corporate body,

whose existence was distinct from and survived particular constituents. One source of this form, as More’s quote suggests and as Kantorowicz has demonstrated at length, is the doctrine of Christ’s double nature or *gemina persona* as a mortal body and an instantiation of immortal God.\(^{297}\)

Another influence, which I would like to focus on here, is friendship as a concept of classical and Renaissance humanist philosophy. As Henry Turner has demonstrated in an essay on *The Merchant of Venice*, English Renaissance republican political theories can be thought of as “the problem of the more-than-one”:

\[\text{…as both Derrida and Laurie Shannon have shown, any investigation into the tradition of philosophical writing on friendship leads us to consider problems of number, unit, and quantity: the relationship between the one and the many, and the individual and the collective; problems of equality, similarity, and recognition; and the laws and power necessary to regulate relationship among the people and the values that justify this regulation. For all these reasons, the problem of the more-than-one is fundamentally a political problem…}^{298}\]

For Renaissance humanists and statesmen, the canonical ancient texts addressed to this problem were Aristotle’s *Nichomachean Ethics* and Cicero’s *De Officiis*. For Aristotle, man is essentially a social animal, and full happiness can only be achieved through virtuous friendship, or as Turner puts it, “the act of loving a friend and…the equitable

\(^{297}\) Kantorowicz, *King’s Two Bodies*, 49-50.

exchange of love that bonds private friends and public citizens alike.” Aristotle defines the best form of friendship as a perfect reciprocity:

And in loving a friend men love what is good for themselves; for the good man in becoming a friend becomes a good to his friend. Each, then, both loves what is good for himself, and makes an equal return in goodwill and in pleasantness; for friendship is said to be equality, and both of these are found most in the friendship of the good. Happy and virtuous persons are so only by dint of their being in a relation of friendship to another. This fundamentally relational philosophy of happiness is not surprising, since Aristotle at the beginning defines his investigation into happiness as an activity of political science; and in his *Politics*, Aristotle claims that states precede particular constituent citizens. For Aristotle, then, political association and friendship are inextricably connected.

Cicero, too, insists on the fundamental role of social and political association, and links it to the benevolence of friendship, as Turner observes:

> We *must* contribute to the community at the common good, Cicero writes in one of the passages most often cited of the sixteenth and seventeenth centuries, and we must do so because we are shared creatures: “we are not born for ourselves alone, but our country claims a share (*partem*) of our being, and our friends a share (*partem*)”.

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299 *Id.*, 423.


Citizen-friends, in short, do not merely form a political community: they form a corporation.\textsuperscript{302} Indeed, as other commentators have noted, even the seemingly most personal and least communal traits of ourselves become, in the world of \textit{De Officiis}, drawn into the social and political realm. As Christopher Gill notes, Cicero in the \textit{De Officiis} works to balance questions of personhood (what constitutes our shared humanity) and personality (our individual selves, what makes us unique).\textsuperscript{303} As a way of analyzing and harmonizing the two, Cicero develops what Gill calls the “four-personae theory,” which isolates four different kinds of \textit{persona} or self within each person: 1) our rationality; 2) our “characteristics”; 3) our social position; and 4) our choice of \textit{métier} or career. The problem, as Gill aptly puts it, is that even those aspects of the four personae theory that purport to be about our own unique selves, or our personality, tend to end up reducing to a place on the “social grid.” The characteristics Cicero singles out are usual ones of public significance, defined through historical “types.” Put simply, personality keeps disappearing into personhood.

Two types of corporation have appeared in this analysis of friendship and public association. The first involves a structure in which multiple agents join together to form a larger agent. The state, in Aristotle and Cicero’s political philosophy, constitutes such a group agent. It exists independently of any particular biological person in it, and it survives beyond the death of any given member of the corporation, or even all of its

\textsuperscript{302} Turner, “Problem of the More-than-One,” 427.

members at any given moment. In medieval theology and jurisprudence, as Kantorowicz notes, this structure was articulated through the concept of *universitas*:

…the notion of *corpus mysticum* was used synonymously with *corpus fictum, corpus imaginatum, corpus repraesentatum*, and the like – that is, as a description of the juristic person or corporation. The jurists, thereby, arrived, like the theologians, at a distinction between *corpus verum* – the tangible body of an individual person – and *corpus fictum*, the corporate collective which was intangible and existed only as a fiction of jurisprudence. Hence, by analogy with theological usage as well as in contrast with natural persons, the jurists defined their fictitious persons not seldom as “mystical bodies.” This term was applicable to every size and rank of *universitas* within the hierarchy of corporate communities of which medieval social philosophy, in a blending of Augustinian and Aristotelian definitions, distinguished five: household, neighborhood, city, kingdom, universe.\(^ {304} \)

Friendship is the local ethical and affective dynamic that brings individuals into relation with these corporate structures.

Along with this sense of corporation as a group agent independent of its constituents, there is also a sense of corporation within individuals, and within the individuals who make up corporate entities such as a state, a town, or a guild. The classical ethics of friendship and social life I have sketched above through Aristotle and Cicero implies a multiplicity within a person. As a social animal whose happiness can only be obtained through virtuous friendship in the political community, man, according to Aristotle, is not self-sufficient; part of his full self, his happy and actualized self, is external to him, in the “good” of his friends and his civic life. Aspects of his identity –

\(^ {304} \) Kantorowicz, *King’s Two Bodies*, 209.
say, his social status; his work in the city; his ethos or character as perceived by the community – are constructed in relation to others and to a community. They are, in a sense, variations on types or what Elizabeth Folwer calls “social persons”: “a paradigmatic representation of personhood that has evolved historically among the institutions of social life.”\(^{305}\) In our social lives or in a literary text, an individual or character takes on the aspect of many different social persons at any moment, which gives a sense of richness to that individual or character in our social and literary readings:

…the difficulty we experience in sorting out the degree of attribution [of a social person to an individual] in each case causes us to feel a density in the character, no matter which judgment we make. Social persons are, by definition, simple and thin; positioned among a number of them, a character takes on complexity and weight.\(^{306}\) Fowler’s notion of social person helps to clarify the earlier discussion of Cicero’s “four-personae theory.” Using Christopher Gill’s terms, we might say that the “density of character” Fowler notes in the layering of social persons upon an individual is an instance of personality (individuality) being produced from a contrapuntal personhood (shared human qualities). A self is always being defined, even in its most individual moments, in relation to complexes of norms and types. Even relatively abstract or universal virtues such as temperance or courage or wisdom are social, not only because of their utility to the community but also because Cicero tends to define and refer the virtues through historical archetypes. In this kind of thought, any individual is always, within himself, a


\(^{306}\) *Id.*, 9.
kind of corporation: an amalgam of overlapping, sometimes competing social roles and values, which is not exactly reducible to any of its constituent components.

**Whether Whether**

Book IV, canto ix of *The Faerie Queene* opens with a characteristic gesture of analytic and moral clarity from the narrator:

> Hard is the doubt, and difficult to deeme,  
> When all three kinds of loue together meet,  
> And doe dispart the hart with power extreme,  
> Whether shall weight the balance down; to weet  
> The deare affection vnto kindred sweet,  
> Or raging fire of loue to woman kind,  
> Or zeale of friends combynd with vertues meet.  
> But of them all the band of virtuous mind  
> Me seemes the gentle hart should most assured bind.

> For naturall affection soone doth cesse,  
> And quenched is with Cupids greater flame:  
> But faithfull friendship doth them both suppresse,  
> And them with maystring discipline doth tame,  
> Through thoughts aspiring to eternall fame.  
> For as the soule doth rule the earthly masse,  
> And all the seruice of the bodie frame,  
> So loue of soule doth loue of bodie pass,  
> No lesse then perfect gold surmounts the meanest brasse.  
>(IV.xi.1-2)

The stanzas begin with a *quaestio*: “When all three loues together meet, / And doe dispart the hart with power extreme, / Whether shall weigh the balance down,” the three loves being those of family, eros, and friendship. The narrator comes up with a neat solution, congruent with the dominant themes of the book: friendship offers a resolution to and improvement upon the conflict between familial and erotic love. Friendship here is a “band of virtuous mind,” and as such is a form of love of the soul, rather than love of the body. The statement is congruent with the larger thrust of Spenser’s Legend of
Friendship, which posits the virtue as a social and political good. Like Cicero and Aristotle, Spenser treats friendship as a foundation of civilized life, the necessary prerequisite to a healthy polis. As in Aristotle and Cicero, friendship in Book IV of *The Faerie Queene* is a form of corporate personhood: though constituted by individuals, it produces something (the state) not entirely reducible to its parts. Here, friendship has a corporate effect at the ideological level: it acts to “bind,” “suppresse,” and “tame” the potential conflicting energies of familial and erotic love, and to transform them into a more perfect whole. As Hamilton notes, friendship does not act as a negation of these other forms of love so much as a “mean” that harmonizes them.307

But as is so often the case in this poem, the breezy confidence of the opening to IV.ix becomes much more equivocal when put in context and subjected to scrutiny. The canto tells the second half of the story of Amyas and Placidas. In IV.viii, Placidas appeared under hot pursuit by Corflambo, a fiery-eyed personification of destructive lust. After Arthur vanquishes Corflambo, Placidas reveals his story. He is the identical friend of the imprisoned Amyas, who had arranged a secret meeting with his socially superior lover, Aemylia, only to be ambushed and imprisoned by Corflambo (Aemylia, present with Arthur and Amorett for this story at IV.viii, had been kidnapped by Lust, and freed by Belphoebe in IV.vii). While imprisoned, Amyas had attracted the attention of Poena, Corflambo’s daughter. In the meantime, hearing of his distress, Placidas infiltrated the prison to free his friend, and managed to persuade his friend that he, Placidas, should pose as Amyas to Poeana. At his first chance, Placidas escaped, and now, at the opening of IV.ix, guides Arthur to free Amyas from Corflambo’s prison. The neat tetradic

307 Hamilton, notes to the *Faerie Queene*, 476.
structure of the story’s eventual resolution, which happily reunites Amyas and Aemylia and pairs a newly chastened Poeana with Placidas, makes it a companion story to the central “Legende” of Book IV, the friendship of Cambell and Triamond and their marriages to Cambina and Canacee.

If in summary it looks like another of the elaborately balanced structures that make Book IV the most overtly complex and least accessible part of Spenser’s poem, the details of the poetry show the kind of subtle ambivalence that energizes even the most ceremonious moments in the poem. Take the very next stanza after the ones I’ve quoted, in which the narrator shifts from the general moral to its narrative application:

All which who list by tryall to assay,
Shall in this storie find approoved plane;
In which these Squires true friendship more did sway,
Then either care of parents could refraine,
Or loue of fairest Ladie could constraine.
For though Poeana were as faire as morne,
Yet did this trustie Squire with proud disdaine
For his friends sake her offred favours scorne,
And she her selfe her syre, of whom she was yborne.
(IV.ix.3)

As is often the case in The Faerie Queene, slight uncertainties of reference prove telling.

To whom does the narrator refer as he shifts from “these Squires” to “this trustie Squire”?

Hamilton summarizes the problem nicely:

If this trustie Squire is Amyas, he refuses Poeana’s love For his friend’s sake, namely Placidas, or possible Aemylia. If the Squire is Placidas (as at 15.3), which is more likely, he flees from Poeana, thus scorning her love, in order to find the means to free his friend, Amyas. She scorns her sire by freeing her lover from his prison.308

In fact, whichever friend one chooses, the passage remains weird. If Amyas, it puts intolerable strain on the notion of friendship outlined by the opening stanzas of the

308 Hamilton, notes to the Faerie Queene, 476 (emphasis in original).
cantos. If being cold to Poeana because of his commitment to Aemylia counts as doing something “for his friends sake,” then friendship collapses into erotic love. If Amyas has scorned Poeana for Placidas’ sake, one has to ask: why? In what sense would his obligations to his friend interfere with a liaison with Poeana, and why would they seem more of a hindrance than his obligation to Aemylia? Placidas does seem to make more sense; he has fled from Poeana for the sake of his friend. But he by no means scorned her; indeed, he suggests the erotic attachment that will form a basis of his marriage to Poeana when he describes his easy response to her advances in IV.viii: Which I, that was not bent to former loue, / As was my friend, that had her long refusd, / Did will accept, as well it did behoue (IV.viii.60). And whichever friend one chooses, the praise is weirdly undercut by the final lines inclusion of Poeana’s neglect of her father’s will: “And she her selfe her syre, of whom she was yborne.” In what sense is Poeana’s obedience to her lust, rather than her father, comparable to an act of self-denial in the name of friendship? The stanza gives the impression that the poem is less interested in an accurate description of its own materials than it is in their moral schematization. It does not matter if one reads the lines as referring to Amyas or Placidas; both are equally appropriate, and inappropriate. Individual character and agency blurs, or is willfully obscured, into a larger structure, and the poem insists on the structure, even when the details do not seem to corroborate it.

This rather disconcerting indistinction between persons intensifies as IV.ix unfolds. After freeing Amyas, Arthur and the newly captive Poeana watch as Aemylia and Placidas embrace Amyas:

Whom soone as faire Aemylia beheld,  
And Placidas, they both vnto him ran,
And him embracing fast betwixt them held,
Striving to comfort him all that they can,
And kissing oft his visage pale and wan.
That faire Poana them beholding both,
Gan both enuy, and bitterly to ban;
Through iealous passion weeping inly wroth,
To see the sight perforce, that both her eyes were loth.

But when a while they had together been,
And diversly conferred of their case,
She, though full oft she both of them had seene
A sunder, yet not ever in one place
Began to doubt, when she them saw embrace,
Which was the captiue Squire she lou’d so dear,
Decieved through great likeness of their face,
For they so like in person did appeare,
That she vnneath discerned, whether whether weare.

And eke the Prince, when as he them auized,
And like resemblaunce much admired there,
And mazed how nature had so well disguised
Her worke, and counterfet her selfe so nere,
As if that by one patterne seene somewhere,
She had them made a paragone to be,
Or whether it through skill, or errour were.
Thus gazung long, at them much wondred he,
So did the other knight sand Squires, which him did see.
(IV.ix.9-11)

This is an especially curious reunion. There is, first, the hint of competition between
Aemylia and Placidas in their embrace of Amyas: they hold him “betwixt them…” /
…Striving to comfort him,” as if they were fighting for his attention and for the position
of his chief comforter. It is as if Poeana were not the only person in the scene who feels a
pang of “iealous passion.” The specter of affectionate or even erotic competition between
Aemylia and Placidas is not entirely new; its flickering into view here recalls Placidas’
somewhat disconcerting boast in IV.viii of Amyas’ supreme love for him:

For all his ioy, he said, in that distresse
Was mine and his Aemylia’s libertie.
Aemylia well he lou’d, as I mote ghesse;

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Yet greater loue to me then her he did professe.
(IV.viii.57)
The sense of a more-than-friendly dynamic between Placidas and Amyas increases as one progresses through the stanzas from IV.ix quoted above. Aemylia rather quickly disappears from view, replaced by the extraordinary vision of an uncanny union between the identical friends. Watching them “embrace,” Poeana cannot tell “whether whether weare.” The phrase, beyond its obvious paraphrase (“she hardly knew which was which”)\textsuperscript{309} recalls the language of the quaestio at the opening of the canto: of the three kinds of love, “[w]hether shall weigh the balance down.” “Whether,” of course, functions as “which” here. But it also carries something of the all-in-all, whichever quality the word can have in its more normal usage: “Whether X or Y, Z obtains.” The extraordinary union of Placidas and Amyas is part of a larger conceptual union that friendship performs on different forms of affection, irrespective of the differences between what it works upon. It is, in other words, an instance of the corporate dynamic that runs through the book, in which individual agents and bodies blur into something larger and more general.

For a moment, that blur is radicalized and given a remarkable sense of moral ambiguity. Arthur, gazing in amazement at the two friends, reflects on its nature:

As if that by one patterne seene somewhere,
She had made a paragone to be,
Or whether it through skill, or errour were.
Thus gazing long, at them much wondred he,
So did the other knights and Squires, which did him see.

Arthur’s wonder is not entirely positive: something about the scene causes him to ask whether Amyas and Placidas’ identities were formed “through skill, or errour.” Even more interesting is the final line of the stanza, which expands the perspective beyond

\textsuperscript{309} Hamilton, notes to \textit{Faerie Queene}, 477.
Arthur to all the other men on the scene, the “knights and Squires” freed from Corflambo’s prison. Just as Arthur wonders with some unease at Placidas and Amyas, “So did the other knights and Squires, which did him see.” Yet again, the pronoun, singular instead of the expected plural, is telling. It is another one of those tactically loose grammatical choices Spenser makes throughout the poem: maybe a mistake, but my own instinct is to think of this one as deliberate and significant. Hamilton declares of the pronoun: “‘them’ conj. Hughes 1715, but the text may stand: being clones, the two are essentially one.”310 As such, the two recall other, usually doubled-edged, artificial twins throughout the book: the true and false Una, the true and false Florimell. But this pair is different in being male, and in not being a true/false pair centered around a single individual. Rather, the intensity of likeness between the two comes not just through physical identity, but also affectionate intensity. As such, the united friends recall another distinct categories of characters in the poem: the homoerotic figures and pairs scattered through Faerie Land (Adonis and Verdant, too pretty for their own good, uncomfortably close to being catamites; Braggadocchio and Trompart, at one point caught cross-dressing in the brush (III.x.21-3); at moments, Arthur and Timias).311 They also, I would argue, hearken back to the redacted conclusion of Book III of the poem, the hermaphroditic embrace between Amorett and Scudamour. That episode is one of the most controversial in The Faerie Queene, startling enough apparently to have disturbed Lord Burghley or some other official, as the proem of Book IV makes clear. Spenser cannot help but

310 Id.

311 For a somewhat more detailed analysis of the homoerotic atmosphere of Malbecoo’s encounter with Braggadocchio and Trompart in this scene, see my chapter on suspicion in The Faerie Queene.
recreate that scandalous scene in an even stranger form. All of its elements are present: the occasion of reunion; the almost miraculous confusion of persons; the wondering audience (among it a woman who, like Britomart in the original ending of Book III, feels pangs of jealousy). These paradigmatic friends might instead be a “paragone,” to use the language of the passage: a marriage.

For a moment, then, the whole structure of friendship in Book IV of *The Faerie Queene*, sketched so emphatically at the beginning of the canto, seems utterly incoherent. Two great friends, Amyas and Placidas, seem not to form a corporation in a sense of a civically productive agency, but rather a corporation of a more particular, intimate, and literal kind: a single, perhaps erotically charged body, spectacularly separate from the world around them. The poem at once casually flattens out distinctions between persons and creates irreducible, unique bodies out of them. In the extremity of their affection and identity, Amyas and Placidas seem less like exemplars of friendship than a *reductio ad absurdam* of its principles.

Ultimately, the instability is contained. Arthur quickly irons things out by arranging a marriage between Poeana and Placidas, shaping them together with Amyas and Aemylia into that triadic form which serves as concord’s ultimate sign in Book IV. Arthur effects these harmonies through rhetorical grace, but also specifically legal power:

> Then gan they ransacke that same Castle strong,  
> In which he found great store of hoarded threasure,  
> The which that tyrant gathered had by wrong  
> And tortious power, without respect for measure.  
> Vpon all which the Briton Prince made seasure,  
> And afterwards continued there a while,  
> To rest himselfe, and solace in soft pleasure  
> Those weaker Ladies after weary toile;  
> To whom he did divide part of his purchast spoile.
And for more ioy, the captiue Lady faire
The faire Poeana he enlarged free;
And by the rest did set in sumptuous chaire,
To feast and frolicke; nathemore would she
Shew gladsome countenaunce nor pleasant glee:
But grieued was for losse both of her sire,
And eke of Lordship, with both land and fee:
But most she touched was with griefe entire,
For losse of her new loue, the hope of her desire.

But her the Prince through his well wonted grace,
To better termes of myldnesse did entretat,
From that fowle rudeness, which did her deface;
And that same bitter corsiue, which did eat
Her tender heart, and made refraine from meat,
He with good thewes and speeches well applyde,
Did mollifie, and calme her raging heat.
For though she were most faire, and goodly dyde,
Yet did she it all mar with cruelty and pride.

And for to shut vp all in friendly loue,
Sith loue was the first ground of all her griefe,
That trusty Squire he wisely well did moue
Not to despise that dame, which lou’d him liefe,
Till he had made of her some better priefe,
But to accept her to his wedded wife.
Thereto he offred for to make him chiefe
Of all her land and lordship during life:
He yielded, and her tooke; so stinted all their strife.

Arthur treats Grantorto’s territory as property obtained by “tortious power”, and hence
unlawfully held. As such, the land is both “purchast” by Arthur as an object of conquest,
but also “seized” as forfeited property. In both cases, Arthur acts as a state might, using
legal authority to assert title over land both conquered and forfeited from its owner’s
wrongdoing. The forfeiture of Corflambo’s land is also a forfeiture of Poeana’s
inheritance, of course; but Arthur, in some sense acting in response to his seizure as an
equity court might to common law forfeiture, mitigates the effects by marrying Poeana to
Placidas and giving Placidas title to much of Corflambo’s estate.\footnote{For an overview of the common law doctrine of forfeiture, see Gary Watt, “Property Rights and Wrongs: The Frontiers of Forfeiture,” \textit{Modern Studies in Property Law Volume 1: Property 2000}, ed. Elizabeth Cooke (Oxford: Hart, 2007), 115-132.} In a sense, then, Arthur’s tidying up of the complicated aftermath of the Amyas/Placidas story is an instance of a corporate power, the state’s, ensuring the relational dynamic (friendly love and marriage, tetradic concord) by which that corporate power is maintained.

Throughout this episode, Spenser’s analysis of a paradigmatic friendship sharpens our apprehension of the tensions embedded in friendship’s corporate form. On the one hand, Spenser’s friendships push constantly toward a greater generality, “according” and effacing distinctions of every sort: between familial and erotic love, or even of personal identity. There seems in these stories of friendship an agency, whether of state power, or of harmony itself, which overrides the agency of any individual in the stories. On the other hand, friendship crystallizes in moments of extraordinary embodiment, as in the wondrous embrace and union between Amyas and Placidas. Such moments raise the possibility of a body that cannot be reduced or absorbed into a structure, a generality, an idea, a state. Somehow, impossibly, Spenserian friendship is a corporation in both senses.

**The Corporate Crown**

The corporate form was not only central to a fashionable political philosophy in early modern England; it formed an ideology of the state and of royal authority. I am referring to the concept of the English monarch as what Frederic Maitland called a
“corporation sole.” As Maitland explains, the concept of a corporation sole originated in the ecclesiastical sphere, in which a single office (a parsonage, say) would be occupied by a single person and passed, without formal interruption, to another officeholder after his predecessor’s death or resignation or transfer.  

While this particular corporate form remained mostly associated with church offices, it did make at least one significant migration into English politics: the office of the king. Maitland traces this to Henry VIII’s reign, noting that:

In 1522 Fineux C.J., after telling how some corporations are made by the king, others by the pope, others by both king and pope, adds that there are corporations by the common law, for, says he, “the parliament of the king and the lords and the commons are a corporation.”

A decade later, the Statute in Restraint of Appeals (1532) “[painted a] portrait of the body politic of which [Henry VIII] was the sovereign head [that] will not be forgotten”:

[H]ere by divers sundry old authentic histories and chronicles it is manifestly declared and expressed that this realm of England is an Empire, and so hath been accepted in the world, governed by One supreme Head and King, having the dignity and royal estate of the Imperial Crown of the same, unto whom a Body Politick, compact of all sorts and degrees of people and by names of Spirituality and

314 Id.
315 Id.
Temporality been bounden, and owen to bear, next to God, a natural and humble obedience. . . \(^{316}\)

This “body politick” is the king’s corporate aspect, the political aggregate which he represents, and the office his natural person occupies. It is also worth noting that the statute’s language adopts, despite its statutory character, a typical common law tactic of legitimization, an appeal to “divers sundry old authentic histories and chronicles” that make “manifest” the statute’s principles. The statute strikes an attitude of powerful modesty; as Bradin Cormack writes of the common law reports, the statute “[overpowers] the unwritten even as it attempts to assume the aspect of the unwritten”; corporate kingship as declared in the Statute in Restrain of Appeals is an “institutional form fictively assumed by the imperial and the statutory.”\(^ {317}\)

The doctrine of the king as a “corporation sole” found its most famous expression in the law reports of Plowden. In his report of *Willion v. Berkley*, Plowden, paraphrasing the opinion of jurists during the reign of Henry VII, made a distinction between the legal rights of the monarch in his capacities:

[T]he king has two capacities, for he has two bodies, the one whereof is a body natural consisting of natural members as every other man has, and in this he is subject to passions and to death as other men are; the other is a body politic, and the members thereof are his subjects, and he and his subjects together compose the corporation, as *Southcote* said, and his is incorporated with them, and they with him, and he is the head, and they are the members, and he has the sole government of

\(^{316}\) 24 Hen 8 c 12, quoted in Maitland.

\(^{317}\) Bradin Cormack, *A Power to Do Justice*, 158. Cormack is describing the notion of “custom” in the common law, particularly in its relation to Irish custom in Sir John Davies *Reports*. 
them; and this body is not subject to passions as the other is, nor to
death, for as to this the body of the king never dies and his natural
death is not called in our law . . . the death of the king, but the demise
of the king, not signifying by the word (demise) that the body politic of
the king is dead, but that there is a separation of the two bodies, and
that the body politic is transferred and conveyed over from the body
natural now dead or now removed from the dignity royal to another
body natural. So that it signifies a removal of the body politic of the
king of this realm from one body natural to another. But
notwithstanding that these two bodies are at one time conjoined
together, yet the capacity of the one does not confound that of the
other, but they remain distinct capacities. So that the king may take in
his body natural lands or tenements as heir to any of his ancestors; and
also in this capacity he may purchase to him and to his heirs, and his
heirs shall hold the same notwithstanding he is removed from the
estate royal. And also he may take or purchase lands or tenements in
fee in his body politic, viz. to him and his heirs kings of England; so
that his double capacity remains as it does in other persons that have a
double capacity.\textsuperscript{318}

Plowden’s explanation of the king’s two “capacities” puts important formal limits on the
King’s legal powers. The King as a natural person has the legal rights of any other natural
person: he may hold, acquire, and alienate land, in the form and manner the law allows.
But these legal rights are distinct from, and are subordinate to, his legal rights as the head
of the body politic. In other words, the King as an individual is inside the law: like any
other natural person, he must obey the legal order of which he is also, in a different

\textsuperscript{318} \textit{The Commentaries, or Reports of Edmund Plowden}, vol. 1 (Dublin, 1792), 584-85,

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capacity, the head.\textsuperscript{319} Plowden goes on to analogize this double nature of the king’s legal capacities to that of a bishop, who may purchase and hold land both through his office, to be passed to his successors in office, and through his individual capacity, to be passed to the heirs of his estate.

And thus Maitland rather dismissively refers to the entire process as one in which “(I must borrow from one of Mr Gilbert’s operas) . . . the king is ‘parsonified.’”\textsuperscript{320} But, as Ernst Kantorowicz recognized in his seminal work \textit{The King’s Two Bodies}, the doctrine had massive consequences.\textsuperscript{321} In painstaking detail, Kantorowicz traces the roots of the doctrine both to classical political theory and to theological concepts of the \textit{gemina persona} or twinned personhood of Christ as simultaneously man and deity. Kantorowicz’s genealogy of the concept shows its maturation over time, its debt to various intellectual traditions and to the process and contingencies of history. And that scrupulous historical work, as Victoria Kahn and others have suggested, subjects the English monarchy to the larger energies of history and tradition.\textsuperscript{322} It is a Burkean reading of the corporate monarchy, a strikingly different vision than that of Carl Schmitt,

\textsuperscript{319} See Eric Enlow, “The Corporate Conception of the State and the Origins of Limited Constitutional Government,” \textit{Washington University Journal of Law and Policy} 6.1 (2001): 8. Enlow claims that “the corporate law doctrine of ultra vires, at least theoretically, prevented the king's personal acts from becoming an act of his corporate or political capacity when they violated the laws which created his office. The king's corporate nature when acting in his official capacity placed an inherent limit on his capacity to violate the fundamental laws of the corporate kingdom.”

\textsuperscript{320} Maitland, “Crown as Corporation.”

\textsuperscript{321} Kantorowicz, \textit{The King’s Two Bodies}.

\textsuperscript{322} See Victoria Kahn, “Political Theology and Fiction in \textit{The King’s Two Bodies},” \textit{Representations} 106.1 (Spring 2009): 77-101.
a thinker with whom Kantorowicz was intensely, agonistically engaged. Kantorowicz’s genealogy places limits around the English monarchy by placing it in history, and it also looks forward, past the conceptual limits articulated in Plowden’s reports to the more radical challenges the Crown faced in the English Revolution:

_The King’s Two Bodies_ shows how the idea of the two bodies could morph into the distinction between person and office, which in turn played a crucial role in the dethroning of Charles I in 1649. If charisma is one effect of the king’s two bodies, the other is – at least in the long run – constitutionalism.323

By driving a structural wedge between the king in his natural capacity and the king in his political capacity, the theory of the “corporation sole” of the English monarchy makes English constitutionalism possible: theoretically, and historically, it is possible to act against the King in the name of the King, that is, against the King as a person in the name of his office.

If the corporate aspect of the English monarchy provided a limiting principle on royal power, and one that emphasized the conceptual distinction between the king’s office and his natural body, it also served as yet another tool in the common law’s vast repertoire of techniques by which it centralized the legal system and acted on its colonial ambitions.324 In _Calvin’s Case_ (1608), Chief Justice Edward Coke used the distinction between the king’s two bodies to extend the jurisdiction of the English common law courts to subjects of Scotland in the reign of James I, simultaneously King of England and Scotland. As Coke frames things, though it was clear that the plaintiff in the case,
Robert Calvin, born three years after James’ ascension to the English throne, owed allegiance to James, the crucial question was to which capacity of James Calvin owed allegiance:

By that which hath been said it appeareth, that this ligeance is due only to the king, so as therein the question is now, *cui, sed quomodo debetur* [not to whom, but in what way, it is owed]. It is true, that the King hath two capacities in him: one a natural body, being descended of the blood royal of the Realm; and this body is of the creation of Almighty God, and is subject to death, infirmity, and such like; the other is a politic, body or capacity, so called, because it is framed by the policy of may (and in 21 Edw. 4. 39 it is called a mysticall body;) and in this capacity the king is esteemed to be immortal, invisible, not subject to death, infirmity, infancy, nonage . . . Now seeing the king hath but one person, and several capacities, and in one politique capacity for the Realm of England, and another for the Realm of Scotland; it is necessary to be considered, to which capacity ligeance is due. And it was resolved, that it was due to the natural person of the King (which is ever accompanied with the politique capacity, and the politique capacity as it were appropriated to the natural capacity) and it is not due to the politique capacity only, that is, to his crown and kingdom distinct from his natural capacity.  

Coke gives several reasons for which allegiance should be owed to the King in his body natural. Traditionally, *treason*, or a betrayal of allegiance, was charged as an offense against the King’s physical person, his body politic being invulnerable to physical attack.  

Further, ligeance is at least conceptually an interpersonal relationship: the oath of one to obey another. In that sense, ligeance to a body politic is absurd: “A

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325 *The Selected Writings of Sir Edward Coke*, 189-190.

326 *Id.*, 190.
body politique (being invisible) can as a body politique neither make nor take homage.” And by owing allegiance to the King’s body natural natural, Calvin receives the rights bestowed upon the King through his body politic as head of the English polity (the body natural “is ever accompanied with the political capacity, and the politque capacity as it were appropriated to the natural capacity”). Thus, by an extraordinary and counterintuitive sleight of hand, Coke is able to absorb all the so-called post-nati (those born after James’ ascension to the English throne) of Scotland into the English legal system. The king’s two bodies are held separate (ligiance can be owed only to the body natural) and then collapsed into each other (a relation to the body natural guarantees a relation to the body politic). The politics of imperialism turn out to be an intensely embodied business, and a particular body becomes the engine of vast political abstractions.

This imperialism is even more expansive than what is necessary to answer legal question of Calvin’s Case (the capacity of a Scottish subject to hold lands in England and sue in English courts). Though it seems entirely unnecessary to the immediate disposition of the Calvin court, Coke goes out of his way to exclude certain classes of persons from enjoying the privileges of English subjecthood. In a lengthy discussion of conquest, Coke notes that there are two basic forms by which one government might subject another. The first form involves the conquest of one Christian kingdom by another; in this case, while the subjects of the conquered territory are immediately made subjects of the conquering kingdom and given the protections of its laws, their local legal system remains untouched unless explicitly altered by the conquering monarch. The second is quite different: when

\[327\] Id.
a Christian kingdom conquers a non-Christian one, the laws of the non-Christian or “Infidel” nation are “abrogated,” dissolved, and their people are ruled absolutely by the conquering king, without any of the protections normally afforded to English subjects.328

The reason, Coke explains, is that:

All Infidels are in Law perpetui inimici perpetual enemies (for the law presumes not that they will be converted, that being remota potentia, a remote possibility) for between them, as with the devils, whose subjects they be, and the Christian, there is perpetual hostility, and can be no peace.329

Though utterly unnecessary to the case at hand, Coke’s dicta about the legal status (or lack thereof) of infidels subjected to conquest had enormous significance for the course of English imperialism. The lands of non-Christians could be taken with impunity; their legal regimes warranted no formal recognition by the English government. The state incorporates through exclusion.

To Prove Her Surname True

Book V of The Faerie Queene is, paradoxically, perhaps the most abstract and most visceral in the poem. It is certainly the most violent, full of almost parodically graphic and virile “poetic justice” meted out by Artega, the knight of Justice. But perhaps the most shocking violence comes from Artega’s “guide” and “gouernement” (V.vii.3) Talus, a killing machine of unparalleled, severe, uncanny impersonality. Book V is also one of the most feminine books of the poem. Even if it is the “Legend of Artega,” women seem to have almost all the most powerful roles in the book. Artega

328 Id., 206.
329 Id.
himself is an orphan and raised by Astraea, the goddess of Justice and a common symbol of Elizabeth.\textsuperscript{330} Artesgall’s quest is to relieve Eirena, a lady whose customary rights are threatened by the tyrant Grantorto; in the course of his adventure, he serves two other female monarchs, Mercilla and Belge. He also must struggle against some of the most vigorous and dark manifestations of evil feminine power in the poem, preeminently Radigund, an Amazonian queen who temporarily enslaves Artesgall and separates him from Talus. Ultimately, Artegall is saved by another woman: his betrothed, Britomart. Most tellingly, Artegall himself is not just conquered by Radigund, but also effeminized: stripped of his armor, dressed in woman’s clothes and forced to perform traditionally feminine tasks in captivity.

Book V is thus partly an exploration of the ambivalence of female power, both within the frames of the poem and in the Elizabethan context it allegorizes.\textsuperscript{331} That power is generally monarchical or tyranic, depending on the moral cast Spenser gives it; and so the female monarchs of Book V are a particular inflection of the corporate doctrine that underwrites royal power generally, in particular the tension between an abstract, sempiternal body politic and a particular, mortal, gendered body natural. This section will examine the pressure Spenser applies to the corporate structure of his female personifications in Book V. It will focus on a reading of Adicia’s metamorphosis in


\textsuperscript{331} On Spenser’s ambivalent representations of Elizabeth and their relationship to the larger cultural context of the period, see Louis Montrose “Spenser and the Elizabethan Political Imaginary.” ELH 69.4 (Winter 2002): 907-946; and Stephen Orgel, “Gendering the Crown,” in The Authentic Shakespeare.
V.viii, a moment in which the doubled nature of Spenser’s representational system – the way his characters all to some extent mimic in a literary register the “two bodies” structure of English sovereignty – is at once clearest and strangest.

V.viii, begins in the wake of Britomart’s rescue of Artegaill. The opening stanzas of the canto reflect the poem’s especially tangled representation of women at this moment:

Nought vnder heauen so strongly doth allure
The sence of man, and all his minde possessse,
As beauties lovuely baite, that doth procure
Great warriours of their rigour to represse,
And mighty hands forget their manlienesse;
Drawne with the power of an heart-robbing eye,
And wrapt in fetters of a golden tresse,
That can with melting pleasance mollifye
Their hardned hearts, enur’d to bloud and cruelty.

So whylome learnd that mighty J ewish swaine,
Each of whose lockes did match a man in might,
To lay his spoiles before his lemans traine:
So also did that great Oetean Knight
For his loues sake his Lions skin vnlight:
And so did warlike Antony neglect
The worlds whole rule for Cleopatras sight.
Such wondrous power hath wemens fair aspect,
To captiue men, and make them all the world reiect.

Yet could it not sterne Artegaill retaine,
Nor hold from suite of his auowed quest,
Which he had vndertaine to Gloriane;
But left his loue, albe her strong request,
Faire Britomart in languor and vnrest,
And rode him selfe vppon his first intent:
Ne day nor night did euer idly rest;
Ne wight but onely Talus with him went,
The true guid of his way and virtuous guvernment.
(V.viii.1-3)

The stanzas are provocatively forgetful and contradictory. They begin, first, with a rehearsal of dangerous feminine temptations, and a catalogue of femme fatales (Deliah,
Iole, Cleopatra). Any reader of the preceding story must initially imagine the first two stanzas to be, as Hamilton puts it, a cautionary judgment about Artegaull’s enslavement by Radigund. In fact, astonishingly, the narrator claims that Artegaull’s behavior is not like those heroes (Samson, Hercules, Antony) who have fallen under the sway of evil women. The proof of this, it seems, is Artegaull’s decision to get back to his mission on behalf of the Faerie Queene and his refusal to linger with his saviour and beloved, Britomart, which hardly seems apposite to the denial of genuinely dangerous feminine temptation. But is Britomart, who has been so good to Artegaull and saved him from Radigund, really comparable to the narrator’s examples? The stanzas’ near incoherence is itself instructive; it indicates that the poem’s complicated attitude toward women and sovereign power is especially strained at this moment.

It also indicates one aspect of the mutability of corporate personhood in Spenser’s personifications. Often, characters in The Faerie Queene carry within themselves historical analogies that go beyond their immediate allegorical significance. So, for example, Artegaull might resemble and contain some of the historical and mythic energies of Achilles (III.2.25), or Samson, or Hercules, or Antony. This resembles, on a historical and mythic registers, Elizabeth Fowler’s idea of a character’s social person, the amalgam of socially constructed positions a fictional or real person assembles in his or her identity. This incorporation of historical and mythical meaning has a particular ambivalence here. By incorporating Achilles into his identity, does Spenser suggest that Artegaull shares the former’s “prowess and epic heroism” or “his vulnerability, effeminacy, and wrath”? 

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This double-edge tone is especially keen in the representation of the kinds of feminine power that surround Artegaill in Book V, and it is radicalized in his encounter with Adicia. Artegaill learns of Adicia through Samient, whom he, along with Arthur, saves from a pair of dangerous knights. Samient reveals that she is an envoy from Mercilla, “a mayden Queene of high renowne” (V.viii.17), and hence yet another representation of Elizabeth. Mercilla had dispatched Samient to make peace with a hostile Souldan:

Her name *Mercilla* most men vse to call;  
That is a mayden Queene of high renowne,  
For her great bounty knowen ouer all,  
And soueraine grace, with which her royall crowne  
She doth support, and strongly beateth downe  
The malice of her foes, which her enuy,  
And at her happinesse do fret and frowne:  
Yet she her selfe the more doth magnify,  
And euen to her foes her mercies multiply.

Monst many which maligne her happy state,  
There is a might man, which wonnes here by  
That with most fell despight and deadly hate,  
Seekes to subuert her Crowne and dignity,  
And all his power doth thereunto apply:  
And her good Knights, of which so braue a band  
Serues her, as any Princesse vnder sky,  
He either spoiles, if they against him stand,  
Or to his part allures, and bribeth vnder hand.

Ne him sufficeth all the wrong and ill,  
Which he vnto her people does each day,  
But that he seekes by traytous traines to spill  
Her person, and her sacred selfe to slay:  
That o ye heauens defend, and turn away  
From her, vnto the miscreant him selfe,  
That neighter hath religion nor fay  
But makes his God of his vngodly pelfe,  
And Idols serues; so let his Idols seue the Elfe.  
(V.viii.17-19)
Tellingly, Samient’s description of the Souldan’s attacks on Mercilla are probably the closest thing in the poem to an allusion to the doctrine of the king’s two bodies: “The distinction between Mercilla’s person and her sacred selfe relates to the claim in the [Letter to Raleigh]…that the Queen ‘beareth two persons.’”

Interestingly, however, the passage puts little emphasis on the distinction between the queen’s sempiternal office and her mortal body; instead, the two seem inextricably bound up and equally fragile. The Souldan’s aim is to “spill / Her person, and her sacred selfe to slay” (emphasis mine).

The syntax suggest that the two go hand in hand, or that one leads to another: “spill” or destroy the body natural, and thereby “slay” the “sacred selfe” of the body politic. It is the most overt reference to the political doctrine that underwrites Spensers mechanics of personification. Yet the moment it is invoked, the structure seems to collapse on itself.

The threat to that structure ultimately does not originate from the Souldan, but from another woman, the Souldan’s wife, Adicia:

To all which cruel tyrannye they say,
He is prouokt, and stird vp day and night
By his bad wife, that hight Adicia,
Who counsels him through confidence of might,
To breake all bonds of law, and rules of right.
For she her selfe professteth mortall foe
To Iustice, and against her still doth fight,
Working to all, that loue her, deadly woe,
And making all her Knights and people to do so.

Which my liege Lady seeing, thought it best,
For that his wife in friendly wise to deal,
For stint of strife, and establishment of rest
Both to her selfe, and to her common weale,
And all forepast displeasures to repeale.
So me in message vnto her she sent,
To treat with her by way of enterdeale,
Of finall peace and faire attonement,

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333 Hamilton, notes to The Faerie Queene, 563 (emphasis in original).
Which might concluded by by mutuall consent.

All times havue wont safe passage to afford
To messengers, that come for causes iust:
But this proude Dame disdaining all accord,
Not onley into bitter terms forth burst,
Reuiling me, and rayling as she lust,
But lastly to make prove of vtmost shame,
Me like a dog she out of dores did thrust,
Miscalling me by many a bitter name,
That neuer did her ill, ne once deserued blame.
(V.viii.20-22)

Tellingly, Samient is dispatched to negotiate with Adicia, not the Souldan. Adicia’s response is shockingly visceral: she throws out Samien “like a dog” and has her chased by knights. The simile is important to note. Adicia’s savagery turns a high-minded diplomatic exchange into an animal struggle, The physicality of her hatred gives the conflict a special charge.

And the real conflict is between the two women, Mercilla and Adicia. Samient’s name encodes the need to resolve this conflict, “signifying ‘bringing together’…as she is an ambassador who seeks ‘attonement’…between Mercilla and Adicia.” The women are both inimical and deeply related, something made even more powerfully clear by their historical referents. Just as Mercilla is a clear figure of Elizabeth, Adicia, like Duessa during her execution later in Book V, is a representation of Mary Tudor.

As Mary, Adicia is antithetical to the poem’s order. She married to a prince whose title, Souldan, clearly marks him out as a “Paynim” or non-Christian, and who also bears the impresa of Philip of Spain, Mary’s husband and the Catholic monarch who represented a constant menace to Elizabeth’s England. Early modern readers of Spenser saw this as clearly as we do: marginalia in an early edition of the poem identifies Adicia

334 Hamilton, notes to The Faerie Queene, 564.
as “Popery.” As a Paynim or Catholic, Adicia resembles the “Infidel[s]” that would soon be rendered permanently alien and unrecognizable at law by Coke in *Calvin’s Case*. Yet as Mary, Adicia is also deeply, frighteningly internal to the poem’s world: Mary, after all, was the sister of Spenser’s Queen and her predecessor on the English throne. Adicia, then, represents a special threat in the poem: a negative mirror image of justice (as her name, Greek for injustice, suggests) and of feminine sovereignty, she is also somehow too closely related for comfort to the figures she opposes.

Adicia’s unusually complex nature is most fully revealed by her astonishing fate. After seeing the armor of her slain husband raised up by Arthur as a future warning, a characteristic move in Book V, she violently charges at Samient:

Stright downe she ranne, like an enraged cow,  
That is berobbed of her youngling dere,  
With knife in hand, and fatally did vow,  
To wrek her on that mayden messengere,  
Whom she had causd be kept as prisonere,  
By Artegall, misween’d for her owne Knight,  
That brought her backe. And coming present there,  
She at her ran with all her force and might,  
All flaming with reuenge and furious despight.

Like raging *Ino*, when with knife in hand  
She threw her husbands murdred infant out,  
Or fell *Medea*, when on Colchicke strand  
Her brothers bones she scattered all about;  
Or as that madding mother, mongst the rout  
Of *Bacchus* Priests her owne deare flesh did teare.  
Yet neither *Ino*, nor *Medea* stout,  
Nor all the *Moenades* so furious were,  
As this bold woman, when she saw that Damzell near.  
(V.viii)

Again, Adicia’s violence is marked by an almost animal vehemence: she charges Samient “like an enraged wo, / That is berobbed of her youngling dere.” As Hamilton

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335 *Id.*, 563.
wryly observes, “[t]he image of an angry cow running with knife in hand is not entirely obliterated by the comma”;\textsuperscript{336} the almost ridiculous half-human, half-bestial image is more appropriate retrospectively, after Adicia’s final metamorphosis. The repeated emphasis on the animal character of Adicia’s viciousness makes her seem less like a personification, or even a person, than a crazed, unreasoning body. At the very same time, her character is amplified to historic dimensions through a series of literary similes: she is like Ino taking her husband’s son with her to her death; like Medea murdering her brother Absyrtus; like Agave tearing her son to shreds. These similes work in an entirely different direction from that of the “enraged cow.” They make Adicia into a composite image, an incorporation of historical and mythic forces. They also reverse the familial metaphors at work. Whereas Adicia as enraged cow attacks to avenge the death of her “youngling dere,” Adicia as Ino, Medea, and Agave acts with violence against her own blood. Hamilton points out that “The three [historical and mythic] examples treat a woman’s role as wife, sister, and mother.”\textsuperscript{337} As the familial imagery reverses, so too do its referents, moving from the Souldan (the “youngling dere”) to Samient and, by extension, Mercilla (the family members heinously murdered by Ino, Medea, and Agave). As her denoument begins, then, Adicia becomes intensely embodied: radically excluded from the community of justice, good women, and Faerie Land, and dangerously, persistently included.

\textsuperscript{336} Id., 567.
\textsuperscript{337} Id.
These intensifying contradictions reach their boiling point in Adicia’s metamorphosis. Thwarted from attacking Samient by a hitherto disguised Artegall, Adicia goes wild with rage:

But *Artegall* being thereof aware,
Did stay her cruel hand, ere she her raught,
And as she did her selfe to strike prepare,
Out of her fist the wicked weapon caught:
With that like one enfeolar’d or distraught,
She forth did rome, whether her rage her bore,
With franticke passion, and with furie fraught;
And breaking forth out at a posterne dore,
Vnto the wyld wood ranne, her dolours to deplore.

As a mad bytch, when as the frantickke fit
Her burning tongue with rage inflamed hath,
Doth runne at randon, and with furious bit
Snatching at evey thing, doth wreake her wrath
On man and beast, that commeth in her bath.
There they doe say, she transformed was
Into a Tygre, and that Tyrgres scath
In crueltie and outrage she did pas,
To proue her surname true, that she imposed has.

Adicia’s breakdown begins in a recognizably human register, and ends in an animal one. She flees “as one enfelon’d,” that is, as a criminal, proper both to her particular infractions and to her allegorical significance as a personification of injustice. But things accelerate rapidly from there, as the verb for her exit, “rome,” suggests, and as the simile of the next stanza vividly confirms: “As a made bytch.” Up to this point, Adicia’s transport has been figurative; by the end of the last stanza quoted, it is quite real. After he escape, “she transformed was / Into a Tygre.” In fact, Adicia’s ferocity at the end surpasses that of any ordinary tiger; and the narrator insists that this, somehow, fulfills her name and her ultimate meaning in the poem: “To proue her surname true, that she imposed has.”
Adicia’s metamorphosis has only one parallel in *The Faerie Queene*: the transformation of Malbecco into *Gealosy*. In both cases, the poem alters its characters in ways that seem almost violations of the poem’s order, in that personifications in *The Faerie Queene* are not supposed to change so much as clarify (e.g. Redcrosse and the reader discover that the castle hosting him was in fact the House of Pride). These unusually conspicuous and violent instances of allegorical meaning-making implicate the poem’s most fundamental processes. As I have argued already, the Malbecco episode forces us to consider the poem’s necessary but conflicted relationship to suspicion and jealousy as epistemological modes. Here, Adicia’s extraordinary change suggests an enduring relationship between injustice and the structure of personification that supports the entire poem.

That this moment should be a heightened instance of Spenserian personification seems especially odd. Malbecco is transformed into Gealosy itself, a classically tableau-like composite Vice figure (pent up in a cave, one eye open for his impending doom, with a cold, rancorous complexion from his diet of toads and frogs). Malbecco has all the fixity and rich tapestry of signification we expect from an out-and-out personification. Adicia’s transformation is somewhat different. She becomes a literalized version of the metaphors that have attached to her ever since her entrance into the poem: a wild animal, a tigress. She has none of the usual accessories of Spenser’s personifications: no particular poses, no human traces. She is a pure, furious body, an antithesis of personification. She seems no longer an allegorical corporation, a physical “body natural” and an abstract “body politic,” but rather a *corpse*, an animal husk animated by violence, irreducible and unassimilable.
At the same time, Adicia’s metamorphosis is an extreme instance of personification. In a moment without any parallel I know of in the poem, the narrator claims that her transformation into a tiger proves Adicia’s name, which she has chosen herself: “To proue her surname true, that she imposed has” (V.viii.49). No other character in Spenser names him- or herself. It is an act of incorporation, as taking a “surname” means to give oneself the name referring to some accomplishment, or birthplace, or family, external to the immediate limits of the body; the surname draws into the self a kind of body politic, the body of the name.\(^{338}\) It is an incorporation in the other sense that it is a making into flesh of an idea, a form of “proving” or testing and confirming with sense experience the idea of injustice. It is thus also an act of sovereignty, a chosen destiny, as radical an expression of privilege as Mercilla’s power of life or death over Duessa. Adicia is one of the poem’s most memorable figures of sovereignty, and one its most intensely corporate figures.

The poem is not quite rid of her yet. The narrator feels the need to be done with her again at the beginning of the next canto:

What Tygre, or what other saluage wight
Is so exceeding furious and fell,
As wrong, when it hath arm’d it selfe with might?
Not fit mongst men, that doe with reason mell,
But monst wyld beasts and saluage woods to dwell;
Where still the stronger doth the weake deoure,
And they that most in boldnesse doe excel,
Are dreaded most, and feared for their power:
Fit for Adicia, there to build her wicked bowre.

There let her wonne farre from resort of men,
Where righteous Artegall her late exyed;

There let her euer keepe her damned den,
Where none may be with her lewd parts defiled,
Nor none but beasts may be of her despoiled:
And turne we to the noble Prince, where late
We did him leue, after that he had foyled
The cruell Souldan, and with dreadfull fate
Had vtterly subuerted his unrighteous state.
(V.ix.1-2)

The narrator exiles Adicia to the “saluage woods,” a space seemingly “wild, uncultivated; hence fierce, ungoverned.”339 Paradoxically, this becomes Adicia’s kingdom: she builds her “bowre” there, making order out of chaos. She is, in the end, a sovereign of injustice, as potent as her opposite, Mercilla, the just sovereign whose palace Arthur and Artegall visit at the end of V.ix. Far from disappearing from the poem, Adicia’s injustice haunts it, as what we might call, borrowing a phrase from Giorgio Agamben, an “inclusive exception” that maintains the order against which it is set.340

And so injustice persists in The Faerie Queen as a corporation. It is a body, a singularity so irreducibly, wildly alive and willful that it cannot properly be called human, though it may be a person. It is also an amalgamation and an abstraction. Banished from a community, it infects everyone. When it flees to the fringes of the realm, it invades the center of the commonwealth. It is everywhere and nowhere, like the Blatant Beast.

339 Id., 569.
340 On Agamben’s concept of the “inclusive exception” as a fundamental structure of sovereignty, see Homo Sacer, esp. 20-23.
The Joint-Stock Company

Beginning in the mid-sixteenth century, the joint-stock company emerged in a culture saturated with the corporate forms I have outlined in the previous sections. Scholars sometimes think of the joint-stock company as an important departure from existing models of English commerce and organization, one that points toward the contemporary multinational corporation.\(^341\) Previously, state-regulated commercial companies operated under a guild model by which ownership and governance were exercised solely by the merchants themselves, with operations financed by profits from the trade instead of consideration for stocks. This shift occasioned considerable skirmishes between traditional regulated companies and the new joint-stock form.\(^342\)

While clearly perceived as a legal and cultural innovation, the joint-stock company might also profitably be viewed as an intensification of the corporate dynamics I have already explored. The companies were typically formed through royal grants of monopoly power: exclusive rights over a form of trade or a region of trade.\(^343\)

\(^341\) Philip Stern notes that the East India Company “has earned a somewhat confusing, Janus-faced historiographical reputation: on the one hand, it is taken to be the harbinger of ‘modern’ multinational, global corporate capitalism, and on the other hand, it is imagined as the mercantilist body par excellence.” See Philip Stern, “Companies” in Mercantilism Reimagined: Political Economy in Early Modern Britain and Its Empire, eds. Philip J. Stern and Carl Wennerlind (Oxford: Oxford University Press, 2013), 177-91, 178.


\(^343\) Sacks, “Private Profit and Public Good,” 123.
Harris Sacks observes, “the monopolies were a characteristic means by which state power was exercised in early modern English society.” By granting these monopolies, the state affirmed its own control of the given subject (a type of manufacturing, a geographical region ripe for exploration or trade), and harnessed the capital of prosperous citizens in the pursuit of its projects. And the corporate form gave these financial ventures the kind of agential and legal advantages that remain attractive today: as corporate entities, these merchant ventures could make financial and legal transactions (alienate property, sue) as a single legal entity, and could shield individual stockholders from some consequences of corporate failure.

In the face of public hostility to the increase in monopoly grants, Queen Elizabeth justified the activity in terms that recall the Aristotelian and Ciceronian notions of civic friendship I discussed earlier: corporate monopolies were imagined as formed for the good of the realm as a commonwealth. Likewise, stockholders defended their companies’ extraordinary prerogatives as an exercise of responsibility on behalf of the realm. Private and public profit were indistinguishable – or at least, so they were in the philosophy of civic friendship that imagined the state and its economy as a commonwealth. The reciprocity between private and national gain is clearest in the colonial context: In 1606, for example, James I “granted to the Virginia Company and to the Plymouth Company all commercial rights to land in the New World between 34 and

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344 Id., 125.
346 Sacks, “Private Profit and Public Good,” 132-134.
45 latitude, while retaining for the Crown the political authority necessary to rule the colonies that the company established.”

But it would be a mistake to view the joint-stock company merely as an appendage of the state. Indeed, some of the most sophisticated recent scholarship on the subject has emphasized the sovereign independence of the more powerful companies. Philip J. Stern, in his study of the East India Company, has theorized “the Company as a form of early modern government.” The East India Company, “[l]ike other English corporations... was empowered and obligated to construct ‘Laws, Constitutions, Orders and Ordinances’ to govern itself and those under its command, to administer oaths, and offer its ‘freedom[.]’” Charters were not just licenses for economic activity: they were also, in a practical sense, grants of jurisdiction over territories the native governments of which were not, as we saw from the earlier analysis of Coke’s report of Calvin’s Case, deemed worthy of formal recognition. Moreover, companies granted charters to explore and trade outside of England established their powers in relation to foreign governments.

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350 Id., 10.
and populations on their own initiative through treaties and other agreements. In some sense, the joint-stock companies were competitors of the national state, not subordinates.

Henry Turner, in a survey of the place of Renaissance corporations in humanist thought, summarizes nicely the tension between the companies’ function as an instrument of state expansion and their simultaneous exhibition of considerable sovereign autonomy:

From the point of view of the Crown, the incorporated societies were important instruments of Royal prerogative, especially where the Crown sought to extend its authority over territories or substances, like precious metals, where its authority might be subject to question. But by delegating its power, the Crown had also effectively created subsidiary agencies that began to enjoy an independent jurisdictional freedom and authority, in principle operating under Royal permission but in practice conducting activities that the Crown itself was incapable of pursuing on its own. These ancestors of modern venture capital and private equity funds were important actors in the formation of a new “political economy”: all are explicitly named as “bodies politic” as well as “bodies corporate” in their charters, and as such all operated as small-scale group organizations subject to their own laws, courts, and a government of their own making: they are specialized zones of jurisdiction in which technical knowledge or expertise, instruments and substances, persons, and systems of value were bundled together and translated into an enduring force.

Corporations were kinds of commonwealths in themselves: indeed, as Turner notes, one of the first Englishmen to make ambitious, though disastrous, use of the corporate form was Sir Thomas Smith, author of *A Discourse of this Commonweal of England* and *De Republica Anglorum*. Among other ventures, Smith formed the “Society of New Art,”

\[351\] *Id.*, 13.

\[352\] Turner, “Corporations,” 162.
designed to promote the processes of an alchemist who claimed to Smith that he had a
technique for transmuting iron to copper.\textsuperscript{353} After the “total failure” of the Society of
New Art, Smith went on to obtain letters patent for himself and his son Thomas for
“approximately 360,000 acres in the territory of Ards, a peninsula in northeast Ulster.”\textsuperscript{354}
This time, Smith’s ambitions were nothing less than “an entire commonwealth in
miniature . . . a community organized into parishes with schools and courts, a central city
named Elizabetha, and protected by watchtowers (and by racial laws that prohibited
native Irish from buying land, holding office, or serving on juries),” for which the letters
patent granted Smith martial law.\textsuperscript{355} Far-fetched as the project sounds, something much
like it was realized in America: as Turner points out, the original early seventeenth-
century charters of the colony established by the Virginia Company created a similar
“commonwealth,” and which survives in the “Constitution or Form of Government,
Agreed to andResolved Upon by the Delegates and Representatives of the Several
Counties and Corporations of Virginia” of June 29, 1776.\textsuperscript{356}

In a provocative reading of \textit{Principal Navigations} (1589), compiled and written
by Richard Hakluyt, a director of the Charter of the Virginia Company of London, Turner
argues that the emergence of the joint-stock company gave rise to a new corporate
identity. Turner builds his argument from a series of simple insights. While the
corporation is a person and a body for legal purposes, the forms of reading we associate
with personality and with embodiment are, perhaps unsurprisingly, unsuited to the task of

\textsuperscript{353} Id., 161.
\textsuperscript{354} Id., 163.
\textsuperscript{355} Id.
\textsuperscript{356} Id., 167-168.
comprehending its peculiar kind of personhood. Though it might be useful to think psychoanalytically about corporate forms (Turner certainly thinks so), the surface-depth metaphor we are accustomed to using with psychoanalytic personality does not work in this context: “For there is no depth and no inside to the corporate person; there is only surface, and there is only outside." Hakluyt’s narrative demonstrates that corporations take form along the surfaces of geography, dispatching officers and voyagers, investing capital in far-flung locales. But though a corporation is a “geographical” entity, Turner argues, it is not “bounded”: not fixed by a particular position, it is rather a “network” of “vectored movement”; to this effect, Turner reads Edward Wright’s “Molyneux map,” published by Hakluyt and alluded to in *Twelfth Night* as “a diagram of corporate desire stretching itself across the body of the earth.” In a sense, a corporation is everywhere and nowhere, heterotopic and atopic.

The strange way in which a corporate seems to be everywhere and nowhere at once gives rise to Turner’s striking description of its almost frighteningly unpredictable reach:

The corporation is an entity whose head can suddenly emerge at any point, since as an artificial person it must borrow the hands, eyes, legs, and mouths of its natural representatives, who begin to move on its behalf and speak in its name. It bears not one but a thousand heads – only those heads are suddenly in the hands of its monstrous body,

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357 Turner, “Toward an Analysis of the Corporate Ego,” 120.
358 Maria says of the duped Malvolio that “He does smile his face into more lines than is the new map with the augmentation of the Indies” (3.2.74-76).
which fondle and paw the earth, in the roving eyes of its factors and agents, in its mouth or mouths.\(^{360}\)
The corporation starts to sound like the marauding villains, now here, now there, of the second half of *The Faerie Queene*. What’s more, the teeming, monstrous quality Turner detects here leads him to ask after the relationship between the corporation and its seeming inverse: the angry mob, that bain of Renaissance political theory and of the latter episodes of Spenser’s poem: “the crowd or multitude as a many-headed monster suddenly appears as an uncanny doppelganger for the early modern corporation.”\(^{361}\)

Corporations are at the heart of English constitutional framework, as we have seen, and were increasingly central to its financial and colonial enterprises; they can also seem like unnerving threats to those orders, as alternative sovereignties, not entirely reducible to their parent nation, or as amalgamations of mutinous energy.

**The Corporate Beast**

At the end of Book VI, canto i, Calidore, Spenser’s Knight of Courtesy, delivers a lecture on his virtue to Crudor, a knight whose proud demands force his lover, Briana, to exact a humiliating tax against all who pass through her domain. Briana has stayed Calidore’s hand from killing the offending knight; in turn, Calidore demands that Crudor marry Briana and reform himself.

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\begin{align*}
&\text{With that his mortall hand a while he stayd,} \\
&\text{And hauing somewhat calm’d his wrathfull heat} \\
&\text{With goodly patience, thus he to him sayd;} \\
&\text{And is the boast of that proud Ladies threat,} \\
&\text{That menaced me from the field to beat,}
\end{align*}
\]

\(^{360}\) *Id.*, 125.

\(^{361}\) *Id.*, 136.
Now brought to this? By this now may ye learne,
Strangers no more so rudely to intreat,
But put away proud looke, and vsage sterne,
The which shal nought to you but foule dishonor yearne.

For nothing is more blamefull to a knight,
That court’sie doth as well as armes professe,
How euer strong and fortunate in fight,
Then the reproach of pride and curelnesse.
In vaine he seeketh others to suppresse,
Who hath not leارد him selfe first to subdew:
All flesh is frayle, and full of ficklenesse,
Suiect to fortunes chance, still chaunging new;
What haps to day to me, to morrow may to you.

Who will not mercie vnto others shew,
How can he mercy euer hope to haue?
To pay each with his own is right and dew.
Yet since ye mercie now doe need to craue,
I will it graunt, your hopelesse life to saue;
With these conditions, which I will propound:
First, that ye better shall your selfe behaue
Vnto all errant knights, whereso on ground;
Next that ye Ladies ayde in euery stead and stound.
(VI.i.40-42)

Crudor agrees to Calidore’s conditions and takes Briana as bride “[w]ithouten dower or composition” (VI.i.43). Briana, overjoyed at finally being united with Crudor, becomes a gracious host: she is “wondrously now chaung’d, from that she was afore” (VI.i.46). As Humphrey Tonkin notes, Calidore in this scene performs a kind of “miracle,” something almost as rare as the more dramatic metamorphoses of Malbecco and Adicia, and perhaps even more extraordinary in The Faerie Queene: through courtesy, he changes characters’ moral composition.362 Unlike the many malefactors of Book V, mowed down by Artegall and Talus and then left as exemplary warnings of their crimes, Briana and Crudor have

been changed for the better. Crudor can be something more than a name, more than the straightforward personification we expect from his role in this initial, exemplary canto in the Book of Courtesy.

Calidore performs his transformation through an appeal to a kind of collective principle. His speech begins predictably, admonishing Crudor’s pride and suggesting that it derives ultimately from a lack of self-mastery. Towards the end of the second stanza, however, Calidore’s rhetoric shifts, and his argument moves from the self to its community. Courtesy is a realization of interdependence: “What haps to day to me, to morrow may to you.” As Calidore elaborates, receiving justice, mercy, and other civil goods depends on giving them: “Who will not mercie vnto others shew, / How can he mercy euer hope to haue? / To pay each with his owne is right and dew.” His next line sounds like another shift, an exception to this rule: “Yet since ye mercie now doe need to craue, / I will it graunt, your hopelesse life to saue”; the adversative yet suggests that Calidore steps outside the logic he has sketched to grant Crudor mercy. But it is really a confirmation of the rule, for Calidore, exemplifying courtesy, can expect and receive courtesy in return; and he has now initiated Crudor into the same circuit. Like friendship, courtesy has a corporate structure, in which an individual is fully constituted only through relation and exchange. When one pays another “his due,” one is paying one’s own as well. The financial diction is not accidental, for courtesy here is a kind of economy.

Put another way, courtesy is a virtue of the commonwealth. As such, and set in a pastoral world filled with allusions to the Ireland where Spenser spent most of his adult life, courtesy resembles colonial models of commonwealth developed in the late sixteenth century. In 1572, Sir Thomas Smith, author of De Republica Anglorum, elaborated in A
Letter Sent by I.B. Gentleman unto his Friende Mayster R.C. Esquire what Bradin Cormack has described as “a colonial program from which the commonwealth as an integrated whole stands to benefit.” The letter proposed a scheme in which land would be distributed in different shares proportionate to each adventurer’s material investment. Here, commonwealth is corporate profit: both of the adventurers who have invested in the scheme, either through direct participation or through funded proxies, and of the Elizabethan state.

Though unsuccessful, Smith’s scheme was prescient. It roughly approximates the structure of the joint-stock companies that would become the engine of English colonial expansion, a famous early example of which was the Virginia Company, the corporate successor of the early ventures into America by Spenser’s patron, Sir Walter Raleigh. Ireland, too, would be partly controlled by the British through similar joint-stock companies such as The Irish Society, founded in 1613. As Thomas Herron points out, Spenser “as a young man operated in the same intellectual circles as Smith,” and he must have known of this new colonial structure, even if he did not survive to see its full flowering. Furthermore, Herron notes that Ireland was already being aggressively advertised as an attractive investment for wealthy English: “The commoner and Co. Cork settler Robert Payne’s *Briefe Description of Ireland* (1589), for example, describes Munster’s natural wealth to the extent that it ‘reads rather like a Chamber of Commerce


The idea that colonial Ireland might be managed best through a corporate commercial venture was well underway. Calidore is an ambassador of the new ethos. Courtesy is commerce and, like the joint-stock form, an instrument of colonial expansion.

But I would argue that Calidore is not Spenser’s fullest or most intense exploration of the corporate colonial form in Book VI. That distinction belongs to his enemy and opposite, The Blatant Beast, the “[e]pitome and culmination of intractable evil in The Faerie Queene.” No other character in the poem so completely embodies what Henry Turner calls “the corporate ego” as it emerged in early modern forms of the joint-stock financial venture. The Blatant Beast’s characteristically paradoxical entrance into the poem at the end of Book V already suggests this. The monster, almost literally unleashed by Envy and Detraction, seems at once subordinate and subhuman, and yet somehow more ominous than either of the women leading it:

These two now had themselues combynd in one,
And linckt together ganst Sir Artegall,
For whom they wayted as his mortall fone,
How they might make him into mischeife fall,
For freeing from their snares Irenas thrall,
Besides vnto themselues they gotten had
A monster, which the Blatant beast men call,
A dreadfull feend of gods and men ydrad,
Whom they by slights allur’d, and to their purpose lad.
(V.xii.37)

The Beast seems at first like a mere accessory to Envy and Detraction’s last-minute attack on Artegaill. It is “gotten” by the two personifications, as if it could be purchased, like a demented pet. Moreover, it seems to lack agency: it is “allured” into the aid of the two hags “and to their purpose lad,” as if it were a blindly malevolent force to

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365 Id.

be aimed in some direction by another. At the same time, the narrator immediately
indicates the dangerous ferocity of the Beast, beating repeatedly on its dreadfulness: “A
dreadfull feend of gods and men ydrad”; none, not even the most powerful, can help but
be frightened by it.

The sense that the Beast is somehow super- and subhuman persists across its
career in the poem. In VI.iii, he appears suddenly and kidnaps Serena, Calepine’s
beloved:

All sodainely out of the forrest nere
The Blatant Beast forth rushing vnaware,
Caught her thus loosely wandering here and there,
And in his wide great mouth away her bare,
Crying aloude in vaine, to show her sad misfare
Vnto the Knights, and calling oft for aid,
Who with the horror of her haplesse care
Hastily starting vp, like men dismayed,
Ran after fast to rescue the distressed mayde.
(VI.iii.24)

The Beast appears “forth rushing vnaware.” Hamilton glosses “vnaware” as “suddenly; as
[Serena] was unaware,” but this irons out too neatly a Spenserian moment of tactical
semantic ambiguity. Surely, yes, the line is meant to suggest that Serena is taken
unaware; but “forth rushing vnaware” also suggests a kind of automaton-like
unconsciousness in the Blatant Beast’s attack, a sense that he does not act from cunning
or intentional malice, but something more instinctual and animal. Like a corporate
venture, the Beast is not a normal agent: rather, it resembles a kind of compound impulse
that cannot be understood psychologically or rationally in the sense of reflecting a single
rational actor’s desires or reasoned preferences.

367 Hamilton, notes to The Faerie Queene, 621.
Just as its viciousness seems like an agentless impulse, so too does the Beast’s terrifying strength and physiognomy seem something more and less than individual. Artegall, hearing Calidore’s terrifying description of the monster the latter pursues in his quest, elaborates on his initial encounter with the Beast:

> Then since that saluage Island I did leave,
> Sayd Artegall, I such a Beast did see,
> The which did seeme a thousand tongues to haue,
> That all in spight and malice did agree,
> With which he bayd and loudly barkt at mee,
> As if that he attonce would me deuoure.
> But I that knew my selfe from peril free,
> Did nought regard his malice nor his power,
> But he the more his wicked poison forth did poure.
> (VI.i.9)

The beast is defined not as most Spenserian villains are by some combination of human and animal elements (think, say, of the half-human, half-crane description of Disdaine in VI.vi), but rather by an unelaborated mass of rabid maws. Turner’s description of the monstrous body of the commonwealth’s corporation, its eerie resemblance to the mobs to which it is ostensibly opposed as form, bears repeating here:

> The corporation is an entity whose head can suddenly emerge at any point, since as an artificial person it must borrow the hands, eyes, legs, and mouths of its natural representatives, who begin to move on its behalf and speak in its name. It bears not one but a thousand heads – only those heads are suddenly in the hands of its monstrous body, which fondle and paw the earth, in the roving eyes of its factors and agents, in its mouth or mouths.\(^\text{368}\)

In some sense, the Beast is an incorporation of the violent mobs that swarm Artegall repeatedly in Book V; he is something more radical, though, for from his mouths issue

\[^{368}\text{Turner, “Toward an Analysis of the Corporate Ego, 125.}\]
not demands or threats, but barks, pure furious noise. If we are given a detailed genealogy for it, we never do get a precise sense of the Beast’s body: it is a dark *sfumato* of animal malice. The Blatant Beast is many noises without a voice, many bodies without individuality.

Just as his body is an incorporation of many beastly mouths, the Beast’s presence points out the increasingly corporate nature of the attacks against virtue at the end of *The Faerie Queene*. When they debut the Beast in V.xii, Envy and Detraction “had combined themselves in one, / And linckt together” in their assault on Artesall (V.xii.37). Other villains in Book VI, such as the Decetto, Despetto and Defetto trio, appear as what some commentators term “extensions” of the Blatant Beast’s slanderous nature. Even when the Beast is not present, the villains of the pastoral world seem to reflect aspects of his evil: Disdaine and Scorn, for example, have the same corrosive, shaming effect as the Beast. They too display a strange sense of joint venture. When Arthur, at Mirabella’s request, refrains from killing Disdain, Scorn helps the vice back to his feet:

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The Infant hearkned wisely to her tale,
And wondred much at *Cupids* iudg’ment wise,
That could so meekly make proud hearts auale,
And wreak him selfe on them, that him despise.
Then suffred he *Disdaine* vp to arise,
Who was not able vp him selfe to reare,
By means his leg through his late luckelesse prise,
Was crackt in twaine, but by his foolish feare
Was holpen vp, who him supported neare.
(VI.viii.25)
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This is as tender an act of aid as Calidore’s bearing Aladine home. The Beast and his manifestations and extensions act as a family, or a fraternity, or perhaps even an

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organism; the Beast, like a company, is present as much by proxy as by itself. The villainous personifications of *The Faerie Queene* seem to cooperate much better than their virtuous counterparts; nowhere is this more obvious than in the opposition between the Beast, always game to be employed by other malefactors or to act through them, and Calidore, the almost painfully elegant, ironic Knight of Courtesy. The Beast is the ideal team player, because it is not an individual with volition of its own; Calidore, Spenser’s most fully formed hero, has beautiful manners but cannot make friends, and has promised to take no one with him on his apparently incomplete mission. At the end of the poem, the clearest quest, the true joint venture, is the Blatant Beast’s. The strongest corporation of Faerie Land is the company of evil. The ideology of commonwealth that fueled the colonial ventures in Ireland and elsewhere, in Book VI, have perverted into those ventures’ direst threat.

Indeed, sometimes it seems what most binds together the protagonists of Book VI is not their virtue, but rather their susceptibility to the Blatant Beast’s slanders. As Serena and Timias convalesce from their wounds inflicted on them by the Beast, the wise Hermit suggests that their ailments are as much internal and self-inflicted as external:

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For that beastes teeth, which wounded you tofore,
Are so exceeding venmous and keene,
Made all of rusty yron, ranckling sore,
That where they bite, it booteth not to weene
With salue, or antidote, or other mene
It euer to amend; ne maruaile ought;
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370 I owe this observation to Jeff Dolven.

371 See Tomkin, *Courteous Pastoral*: “Calidore, the last of Spenser’s heroes, is also the closest to the perfect pattern of a knight. . . The contrast [between Calidore and Redcrosse] suggests that the succession of virtues stretching between Redcross and Calidore is not so much an equal series as a continuous growth in experience” (30).
For that same beast was bred of hellish strenere,;
And long in darksome Stygian den vpbrought,
Begot of foule Echnida, as in bookes is taught.
...

Of that commixtion they did then beget
This hellish Dog, that hight the Blatant Beast;
A wicked Monster, that his tongue doth whet
Gainst all, both good and bad, both most and least,
And poures his poysnous gall forth to infest
The noblest wights with notable defame:
Ne euer Knight, that bore so lofty creast,
Ne euer Lady of so honest name,
But he them spotted with reproach, or secret shame.

In vaine therefore it were, with medicine
To goe about to salue such kind of sore,
That rather needes wise read and discipline;
Then outward salues, that may augment it more.
Aye me (sayd then Serena sighing sore)
What hope of helpe doth then for vs remaine,
If that no slaues may vs to health restore?
But sith we need good counsell (say the swain)
Aread good sire, some counsel, that may vs sustaine.

The best (sayd he) that I can you auize,
Is to auoide the occasion of the ill:
For when the cause, whence euill doth arize,
Remoued is, th’effect surceaseth still.
Abstaine from pleasure, and restraine your will,
Subdue desire, and bridle loose delight,
Vse scanted diet, and forbeare your fill,
Shun secrsie, and talke in open sight:
So shall you soone repaire your present euill plight.
(VI.vi.9, 12-14)

The Blatant Beast’s wounds are at once literal and psychic, internal and external, almost
the product of social experience itself. The only solution seems to be a radical asceticism,
and a reduction of sociability to its barest, most formal essentials. The only cure to the
Blatant Beast is to renounce the collective forms of which it is the radical conclusion.
Perhaps the Beast’s ills seem both internal and external because the monster itself seems so atopic. It erupts at any and every corner, yet never can be found. Describing his pursuit of the Beast to Artegaill, Calidore muses: “Yet know I not or how, or in what place / to find him out, yet still I forward trace” (VI.i.7). Perhaps Calidore’s mistake is to think he can find him by moving “forward,” for the Beast’s relationship to place and movement seems to obey no particular directional or linear logic, as becomes evident in the narrator’s description of Calidore’s pursuit:

Great trauell hath the gentle Calidore
And toyle endured, sith I left him last
Sewing the Blatant beast, which I forbore
To finish them, for other present hast.
Full many pathes and perils he hath past,
Through hils, through dales, throughe forests, and throughe plaines
In that same quest which fortune on him cast,
Which he atchieued to his own great gaines,
Reaping eternall glorie of his restlesse paines.
(VI.ix.2)

The Beast seems everywhere and nowhere. Like the joint-stock ventures whose voyages are recorded by Hakluyt and analyzed by Turner, the Blatant Beast defined less by “fixed location” than by “vectored movement” across Faerie Land.

Indeed, in his final appearance at the end of the poem, escaping Calidore’s confinement, the Beast truly is everywhere and nowhere:

Thenceforth more mischeife and more scathe he wrought
To mortall men, then he had done before;
Ne euer could by any more be brought
Into like bands, ne maysted any more:
Albe that long time after Calidore,
The good Sir Pelleas him tooke in hand,
And after him Sir Lamoracke of yore,
And all his brethren borne in Britaine land;
Yet none of them could euer bring him into band.

So now he raungeth through the world again,
And rageth sore in each degree and state;
Ne any is, that may him now restraine,
He growen is so great and strong of late,
Barking and biting all that him doe bate,
Albe they worthy blame, or cleare of crime:
Ne spareth he most learned wits to rate,
Ne spareth he the gentle Poets rime,
But rends without regard of person or of time.

Ne may this homely verse, of many meanest,
Hope to escape his venomous spite,
More then my former writs, all were they clearest
From blamefull blot, and free from all that wite,
With which some wicked tongues did it backebite,
And bring into a mighty Peres displeasure,
That neuer so deserued to endite.
Therfore do you my rimes keep better measure,
And seek to please, that now is counted Wisemans threasure.
(VI.xii.39-41)

As others have observed, Book VI shifts alarmingly at this final moment: “the Beast leaves the remote and golden world of fiction to become a brazen reality confronting Spenser directly.”372 The moods and tenses of history and romance turn to the “now” of the present, both Spenser’s and the reader’s; the scene changes from Faerie Land to Britain. The poet himself becomes his monster’s victim, perhaps in the way the realm his poem celebrates has been betrayed by its own myths. Spenser leaves his unfinished epic with a vision that poetry might, as the law does, make its fictions real.

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