

Positive representation of Inns of Court lawyers
in Jacobean city comedy

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by

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Abstract

This thesis examines representations of lawyers and law in examples of Jacobean city comedy, taking into account certain contemporary developments in the legal profession and the law in England. The period covered is 1598-1616. The thesis questions the conventional interpretation of city comedy as hostile to the legal profession. It suggests the topic is more complex than has been assumed, arguing that city comedy makes direct and indirect positive representation of Inns of Court lawyers, who are to be distinguished from attorneys (newly segregated in the Inns of Chancery), amateur quasi-lawyers, and university-educated civil lawyers. It is proposed that city comedy represents Inns of Court lawyers positively in two ways. Firstly, by means of legal content: representations of developments in the profession and the law demonstrate a wish to connect with the young lawyers and students of the Inns of Court, and reflect a contemporary drive by them for increased organization and regulation. Secondly, by means of literary form: ostensibly pejorative representations need not be taken at face value; instead, they may be found to be ironic. The main proposed contributions to knowledge are: that Inns of Court lawyers were a favoured part of the target audience of the private playhouses, making it questionable that they would be represented negatively in city comedy; that lawyers as represented in city comedy are not a single or a simple category; that representation of lawyers is inflected by the various forms and impulses of city comedy; and that city comedy incorporates some reflection of the increasing professionalization of legal practice in the period.

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Abbreviations

Details of texts are in the Bibliography.

Car	in the reign of Charles I (in law report citation)
<i>Cf.</i>	<i>confer</i> , compare
Ch.	chapter
Co Rep	standard legal citation for Coke's reports
Cro. Eliz.	citation for Croke's reports of cases in the reign of Elizabeth
Cro. Jac.	citation for Croke's reports of cases in the reign of James I
Ed.	editor or edition, as appropriate
F	folio
H.M.S.O.	Her Majesty's Stationery Office
KB	King's Bench (legal citation for <i>The Law Reports</i>)
MS.	manuscript
No.	number
n.d.	no detail supplied
n.p.	no publisher stated
r	<i>recto</i> : right-hand page
RSV	Revised Standard Version (Bible reference)
STC	<i>Short-Title Catalogue</i>
St Tr	state trials (in legal citation)
s.v.	<i>sub verbo</i> , under the word (dictionary reference)
Tr.	translated by
v	<i>verso</i> : left-hand page
Vol.	volume

Chapter one

Introduction

1.1 The argument

In this thesis I consider Jacobean city comedy as a complex literary and dramatic form that involves representations of lawyers and law. I regard the material duration of the genre as being from 1598 to 1616.¹ This compact lifespan coincides with some notable developments in English law, and comes at the height of a period of profession-defining change in London's Inns of Court. I examine five plays: Jonson's *Poetaster* (1601), Middleton's *The Phoenix* (1603-4) and *Michaelmas Term* (1606), John Day's *Law Tricks* (1604), and Lording Barry's *Ram Alley* (1607-8). My central argument is that the attitude taken in the plays to lawyers and law is more complex than has previously been assumed. It is, I contend, often deceptively positive. Positive representation of lawyers in city comedy is an idea contrary to prevailing opinion, which says in general terms that the genre is hostile to the legal profession and the law.² I propose that the plays take a positive attitude to lawyers and law essentially on account of three points.

¹ 1598 for the first performance of the original version of *Every Man in His Humour*; Brian Gibbons deems *The Devil is an Ass* (1616) the terminal point in the genre in *Jacobean City Comedy: A Study of Satiric Plays by Jonson, Marston and Middleton*, 2nd ed. (London: Methuen, 1980), 152. Dates relate usually to first performance rather than time of original composition or publication. Unless otherwise indicated, the source for dates is Andrew Gurr, *The Shakespearean Stage 1574-1642*, 4th ed. (Cambridge: Cambridge University Press, 2009), 286-98.

² Gibbons says that city comedy features "dishonest and ruthless" lawyers, and displays "increasing ambivalence of attitude towards [lawyers'] methods and appetites": *Jacobean City Comedy*, 118-19.

The first point is commercial consideration. These plays were written for performance before an audience including Inns of Court men, so it is questionable that the plays should unambiguously undermine this desired section of their audience.

The second point is legal content. I argue that the plays incorporate reflections of contemporary legal developments in a way that would appeal to Inns of Court lawyers. Barry's *Ram Alley* provides possibly the most straightforward example of how what appears to be a broadly negative representation of lawyers becomes positive in relation specifically to Inns of Court lawyers. The play contains allusions to the newly enforced division between the Inns of Court and the Inns of Chancery. The lawyer-figure, Throte, is an Inns of Chancery man, and Barry has the character declare to the audience that he only *seems* a lawyer, implying that it is the Inns of Court which produce superior, so-to-speak real lawyers – a sentiment that could be

Tom Cain affirms the conventional view of anti-lawyer sentiment in his edition of *Poetaster* (Manchester: Manchester University Press, 1995), 45. Gail Kern Paster perpetuates the standard view of *Michaelmas Term's* Induction as a “sharp satire against the law as a mercenary system run for its own benefit” in her edition of Middleton's play (Manchester: Manchester University Press, 2000), 57. See also Alan Brissenden, “Middletonian Families,” in *Plotting Early Modern London: New Essays on Jacobean City Comedy*, ed. Dieter Mehl, Angela Stock, and Anne-Julia Zwierlein (Aldershot: Ashgate, 2004), 29; C. W. Brooks, *Pettyfoggers and Vipers of the Commonwealth* (Cambridge: Cambridge University Press, 1986), 134; Daniel B. Dodson, “Thomas Middleton's City Comedies” (Ph.D. dissertation, Columbia University, 1954), 95; G. Blakemore Evans, *Elizabethan-Jacobean Drama* (London: A. & C. Black, 1989), 285; Edward Gieskes, *Representing the Professions: Administration, Law, and Theater in Early Modern England* (Newark: University of Delaware Press, 2006), 119-21; Alfred B. Harbage, *Shakespeare and the Professions* (Fred S. Tupper Memorial Lecture, 2 April 1965; The George Washington University, n.p.), 20; W. J. Jones, *Politics and the Bench* (London: George Allen & Unwin, 1971), 33; Wilfrid Prest, *The Rise of the Barristers: A social history of the English bar, 1590-1640* (Oxford: Clarendon Press, 1986), 289.

expected to have pleased the Inns of Court men in the audience at the Whitefriars. The increased determination of the members of the Inns of Courts to stand apart (and to be seen to stand apart) from the Inns of Chancery is only one example of divisions within the legal profession. The word “lawyer” had anything but a univocal, vocationally unified meaning, and lawyers in the plays are not a single or a simple category. To speak against one type on the stage would have been to find favour with another.

The third point is literary form. I propose that representation of lawyers in the plays is inescapably the product of various devices and attitudes which are conventional in city comedy. For example, I show how some ostensibly pejorative representations may be taken to be ironic. The self-consciously sophisticated and ambitious writers of the plays would not have been content merely to perpetuate a predictable literary tradition without adding some twist. They began playing with and against expectations of genre almost as soon as conventions could be recognized, in the self-parody of typical comedy and language that is *Eastward Ho!* (1605). Playing against dramatic expectation was something the young lawyers in the audience for the plays appreciated. The induction to Goffe’s *The Careless Shepherdess* (1618) features four audience-member types, among them a young Inns of Court man.³ Spark and his courtier companion Spruce are connoisseurs of drama, and the two are pleased that the ensuing comedy does not contain a fool, which they regard as an outmoded device. Spark’s conversation portrays the Inns of Court man as one who simultaneously demands of a playwright awareness of the laws of drama, and

³ Date estimated by Keith Sturges, *Jacobean Private Theatre* (London: Routledge & Kegan Paul, 1987), 19. The induction was added later, possibly by Richard Brome (ibid.). The play is reproduced in *The Seventeenth Century Stage*, ed. G. E. Bentley (Chicago: Chicago University Press, 1968), 28-37; Bentley discusses it in *The Jacobean and Caroline Stage* (Oxford: Clarendon Press, 1968), vi, 109-12.

ingenuity in working against cliché. The writers of the plays I examine may appear to perpetuate a tradition of anti-lawyer sentiment, but I contend that they work against cliché by using various methods to make the plays favourable to Inns of Court lawyers. They play to traditional expectation by appearing to be broadly hostile to the legal profession, all the time playing against the expectation to the subtle and deceptive end of representing the standard antipathies and professional ideals of young Inns of Court men. The objects of the Inns of Court lawyers' antipathy vary. They are represented in different examples of city comedy: there are unqualified, quasi-lawyers in *Law Tricks* and *Ram Alley*; Tangle in *The Phoenix* is a swaggering, conspicuously old type of jobbing common lawyer; and Jonson uses for Voltore and Littlewit the nomenclature of the civil law, as distinct from the common law studied in the Inns of Court.

I aim to provide a foundation for the chapters which follow in four further sections. In the next, I look at anti-lawyer sentiment, examining contemporary perceptions of the law from within the profession and from non-dramatic literature. I offer in this section some awareness of lawyers from the different Inns: men who may therefore have been part of the audience for city comedy. In the third section, I provide a sense of the theatrical culture of the Inns of Court. In the fourth section, I discuss the private theatres with which Jacobean city comedy is principally associated, and I examine genre, considering how the variety of forms and impulses within city comedy affects representations of lawyers. In a short final section, I take a summary look at current practice in the interdisciplinary study of law and literature.

1.2 Anti-lawyer sentiment

On November 3, 2007, the Chairman of the Bar Council of England and Wales, Geoffrey Vos Q. C., made news in his speech at the Bar's annual conference by calling for lawyers to be recognized in a positive light.⁴ Barristers perform a vital role as public servants, he said, and they deserve recognition in the same way as nurses, doctors and teachers. Vos's argument rests on a fact not applicable to the early modern period. Something like half of the work undertaken by the Bar today is legal aid driven – representing people accused of crimes, families, children, immigrants, and challenging official decisions.⁵ Vos's motive for making the plea infers that the Bar of today is made of softer stuff than early modern lawyers, at least as they are conventionally portrayed to us: "If . . . lawyers were to be more openly accepted . . . for the public servants they are . . . , it would lift the confidence of the profession more than I can explain."⁶ Even the earnest loss for words seems to break with the image conventionally presented of the lawyer. Part of the relevance of this speech is that it infers what appears to be a perennial presumption: lawyers are viewed negatively. Also of interest is the Chairman's suggestion that the confidence of the profession is in need of a lift – and a substantial one at that, if it is more than he can explain. Confidence was anything but lacking in the early modern lawyer, if we are to take as read the sentiments expressed in city comedy. Indeed, in *Poetaster*, the

⁴ "Bar Chairman Champions Barristers' Public Service Role, 3 November 2007" from the Bar Council's website: Home News, Press Releases, <http://www.barcouncil.org.uk/news/press/531.html> (accessed June 11, 2009).

⁵ Frances Gibb, "From fat cats to human rights: how the Bar is changing," from *The Times*, October 30, 2007, <http://business.timesonline.co.uk/tol/business/law/article2763596.ece> (accessed June 11, 2009).

⁶ "Bar Chairman Champions Barristers' Public Service Role," from the Bar Council's website.

military captain Tucca declares perseverance and confidence sufficient qualification for the practice of law. A prospective lawyer needs only “patience to plod inough, talke, and make noise inough, be impudent inough, and ’tis inough” (I.ii.106-7).

If there appears to be an abundance of anti-lawyer sentiment in late sixteenth and early seventeenth century literature, the impact of the printing press should not be overlooked. But clerical and literary anti-lawyer sentiment was nothing new.

In the Bible, Luke tells of Christ bidding “Woe unto ye lawyers! for ye have taken away the key of knowledge.”⁷ In the *Canterbury Tales*, “Al was fee simple” to Chaucer’s Sergeant of the Lawe, a man “who semed bisier than he was.”⁸ The Utopians have banished lawyers,⁹ albeit that the approving report comes from Raphael Hythlodæus – the ambiguous dispenser of nonsense, conceived by a foremost common lawyer. One of Jack Cade’s followers in the 2 *Henry VI* sends out a rallying call: “The first thing we do, let’s kill all the lawyers” (IV.ii.78).¹⁰ In the present-day interdisciplinary study of law and literature, Shakespeare’s work is interpreted as taking up a generally adversarial stance in relationship to law, the plays being found, broadly speaking, to display disrespect for law and legal processes.¹¹ Harbage noted long ago, though, that, although there are judges and justices, among Shakespeare’s more than seven hundred characters only one is explicitly tagged as a

⁷ Luke: 11.52 RSV (see from 11.45-52; cf. Matthew: 23.29-32, Acts: 7.51-3).

⁸ Geoffrey Chaucer, *The General Prologue to the Canterbury Tales*, in *The Riverside Chaucer*, 3rd ed., ed. Larry D. Benson (Oxford: Oxford University Press, 1988), 61; lines 321, 324.

⁹ Thomas More, *Utopia*, tr. Paul Turner (London: Penguin, 1965), 106.

¹⁰ Dick the butcher, in William Shakespeare, *The Second Part of King Henry VI*, ed. A. R. Humphreys (London: Methuen, 1980).

¹¹ Anthony Julius, introduction to *Law and Literature*, ed. Michael Freeman and Andrew Lewis (Oxford: Oxford University Press, 1999), xi-xii.

lawyer – an almost invisible character in 1 *Henry VI*.¹² Harbage suggested that the fact Shakespeare did not expressly portray lawyers may seem to reduce the significance of the fact that he portrays no “shysters.”¹³ On the other hand, said Harbage, the opportunity was there and a number of his contemporaries seized it. The inference points clearly enough to the playwrights of city comedy, since lawyers appear so often in the plays as to be considered conventional types.

How did anti-lawyer sentiment figure in late sixteenth and early seventeenth century perceptions of lawyers and law? Attitudes were influenced by notions about law’s functions. William Fulbeck saw the law as holding society together: without it, “neither house, nor city, nor nation, nor mankind, nor nature, nor world can be.”¹⁴ And Coke called the laws of England the best inheritance an English subject had: “for by them he enjoyeth not only his inheritance and goods in peace and quietness, but his life and his most dear country in safety.”¹⁵ As early as this time, jurists such as William Hakewill and John Doddridge recognized the law to be no more than a

¹² “Portia posing as Dr Bellario [in *The Merchant of Venice*] is the nearest we come to a portrait of a member of the profession in action.” Harbage, *Shakespeare and the Professions*, 19. Of the judges and justices: “some of them [are] *ex officio*, like the several presiding dukes, . . . [others] vary in type from the Lord Chief Justice who is Falstaff’s nemesis, to Justice Shallow, whom Falstaff mulcts” [in 2 *Henry IV*]. (Ibid.)

¹³ Ibid., 20.

¹⁴ William Fulbeck, *A Direction or Preparative to the study of the Lawe: Wherein is shewed, what things ought to be observed and used of them that are addicted to the study of the Law, and what on the contrary part ought to be eschued and avoided* (London, 1600), 2. See also Henry Finch, *Law or a Discourse Thereof in Foure Bookes* (London, 1627), 1.

¹⁵ *The Reports of Sir Edward Coke, Knt. In English, in thirteen parts complete*, translated by George Wilson (London, 1777), the fifth part, vol. III, part iii.

human artefact subject to change as circumstances altered.¹⁶ Still more revolutionary, Thomas Mun advanced in his economic tract *England's Treasure by Forraign Trade* the idea that lawsuits “decay not our trade nor our treasure,” and he questioned a conventional anti-lawyer sentiment: was the contemporary increase in litigation the result of “lawyers’ covetousness, or the people’s perverseness”?¹⁷ But above (or instead of) all this, law was, for the majority, a reflection of the will of God, and if lawsuits could be seen as detrimental to social order, blame could be directed at lawyers for encouraging discord. Middle Temple lawyer Sir Anthony Benn deplored the idea “that menn . . . cann devoure one another w[i]thout blooding one another” by extortion, usury, and oppressing one another at law.¹⁸ But another Middle Templar articulated the point that lawyers alone should not be singled out for responsibility for the multitude of lawsuits:

Clients, witnesses, jurors, counsel and judges are men and no angels . . . neither will be otherwise so long as men are men, neither may a paradise be expected to be, where any man may innocently fall by the law, as by ignorance or misprision; by his attorney or

¹⁶ C. Brooks and K. Sharpe, “History, English Law and the Renaissance: A Comment,” *Past and Present*, 72 (1976), 138-9. See also J. R. McCulloch, ed., *Early English Tracts on Commerce* (Cambridge: Cambridge University Press, 1970), 179.

¹⁷ Thomas Mun, *England's Treasure by Forraign Trade* (1664; Oxford: Oxford University Press, 1959), 59-60.

¹⁸ “The Essays of Sir Anthony Benn, Knt., Recorder of London,” Bedford County Record Office, L28/46, F17v; cited in Brooks, *Pettyfoggers and Vipers of the Commonwealth*, 108. Sources used for identifying Inns membership: *The Records of the Honourable Society of Lincoln's Inn: Admissions, 1420-1799 and Chapel Registers*, ed. W. P. Baildon (London, 1896); *Register of Admissions to Gray's Inn, 1521-1889, together with the Register of Marriages in Gray's Inn Chapel, 1695-1754*, ed. Joseph Foster (London, 1889); *Register of Admissions to the Honourable Society of the Middle Temple, from the Fifteenth Century to the Year 1944*, ed. H. A. C. Sturgess (London, 1949); “Admissions to the Inner Temple to 1659,” compiled by R. L. Lloyd, typescript (Inner Temple Library, London, 1954).

counsellor; by practise or combination of the adversary; by perjury of witnesses; by forging of deeds; by subornation or corruption of witnesses, jurors or officers of courts; by affection, inclination or corruption in the judge, and by many other bye and black ways, whereof many men have made experience.¹⁹

A charge commonly made by historians against early modern lawyers is the cost of going to law.²⁰ William Harrison's complaint that "all the wealth of the land doth flow unto our common lawyers" could seem to support this, though he implicitly acknowledges, again, that litigants themselves at least share blame: lawyers "wax rich apace and will be richer if their clients become not the more wiser and wary hereafter."²¹ In any event, C. W. Brooks has shown that one of the reasons for the great increase in litigation in the second half of the sixteenth century, was that an in-demand service came within reach of a large number of customers – basic common law litigation was by 1560 not prohibitively expensive, and its cost actually declined steadily in relation to prices over the next eighty years.²² Very high sums could be charged depending on the status of lawyer and client and the demands of the task, of course. The highest single fee in this period went to Inner Temple barrister John

¹⁹ *The Berkeley Manuscripts: The Lives of the Berkeleys, Lords of the Honour, Castles and Manor of Berkeley in the county of Gloucester, from 1066 to 1618, with a description of the hundred of Berkeley and of its inhabitants.* By John Smyth of Nibley, ii, ed. John McLean (Gloucester, 1883-85), 312; cited in Prest, *The Rise of the Barristers*, 312.

²⁰ Conrad Russell, *The Crisis of Parliaments, English History, 1509-1660* (Oxford: Oxford University Press, 1992), 53; Lawrence Stone, *The Crisis of the Aristocracy 1558-1641* (Oxford: Clarendon Press, 1965), 242.

²¹ *The Description of England* (London, 1587), book II, chapter 9; cited in G. Blakemore Evans, *Elizabethan-Jacobean Drama* (London: A. & C. Black, 1989), 282.

²² Brooks calculates the approximate cost of an ordinary suit in *Pettyfoggers and Vipers of the Commonwealth*, 101-4; see also 147, 327 n. 72.

Bridgeman, to whom a Welsh property consortium paid £40 for a written opinion on twenty-six questions of law.²³

Another point in connection with costs is that a payment to a lawyer was not (then, as now) necessarily a payment *for* their lawyer: overheads – including clerical work, travelling and subsistence – could often be the heaviest item of cost in a lawsuit. One study examined two early modern accounts where such expenses amounted to eighty-seven percent and seventy-one percent of the total bill.²⁴ I noted at the beginning of this section that there was no legal aid in this period. In civil matters at Westminster Hall, however, litigants unable to meet the cost of a suit could apply to sue *in forma pauperis*, by producing a certificate of good character, worthy cause and slender means from a barrister or justice. If the application was successful, a court could arrange for attorney and counsel to act for a litigant without fee. Though it became a proverb that “a suit *in forma pauperis* hath no scent,”²⁵ there were good and conscientious lawyers to take them.²⁶

Another cause of anti-lawyer sentiment centred on the potential for vexation, expense and delay arising from the fact that one legal jurisdiction could challenge another. The numerous problems have been summarized thus:

... going to law was not always a simple matter of moving from initiation of a suit in one court to judgment in the same court. Indeed, even if litigation was confined to one court, judgment might not be achieved. Often there were many suits around the same

²³ Prest, *The Rise of the Barristers*, 162; citing National Library of Wales, Wynnstey Manuscripts, Manorial Miscellanea 10; Prest’s source: *Bulletin of the Board of Celtic Studies*, ix, iv (1939), 350.

²⁴ E. W. Ives, *The Common Lawyers of Pre-Reformation England* (Cambridge: Cambridge University Press, 1983), 320-1.

²⁵ See Edward Hake, *Newes out of Powles Churchyarde* (London, 1579), B7v.

²⁶ Prest cites without specifying by name Folger MS. V.b.186, 343 as an example of a petition for a suit *in forma pauperis* in *The Rise of the Barristers*, 22 n. 34. See also Ives, *Common Lawyers*, 318.

dispute, several courts could be involved, and the atmosphere might be that of a war of attrition . . . Sometimes the delay was a device, sometimes the parties were hoping to force discovery of evidence, and often it was just incompetence. Proceedings in a particular court might have no more than a tactical purpose. Even when there was only one set of proceedings, the end might well be some settlement or interim order. Every stage in procedure could be a subject of contest.²⁷

There was a degree of central authority: the early establishment of the supremacy of the royal courts in London (including the Courts of King's Bench, Common Pleas, and Chancery) is a founding part of the history of the English legal system; but a very large number of other courts administered numerous types of law, and this caused great confusion.²⁸ Interpreting the word "system" strictly, Brooks makes the point that in terms of procedure there was no such thing as an English legal system.²⁹ As far ahead as 1628, Sir Edward Coke could identify sixteen varieties of law, only one of which he called the common law.³⁰ In 1616, James I still had reason to include in his speech in Star Chamber of 20 June of that year advice to litigants to "make not many changes from Court to Court: for hee that changeth Courts, shewes to mistrust the iustnesse of the cause. Goe to the right place, and the Court that is proper for your

²⁷ Jones, *Politics and the Bench*, 34. For a more detailed discussion than Jones's, see Louis A. Knafla, *Law and Politics in Jacobean England* (Cambridge: Cambridge University Press, 1977), 128-54.

²⁸ Besides the various royal courts, these included the ecclesiastical courts, county courts, borough courts, manorial courts (courts leet and baron), the hundred courts, stannary courts, pye-powder courts, and the quarter sessions. On the court system generally, see Brooks, "The Common Lawyers in England, c. 1558-1642," in *Lawyers in Early Modern Europe and America*, ed. Wilfrid Prest (London: Croom Helm Ltd., 1981), 42. On assizes and quarter sessions see *infra*, 17 n. 49.

²⁹ *Pettyfoggers and Vipers of the Commonwealth*, 12.

³⁰ Sir Edward Coke, *The First Part of the Institutes of the Lawes of England* (1628), F11v; cited in Brooks, "The Common Lawyers in England," 42, 61 n. 2.

cause.”³¹ In respect of the King’s advice, consideration of the justness of a cause of action might not be any great impediment to the possible advantages to be gained from vexatious and dilatory conduct of law-suits through the differing courts and jurisdictions, of course: the court which one party might deem “proper” could presumably be claimed to seem quite improper for the other party’s cause. It is understandable, in any event, that litigation involved delay to the extent that communications took time in this age.³² Lincoln’s Inn barrister Henry Sherfield was criticized by his client Nicholas Assheton for “slowness” in conducting a suit in the Court of Wards. But when the case was heard in the following term, the outcome was in Assheton’s favour, so the delay may have been not only necessary but in the client’s best interests.³³

The verbosity of lawsuits could be a cause of discontent both to clients and to some members of the profession. The grumblings of a client required to pay for pleadings drawn at length³⁴ may seem minor in comparison with the anger of Egerton, who on one occasion in 1596, after receiving a petition that he considered too

³¹ “Speech in Star Chamber of 20 June 1616,” in *King James VI and I: Political Writings*, ed. Johann P. Sommerville (Cambridge: Cambridge University Press, 1994), 219.

³² On the opportunities for delay which existed in the common law, see J. H. Baker, *An Introduction to Legal History*, 4th ed. (London: Butterworths, 2002), 65-6.

³³ *The Journal of Nicholas Assheton of Downham: in the county of Lancaster, Esq. for part of the year 1617, and part of the year following*, ed. F. R. Raines (Chetham Society, 1848), 115-16, 125-6; cited in Prest, *The Rise of the Barristers*, 295.

³⁴ Brooks notes allegations that pleadings in the Common Pleas were drawn to extraordinary length: *Pettyfoggers and Vipers of the Commonwealth*, 327 n. 72. From the late sixteenth century to the early seventeenth the rate for drafting pleadings was 8d. a sheet for the first three and 12d. a sheet for the rest; the cost of entering pleas was 2s. for the first three sheets and 12d. for additional sheets. (ibid.).

verbose, had the lawyer responsible (Richard Mylward) paraded around the courtroom with his head forced through the petition up to his chin.³⁵

Suspicion of corruption was another part of anti-lawyer sentiment. The lack of proscription of ambiguous practices – such as seasonal gifts to the judiciary, and solicitation of judges in person or by letter – served to fuel rumour.³⁶ The potential ambiguity of these formal, often etiquette-driven practices could prick the conscience of (or perhaps even stimulate paranoia in) the ordinary, conscientious lawyer beyond the significance of the act. Lincoln's Inn man Henry Sherfield (who delayed to favourable end in Nicholas Assheton's Court of Wards suit) is a case in point. Sherfield recorded in law French on the penultimate page of his first fee book an ostensibly trivial episode that appears to have troubled him for years to come:

Memorandum that the case between Richard Corbett Esq by information plaintiff and Sir Robert Needham defendant was decreed in the Court of Wards at the end of Michaelmas term 8 Jac., 1610. And on this decree Sir Robert Needham left with me a gilt cup worth £10 as I estimated for Sir Ja. L. [Sir James Ley] This I delivered to him on December 2nd 1610, in his inner chamber at Lincoln's Inn. But this was after the decree was signed by him and before the decree was carried to him to enter.³⁷

Sherfield added a note in English, up to sixteen years later:

For which I humbly ask forgiveness at God's hands, having given me the grace never to offend in that kind since that evil act I then detesting as abominable the same with

³⁵ Harvard Law School MS. 1035, F71r-77v; cited in Cecil Monro, *Acta Cancellariae; or selections from the Records of the Court of Chancery, remaining in the Office of Reports and Entries* (London, 1847), 692-3, and Knafla, *Law and Politics in Jacobean England*, 62.

³⁶ In this connection, see Brooks, *Pettyfoggers and Vipers of the Commonwealth*, 146-50; Prest, *The Rise of the Barristers*, 304-7.

³⁷ Hampshire Record Office, 44M69/xxv/I; cited in Prest, *The Rise of the Barristers*, 310.

promise to God never to offend again in that manner which he hath enabled me to do hitherunto viz 3 June 1626.³⁸

The infinitely complex issue of law's relationship with ideas about right and wrong encouraged some lawyers to take what humanly possible precaution they could for taking a clear conscience into the afterlife – it became customary for a while for lawyers to include in their wills clauses of restitution. This clause from the will of Robert Morton of Lincoln's Inn was typical:

Tenderly I pray and specially require myn executours that if eny wrongis by me haue be done to eny manner persones and dew profe therof made afore my seid executours, that they make due restitucion to the parties greivid for such wrongys by me so doon, to the vtterest that it may be knowen.³⁹

There was an inherent danger, of course. Another Lincoln's Inn man, William Ayloffe, made it clear in his will that such a clause was included as a kind of insurance, and not as an invitation to former clients simply to try their luck.⁴⁰

Judgments capable of seeming influenced by personal prejudice or political expediency might arouse suspicion of a different form of corruption, for their possible lack of impartiality. At a senior level, both prejudice and expediency may have influenced Egerton's judgment in the 1604 fraud case in Star Chamber against John Hele of the Inner Temple, the King's senior serjeant at law. Political expediency

³⁸ Ibid. Milton wrote a sonnet to Ley's daughter Margaret, praising her late father's achievements and character: "that good Earl, once President / Of England's Council and her Treasury, / Who lived in both unstained with gold or fee." Sonnet X, in *Milton: Poetical Works*, ed. Douglas Bush (London: Oxford University Press, 1969), 171.

³⁹ National Archives, PROB11/8 f. 146v.; cited in Ives, *Common Lawyers*, 317.

⁴⁰ National Archives, PROB11/19 f. 1; cited in Ives, *Common Lawyers*, 317.

factored against Hele after he was implicated in the Cobham plot against the Crown;⁴¹ more personally, Egerton may be seen to have harboured a grudge against Hele since 1600, when Hele called in a debt of £400 from Egerton after the latter refused to support his attempt to become Master of the Rolls.⁴² A majority of the common-law judges voted to acquit Hele, but Egerton found Hele “guilty in all of corruption and ambition, craft and covetous practices,” voting for disbarment, imprisonment, and a fine of £2,000.⁴³

Dishonesty in a lawyer could be dealt with in a staggeringly harsh way. In 1601, Robert Pye, a young barrister of the Inner Temple, pursued a case against Christopher Merrick of the same Inn. The particulars of the matter were, on the face of it, fairly trivial – failure to repay a £3 loan resulting in fisticuffs. But Pye persisted with a doubted account of events (involving a serious accusation against Merrick), and was accused and convicted of perjury in the Star Chamber. He was sentenced, again by Egerton:

to pay a fine of 1,000 marks, to be pilloried at Westminster and there to lose an ear, to ride with his face to the horse’s tail with a paper stating his offences, from Westminster

⁴¹ Hele’s part in the Cobham plot is suggested in the *Ashburnham Manuscripts*, Historical Manuscripts Commission, London, Reports and Papers, 8th Report, Appendix Part III (1881), 13-22; cited in Knafla, *Law and Politics in Jacobean England*, 63 n. 2.

⁴² J. S. Cockburn discusses the different types of politics involved in “The Spoils of Law: the trial of Sir John Hele, 1604,” in *Tudor Rule and Revolution*, ed. Delloyd J. Guth and John W. McKenna (Cambridge: Cambridge University Press, 1982), 309-44.

⁴³ John Hawarde, *Les Reports del Cases in Camera Stellata, 1593-1609*, ed. W. P. Baildon (London, 1894), 171-6, 411. See also Knafla, *Law and Politics in Jacobean England*, 62-3, and Prest, *The Rise of the Barristers*, 294.

Hall to the Temple Gate, where he was to be again pilloried, and to lose the other ear, and to perpetual imprisonment.⁴⁴

The sentence was carried out at Temple Gate, as described in a letter dated 17 May 1602 by Commissioner for the repair of St Paul's, John Chamberlain:

This last week one Pie an utter barrister of the Inner Temple stood on the pillory before the Temple gate and lost both his ears for contriving and plotting the death of one of his fellow lawyers by the way of justice.⁴⁵

It was in his judgment in this case that Egerton dispensed a famously discriminating anti-lawyer sentiment: between “the good and literate professors of the law [who] are as good members of the Commonwealth as any others, [and] the ignorant and bad professors of the law [who] are as dangerous vermin to the Commonwealth as caterpillars.”⁴⁶ The attorneys bore the main brunt of this type of criticism. For example, Egerton proposed a variety of reforms in his “Memorialles for Iudicature” of 1609, among them that:

A view . . . be taken of the Number of Attorneys in euey Court, specially in the kinges bench and common place, and thervpon a competent number of the moost expert and honest, discrete and sufficient only to be allowed, and the residue to be discharged and put out from that trade.⁴⁷

⁴⁴ *A Calendar of the Inner Temple Records*, ed. F. A. Inderwick (London, 1896), i, xci. The sharp-dealing and spurious litigation in this matter involving two young Inns of Court lawyers can make it resemble in some respects a city comedy plot. For this reason the full report is reproduced *infra* at Appendix 1, 250-4. Rogues may be found in all walks of life: see *infra*, 18.

⁴⁵ Letter dated 17 May 1602 from John Chamberlain to Sir Dudley Carlton: *Calendar of State Papers, Domestic, Eliz. vol. cclxxxiv, No. 14*; *Letters written by John Chamberlain during the reign of Queen Elizabeth*, ed. S. Williams (London: Camden Society, 1861), 135.

⁴⁶ *A Calendar of the Inner Temple Records*, i, xcii.

⁴⁷ The instrument is set out in full in Knafla, *Law and Politics in Jacobean England*, 274-81 (275).

There is an instance of Coke and Egerton agreeing on the harsh sentence of an attorney who was convicted in Star Chamber of blackmail jointly with a client. Coke and Egerton had the lawyer disbarred; he and his co-defendant were pilloried, had their ears cut off, were branded in the forehead with a “C” for conspiracy, whipped through the streets, and at last fined £500 each.⁴⁸ In view of the examples made of individual lawyers caught and found guilty of dishonesty and corruption, it is questionable that any more than a relative few would have been tempted into serious wrongdoing.

Some anti-lawyer sentiment may have had a political or class basis. According to Brooks, by 1640 one in every eighty men in England was using the King’s courts, and use of these implied recognition of royal rule – often at the expense of magnates or lords of the manor.⁴⁹ It would be wrong, of course, to say that lawyers were characteristically egalitarian. But developments in legal practice in the second half of the sixteenth century did make it easier for the common people to go to law, so many among the landed classes may well have felt they had reason to speak against lawyers, in part because lawyers were able to articulate the concerns of the lower classes, and thus give commoners a taste of liberty and power that could threaten the established social order. Coke is reported to have commented on what law meant to the poor:

⁴⁸ *Miller v. Reynolds and Bassett* (1614), in *Reports of Certain Cases, arising in the severall Courts of Record at Westminster*, by John Godbolt, ed. William Hughes (London, 1652), 205-7. See also Knafla, *Law and Politics in Jacobean England*, 128.

⁴⁹ Brooks, *Pettyfoggers and Vipers of the Commonwealth*, 134. On use of the king’s courts: for administration at local level, see J. S. Cockburn, *A History of English Assizes, 1558-1714* (London: Cambridge University Press, 1972); for quarter sessions, see Cynthia B. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge: Cambridge University Press, 1987).

The equall course of Justice being stayed, the poore & meaner sort of people they are overwhelmed with wrongs oppression, whilst great and wealthy men, like Hilles and Mountaines, buyld their Stations sure, being freed from any cause of grieffe: Justice with-held, only the poorer sort are those that smart for it.⁵⁰

Commentators on the history of the legal profession are surely right to point out that every occupational group, in any period, has its quota of rogues and incompetents.⁵¹

But litigation is fraught with emotion, so it is not difficult to see how some anti-lawyer feeling might be the bitter refuge of impatient and unsuccessful litigants. There may be an element of lawyer myth-making in the story of an imperturbable Thomas More being led to his execution, cursed by one disappointed litigant and confronted by another about an unfinished matter.⁵² To the first he answered that justice had been done (secure in the knowledge that not every courtroom defeat can be a miscarriage of justice); to the second he acknowledged that the business was incomplete, explaining that he had not time or influence left.⁵³

It seems obvious to think first of anti-lawyer sentiment coming from outside the profession. But degrees of rivalry and antipathy existed between different categories of workers in England's legal system. Accordingly, the word "lawyer" did not have a vocationally unified meaning in Jacobean city comedy. It is important to

⁵⁰ *Lord Coke, His Speech and Charge, with a Discoverie of the Abuses and Corruption of Officers* (London, 1607), C4v. The author, Robert Pricket, claims to reproduce an address by Coke to the jury in the Court of Assizes in Norwich on 4 August 1606; cf. *The Reports of Sir Edward Coke*, the seventh part, vol. IV, part v.

⁵¹ For example, Ives, *Common Lawyers*, 318; Prest, *The Rise of the Barristers*, 296.

⁵² *Hall's Chronicle; Containing the History of England during the Reign of Henry the fourth and the Succeeding Monarchs*, ed. Henry Ellis (London, 1809), 817; R. W. Chambers, *Thomas More* (London: Cape, 1935), 348; Ives, *Common Lawyers*, 316.

⁵³ Paraphrase from Ives, *Common Lawyers*, 316.

recognize the distinction between common lawyers and civil lawyers, for example. Practitioners or students of the common law (law “common” throughout the realm) had, by the second half of the sixteenth century, some degree of professional rivalry with those who practised or studied the civil law (so-called for being derived and adapted from Justinian’s *Corpus Juris Civilis*, the sixth century codification of Roman law). Historians’ opinions differ as to the nature and degree of rivalry between the common lawyers and the civilians.⁵⁴ Brian Levack’s view is that it was Roman influence in the law up to this time that aroused suspicion if not hostility. The English ecclesiastical law (a substantial part of the early modern civilians’ practice) could be criticized for the large amount of unreformed Roman canon law it contained: civilians are described as “popish doctors of the bawdy courts” in the *Marprelate Tracts*.⁵⁵ The common lawyers of the Inns of Court lawyers would prevail in professional terms over the civilians, who, in the first decade of the seventeenth century, arguably became “medieval fossils in an early modern world”⁵⁶ – servants of a church losing influence and prestige, clinging to outmoded forms of political and religious thought. But the rivalry approached its height in the decade in which city comedy developed in

⁵⁴ See Brian P. Levack, *The Civil Lawyers in England, 1603-1641: A Political Study* (Oxford: Clarendon Press, 1973), 126; *idem*, “The English Civilians, 1500-1750,” in *Lawyers in Early Modern Europe and America*, ed. Wilfrid Prest (London: Croom Helm Ltd., 1981), 120; Prest, *The Rise of the Barristers*, 191; J. H. Baker, “The Newe Littleton,” *Cambridge Law Journal*, xxxiii (1974), 148-51; H. S. Pawlisch, “Sir John Davies, The Ancient Constitution and Civil Law,” *Historical Journal*, 23 (1980), 689-702; Gilbert Burnet, *The Life and Death of Sir Matthew Hale, Kt., sometime Lord Chief Justice of His Majestie’s Court of King’s Bench* (London, 1682), 13; on “revisionist” approaches, see Glenn Burgess, “On Revisionism: An Analysis of Early Stuart Historiography in the 1970s and 1980s,” *Historical Journal*, vol. 33 (1990), 609-27.

⁵⁵ *The Marprelate Tracts, 1588, 1589*, ed. William Pierce (London, 1911), 51.

⁵⁶ Levack, “The English Civilians, 1500-1750,” 124.

London's private theatres, and recognizing the difference and rivalry between Inns of Court lawyers and civilians not only makes possible but actively invites an alternative interpretation of generalized anti-lawyer sentiment in city comedy.

Precise applications of the different titles under which lawyers are classified have fluctuated over time. Broadly speaking, in the reigns of Elizabeth and James I, the common law courts had barristers, where the civil law courts had advocates; the common law had attorneys, where the civil law had proctors. As remains the case with today's barristers and solicitors, any type of lawyer – barrister or attorney, advocate or proctor – might be referred to using the simple generic classification “lawyer.” This contributes to the conventional perception of city comedy as hostile to lawyers generally – different types of lawyer are often referred to in the plays using the simple generic term “lawyer.” But specific civil terms are sometimes used. The best-known lawyer figure in city comedy is by title a civilian, not an Inns of Court common lawyer. Voltore in *Volpone* is an advocate (strictly a civil denomination), and Jonson, whose renowned learning made him a stickler for detail,⁵⁷ may be presumed to have given the matter due deliberation before using the term “advocate” – instead of the generic “lawyer,” or the common law equivalent denominations “barrister” or “counsellor.” Despite *Volpone*'s Venetian setting, the appearance of the four Avocatori in IV.ii and V.vii looks again like an allusion to the advocates of the civil law. Why should Jonson make allusions to civil advocates in the play? It would fit the commercial purpose of the theatre to answer that he targets civilians in order to appeal to Inns of Court men. Voltore is the vulture, and the target of Mosca's sarcastic, back-handed compliments when reporting Volpone's sentiments on Voltore's vocation:

⁵⁷ See *infra*, 39 n. 118.

I oft have heard him say how he admired
 Men of your large profession, that could speak
 To every cause, and things mere contraries,
 Till they were hoarse again, yet all be law;
 That, with most quick agility, could turn,
 And re-turn; makes knots and un-do them;
 Give forked counsel; take provoking gold
 On either hand, and put it up. These men,
 He knew, would thrive with their humility (I.iii.52-60).

Voltore's was not such a large profession by the first decade of the seventeenth century. A look at the diminishing figures for civilians suggests that Mosca's speech may well be a piece of civilian-targeted sarcasm. The civilians who enjoyed the highest status were those admitted as advocates to the Court of Arches, the Archbishop of Canterbury's most important court. Between 1500 and 1750 some 460 lawyers were admitted to the Court of Arches, but the first two decades of the seventeenth century saw a marked decline in admissions which would never fully recover. Between 1580 and 1589 thirty-six advocates were admitted; this rose to fifty between 1590 and 1599. Between 1600 and 1609, however, the number dropped to twelve, rising only negligibly to fourteen between 1610 and 1619.⁵⁸ In terms of civilian students, numbers hit a low point in the first decade of the seventeenth century, as well. Between 1581 and 1590 forty completed their degrees; the number fell between 1591 and 1600 to twenty-nine; the number sank dramatically between 1601 and 1610, when only seventeen completed their degrees.⁵⁹ In the four Inns of Court, meanwhile, admissions increased from around fifty a year in the early sixteenth century to a high point of three hundred in the reign of James I.⁶⁰ Inns of Court common lawyers could be expected to have approved when Mosca sarcastically called

⁵⁸ Levack, "The English Civilians, 1500-1750," 109.

⁵⁹ Levack, *The Civil Lawyers in England, 1603-1641*, 51.

⁶⁰ Prest, *The Inns of Court*, 7, 52-3; Brooks, *Pettyfoggers and Vipers of the Commonwealth*, 112.

the declining civilians a “large profession,” before disingenuously congratulating these Rome-connected lawyers for, in effect, hypocrisy hid behind false humility.

Two things may be taken to account for the declining numbers entering the civil law. One, the perception of the civilians’ type of law as popish; and two, the successes of common lawyers in limiting the civilians’ jurisdiction.⁶¹ Historians tend to view the smaller numbers of the civilians as a disadvantage, as much as a sign, of their decline.⁶² Contemporary writers do not invariably bear this out, though. Thomas Powell was claiming still in 1635, several advantages to being part of the persevering minority of civilians:

It is to be confest, the charge of breeding a man to the Civill Law, is more expensive, and the way more painefull, and the bookes of greater number, and price than the Common Law requireth. But after the Civill Lawyer is once growne to Maturity. His way of Advancement is more beneficiall, more certaine, and more easie to attaine, than is the Common Lawyers, and all because their number is lesse, their learning more intricate.⁶³

In contradiction of Powell’s ideas in 1635 about the opportunities open to newly qualified civilians, there were already problems in this connection by 1604, as a contemporary journal writer noted:

There is great complaint among those scholars of the University of Cambridge who have dedicated themselves to the study of the civil Law that when they leave the University there is no room for them in the State to exercise their profession, insomuch

⁶¹ Levack, “The English Civilians, 1500-1750,” 120. Ecclesiastical court jurisdictions continued dealing with lapses in religion, sexual offences and the probate of wills long after the Restoration of Charles II: C. W. Brooks, “The Common Lawyers in England, c. 1558-1642,” in: *Lawyers in Early Modern Europe and America*, ed. Wilfrid Prest (London: Croom Helm Ltd., 1981), 43.

⁶² Prest, *The Rise of the Barristers*, 4; Levack, “The English Civilians, 1500-1750,” 108.

⁶³ Powell, *The Art of Thriving. Or, the plaine pathway to Preferment* (London, 1635), 51. On the decline of the Inns of Chancery see *infra*, 191-2.

that the Vice-Chancellor and Senate petition the Lord Cecil, their Chancellor, to take up their cause.⁶⁴

After making Voltore an advocate, Jonson used the civil version of the common law attorney in *Bartholomew Fair*: John Littlewit is a proctor. The use of a negative, half-witted name for the civil equivalent of an attorney could be expected to appeal to Inns of Court lawyers, in that it served both to affirm the type of law they practised, and to infer the putative superiority of their position as court pleaders. There is some line of argument for reversing the apparent negative to be found in the city comedy repertoire of character names ending in “wit”: Littlewit in *Bartholomew Fair* has a part-namesake in Follywit of *A Mad World, My Masters* (Middleton has the more positively named Allwit in *A Chaste Maid in Cheapside*, and Saviourwit in *No Wit, No Help Like a Woman’s*; Jonson has the stoical Lovewit in *The Alchemist*). Cowell looked back to the Saxon root of the word “wit” when defining early modern legal terms such as bloodwit and childwit.⁶⁵ The word wit in this legal usage had its etymology, said Cowell, in the Saxon signification of charging with a fault, or of blame or reprehension. With this in mind, the name Littlewit is capable of construction as little-fault, or little-blame. But this construction seems unlikely, and it works against the more likely possibility – that the civilian proctor is represented in

⁶⁴ G. B. Harrison, *A Jacobean Journal, being a record of those things most talked of during the years 1603-1606* (London: George Routledge and Sons Ltd., 1946), 109. The entry relates to 10 March 1604.

⁶⁵ *Bloodwit* conferred a power to exact a fine for the shedding of blood; *childwit* signified a power to fine a servant woman who became pregnant without her employer’s consent. John Cowell, *The Interpreter: or Booke Containing the Signification of Words: Wherein is set forth the true meaning of all, or the most part of such Words and Termes, as are mentioned in the Lawe Writers, or Statutes of this victorious and renowned Kingdome, requiring any Exposition or Interpretation* (Cambridge, 1607).

ordinary terms as having little wit, as the Inns of Court lawyers in the audience could be expected to have wanted. In *The Alchemist*, again, Jonson has pastor Tribulation Wholesome speak in passing of “*aurum potabile* being / The only med’cine for the civil magistrate, / T’ incline him to a feeling of the Cause” (III.i.41-3).⁶⁶ Specific reference is made to a civilian legal figure, with an imputation of bribery. The express distinction made to the corrupt civil magistrate infers the reverse of the common law equivalent: a characterization that would have met with the approval of the Inns of Court common lawyers in the audience.

The debates of 1628 concerning the Petition of Right are outside the period covered in this thesis, and there is no connection to be found with Jacobean city comedy. But they provide an example of how anti-lawyer sentiment could be based in something more serious than the disappointment of unsuccessful litigants or professional rivalry.⁶⁷ By the Caroline period, anti-lawyer sentiment could be generated by the growing lack of security about certain liberties English gentlemen assumed the law guaranteed them. A key event on the way to the debates was *Darnel’s* or *The Five Knights case*,⁶⁸ in which it was held that it was sufficient answer to a writ of *habeas corpus* to state that a prisoner was detained by special order of the King. Thus the King had a power of preventive arrest not questionable in the courts, and which in this case was used to enforce taxation levied without Parliament’s consent. John Holles, Earl of Clare, articulated his doubts about the law and lawyers in a letter to Thomas Wentworth (who in his youth had been at the Inner Temple):

⁶⁶ *Aurum Potabile*, drinkable gold, was thought to be an elixir: Gordon Campbell, ed. “*The Alchemist*” and other plays (Oxford: Oxford University Press, 1995), 244 n. 41.

⁶⁷ The Petition of Right is enrolled on the statute book as 3 Car 1 c 1: *Halsbury’s Statutes*, vol. 10, 37.

⁶⁸ (1627) 3 St Tr 1; discussed in E. C. S. Wade and A. W. Bradley, *Constitutional and Administrative Law*, 11th ed. (London: Longman, 1993), 263.

. . . I cannot term you, nor myself, a freeman, when law hath no protection for us; for this diseased body our councillors have left us and the disease still strengtheneth upon us. Neither do the lawyers, the physicians for this subject, heal us any whit, for *meum* or *tuum*⁶⁹ between common persons they crow in every corner, but when the question transcends between the head and the body, they are crestfallen and have nothing to say and if accidentally something of them be heard and show themselves in [the law], they only betray the place and leave the matter worse than they found it; witness the late *Habeas Corpus*.⁷⁰

Some Members of the 1628 Parliament fastened early on to distrust of the common law.⁷¹ But the result of the House of Commons' instruction of both prominent civilian Henry Marten and prominent common lawyer John Glanville of Lincoln's Inn following the House of Lords' proposed amendment to the Commons' draft of the Petition may be taken to suggest that some civilians and common lawyers were not so far apart politically as they were in respect of their respective professions. The Lords' proposal was for preserving the King's discretionary power in affairs of state:

We humbly present this Petition to your Majesty, not only with a care for preservation of our liberties, but with a due regard to leave entire that sovereign power whereby your Majesty is entrusted for the protection and happiness of your people.⁷²

Such an amendment would enable the King to ignore the common law where there was just cause in the interests of his subjects – but it would be for the King to decide what amounted to just cause. Civilians were seen, in contrast to the common lawyers,

⁶⁹ Mine or thine: used to express rights of property.

⁷⁰ J. P. Cooper, ed., *The Wentworth Papers, 1597-1628*, Camden Society, Fourth Series, 12 (1973), 287-8; see Conrad Russell, *Parliaments and English Politics, 1621-1629* (Oxford: Clarendon Press, 1979), 348; on Russell's approach to the history of political thought, see Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642* (London: Macmillan, 1992), 110.

⁷¹ Russell, *Parliaments and English Politics*, 347.

⁷² Lords' Journals, unpublished manuscript (London: Inner Temple Library), Petyt MS. 537/23/f. 367; cited in Levack, *The Civil Lawyers in England, 1603-1641*, 118.

as supporting the autocratic power of the Crown, but Marten, instructed by the Commons, showed himself to be politically independent. To admit the exception would, Marten observed, make the Petition meaningless – the civilian pointed out that absolute power could in theory be used for bad as well as for good:

The King may not require money but in Parliament, it is a man's head; but add this clause unless it be by Sovereign power; then it is lion's neck, and it mars all. We leave entire a sovereign power. . . . I say it is . . . dangerous. It implies the King is trusted with a power for the destruction, and also for the safety of the people. It admits also he may use sovereign power, and if he does we may not refuse it for it is for our protection, so it bounds up my mouth that I cannot but say it is for the good of the people. Sovereign power is transcending and a high word.⁷³

Marten showed that fundamental questions of politics might bring civilians and common lawyers in some way together – the King would have to observe the rules of the common law. But professional context would continue to keep the common lawyers and the civilians apart.

1.3 Theatrical culture of the Inns of Court

The Inns of Court are an important focal point for consideration of early modern theatrical culture.⁷⁴ The records of the Inner Temple register the popularity of

⁷³ Ibid., 356v-357r; cited in Levack, *The Civil Lawyers in England, 1603-1641*, 118.

⁷⁴ The cultural significance of the Inns of Court has been the subject of several conferences in recent years. A three-day interdisciplinary conference titled “The Intellectual and Cultural World of the Early Modern Inns of Court” took place on 14-16 September 2006 at the Courtauld Institute and the Inns of Court. It attracted some 150 participants; among them, legal historians Sir John H. Baker, Q.C. (who reconsidered the Inns’ status as “the third university”), and Wilfrid Prest (who examined readers’ dinners and the culture of the early modern Inns of Court). Among the literary scholars were Lorna Hutson (who extended her work in *Rhetoric and Law in Early Modern Europe* to examine links between Shakespeare’s 2 *Henry VI* both to pedagogical uses of classical judicial oratory in humanist

masques and other Christmas entertainments at the Inns in the first half of the sixteenth century and earlier, noting that there were at this time no public theatres where dramatic pieces could be produced.⁷⁵ Performances of plays at the Inns began as part of various organized entertainments celebrating holidays, the three main ones being Christmas, All Saints or All Hallows (1 November), and Candlemas (2 February).⁷⁶ Inderwick observes the evolution of taste for drama at the Inns from simple entertainments to performances characterized by literary and artistic excellence.⁷⁷ The revels of the Inns of Court were initially non-dramatic (involving sports, singing and dancing), but they progressed from pageants and mumming to

interpretation of Roman new comedy and to developments in English legal culture of participatory jury trial), and Andrew Gurr (who extended his study on playgoing in Shakespeare's London to look at bonds between lawyers and playing companies, in particular Middle Templar John Ford). Speakers at the "Law, Evidence and Fiction" conference held at St Andrew's, Scotland on 17 February 2007 included Marion Wynne-Davies, Subha Mukherji, and Lorna Hutson. An interdisciplinary conference entitled "'Beyond Reasonable Doubt': Conversations in Law, Literature and Philosophy from the Reformation to the Present Day" took place at Fitzwilliam College, Cambridge on 7-9 September 2007, bringing together legal practitioners, literary critics, jurists and philosophers; speakers included Peter Brooks, Lorna Hutson, Ian Ward, and Luke Wilson. "Text and Image in Early Modern Society," held at the University of Sussex on 9-11 September 2008 included the Inns of Court among numerous areas of investigation.

⁷⁵ *A Calendar of the Inner Temple Records*, i, lxix.

⁷⁶ Appendix 2, 256-8, is a selective list of plays performed at the individual Inns up to the period covered by the thesis (from 1500 to 1615). Where not otherwise indicated, material on the theatrical culture of the Inns of Court informed by Richardson, *A History of the Inns of Court*, ch. 7; Marie Axton, *The Queen's Two Bodies: Drama and the Elizabethan Succession* (London: Royal Historical Society, 1977), ch. 1 and *passim*; Ann Jennalie Cook, *The Privileged Playgoers of Shakespeare's London, 1576-1642* (Princeton, New Jersey: Princeton University Press, 1981), 108-10.

⁷⁷ *A Calendar of the Inner Temple Records*, i, xcvi.

masques and then plays.⁷⁸ The archives of Lincoln's Inn contain the earliest surviving allusion to revels, celebrations being organized for four festivals in 1431.⁷⁹ The Inns of Chancery seem to have had their own theatrical culture, at least in the late fifteenth and early sixteenth century, before their enforced decline. Middle Templar Robert Brerewood records the Grand Christmas of 1482-3 at Clifford's Inn, where the celebrations included "stately stageplays, . . . [and] speeches whereby was unfolded the brave wits and ingenious capacity of sundry persons."⁸⁰

Revels at the Inns of Court could last for several days at a time (on occasion, longer), attracting public attention – sometimes of an undesirable kind. The Inns' association with drama was first notably visited by controversy and questionable interpretation in 1526, when Cardinal Wolsey imprisoned a prominent lawyer, Serjeant John Roo of Gray's Inn, for a political satire which Wolsey interpreted as an attempt to discredit him. Edward Hall, Roo's contemporary at Gray's Inn, provided an account of the matter in his *Chronicle*, which contains an allusion to the title by which Roo's satire is sometimes known, *Lord Governance and Lady Publike-Wele*:

⁷⁸ *Oxford English Dictionary*, 2nd ed., s.v. "revels." Cf. William Herbert, *Antiquities of the Inns of Court and Chancery Containing Historical and Descriptive Sketches relative to their Original Foundation* (London, 1804), 314.

⁷⁹ *The Records of the Honourable Society of Lincoln's Inn, 1422-1914. The Black Books*, ed. J. D. Walker, W. P. Baildon, and R. F. Roxburgh (London, 1897-1968), i, 4. The first mention of a revel at the Middle Temple dates from November 1501: "Minutes of Parliament of the Middle Temple, 1501-1703," tr. & ed. Charles Trice Martin, in *Middle Temple Records*, ed. C. H. Hopwood (London, 1904-5), i, 2; first mention at the Inner Temple from November 1505: *A Calendar of the Inner Temple Records*, i, 2; at Gray's Inn, from 1530: *The Pension Book of Gray's Inn (Records of the Honourable Society), 1569-1669*, ed. Reginald J. Fletcher (London, 1901), i, Appendix ii, 495.

⁸⁰ Robert Brerewood, "The Brerewood Manuscript," Middle Temple Library, n.d., 109, 110; cited in Richardson, *A History of the Inns of Court*, 217.

This Christmas was a goodly disguising plaied at Greis inne,⁸¹ whiche was compiled for the moste part, by master Ihon Roo seriant at the law xx yere past, and long before the Cardinall had any authoritie, the effecte of the plaie was, that lord gouernance was ruled by dissipacion and negligence, by whose misgouernance and euill order, lady Publike wele was put from gouernance: which caused Rumor Populi, Inward grudge and disdain of wanton souerignete, to rise with a greate multitude, to expel negligence and dissipacion, and to restore Publik welth again to her estate, which was so done. This plaie was so set furth . . . that it was highly praised by all menne, sauing of the Cardinall, whiche imagined that the plaie had been diuised of hym, & in a greate furie sent for the said master Roo, and toke from hym his Coyfe, and sent hym to the Flete, & after he sent for the yong gentlemen, that plaied in the plaie, and them highly rebuked and thretened, & sent one of them called Thomas Moyle [of Gray's Inn] of Kent to the Flete, but by means of frendes Master Roo and he wer deliuered at last. This plaie sore displeased the Cardinall, and yet it was neuer meante to hym, as you haue harde, wherefore many wisemen grudged to see hym take it so hartely, and euer the Cardinall saied that the kyng was highly displeased with it, and spake nothyng of himself.⁸²

The Inns had enjoyed some degree of freedom before the Wolsey incident when presenting plays intended only as entertainments. But Roo's (and his actors') brush with the authorities may seem to foreshadow the problems Jonson would face with his dramatic satires, and legislation and royal proclamations gradually encroached on what freedom the Inns had in staging entertainments, at least until Elizabeth's reign. Statutes of 1543 and 1548 prohibited seditious and irreligious matter in plays, and proclamations of 1549 and 1551 established systematic censorship of plays performed at the Inns.⁸³

⁸¹ Disguising was another word for mumming: see E. K. Chambers, *The Elizabethan Stage* (Oxford: Clarendon Press, 1923), i, 149-55.

⁸² *Hall's Chronicle*, 719; cited in Richardson, *A History of the Inns of Court*, 238-9. On Roo, see Axton, *The Queen's Two Bodies*, 2, 3, 7, 9.

⁸³ "Acte for thadvancement of true Religion and for thabbolishment of the contrarie," 34 & 35 Henry VIII, c. 1, *The Statutes of the Realm, from Original Records, 1101-1713*, ed. Alexander Luders, et al (London, 1810-28), iii, 894-7, s. vii; Act of Uniformity, 2 & 3 Edward VI, c. 1, *ibid.*, iv, Pt. I, 37-9, s. iii. See *Tudor Royal Proclamations*, ed. Paul Hughes & James Larkin (New Haven: Yale University Press, 1964-9), i, 478 (No. 344), 514 (No. 371).

Members of the Inns of Court could be innovative in drama. Two Inner Temple men, Thomas North and Thomas Sackville, were responsible for the first known English tragedy in blank verse, *Gorboduc*, which was performed at the first revels to draw real public attention – Inner Temple’s Christmas revels in 1561-2. With Westminster Hall not far away, students of the Inns of Court were more immediately subject to the ideas and fashions of the royal court than the students of the universities. Irreverent originality could be seen in the royal-sounding titles given to the organizers of the Inns’ entertainments as their presentations came to rival those of the royal court in both quality and scale. The Lord of Misrule governed the Christmas entertainments, and the Inns charged an official with Mastership of the Revels before the royal court adopted that title. In terms of scale, the most spectacular celebration was the *Gesta Grayorum* – Gray’s Inn’s extended series of events lasting from December 1594 to the following Shrove Tuesday. Again, the *Gesta* can be seen to reflect the ideas and organization of the royal court; for example, with the planning of an imaginary kingdom of Graya (for Gray’s Inn), and a state of Templaria (representing the Temple). Gray’s Inn’s celebrations drew on successive nights an unexpected level of curiosity, and unruly revellers turned the scene into one of temporary disorder.⁸⁴ The restoration of order coincided with a performance of *The Comedy of Errors*, but it is the following night which provides an interesting insight into the approach lawyers took to representing their own vocation.

⁸⁴ See the first part of *Gesta Grayorum: or the History of the High and Mighty Prince Henry, Prince of Purpoole, Anno Domini, 1594*, ed. Walter Wilson Greg (Oxford: Malone Society Reprint, 1914).

Gray’s Inn customarily used the title “Prince of Purpoole” for its master of revels, Purpoole being the parish in which the Inn was located.

Interesting in what way? One commentator has remarked on the odd, unreciprocated regard in which lawyers might be said to embrace works which are in places scornful of their own language, practices, and professional ethic.⁸⁵ Another recently acknowledged it as paradoxical that an example of city comedy should be hostile to the law as a profession when Inns of Court men formed a significant part of the audience, and the playwrights themselves had connections with the Inns.⁸⁶ The explanation offered is that the paradox is lessened on reflection that mockery of lawyers was predictably traditional in the Inns of Court revels.⁸⁷ The suggestion is that lawyers would go to see these plays in which their profession was represented apparently in a negative light in order simply to laugh at themselves. There may be something in this. We hope to see the funny side if others find reason to make fun of us. But this by itself seems a not wholly satisfactory explanation.

Following the collapse into disorder at the *Gesta*, the Inns men held a mock trial of the person held most responsible, in which England's courts, justice, and the legal profession were all subjects of satire. Axton sees this approach as the Inns' version of the *causes grasses*, a French carnival tradition in which imitation of legal procedure is pushed to comic absurdity.⁸⁸ At the same time the Inns men's use or imitation of legal procedure in the wake of disorder can be interpreted as an implicitly positive response to, or representation of, the restoration of order. Given the Inns men's vocation, implicit valorization of order may seem a persuasive explanation for city comedy's

⁸⁵ Julius, introduction to *Law and Literature*, xiii.

⁸⁶ Cain, introduction to *Poetaster, or His Arraignment*, 45

⁸⁷ *Ibid.*

⁸⁸ *The Queen's Two Bodies*, 6.

imitation of legal procedure and the use in the plays of judgment scenes, and the approach to the type of mock trial performed at the *Gesta* may have influenced this.⁸⁹

A contemporary account of the “Lincolnia” Christmas revels of 1599-1600, in which Lincoln’s Inn invited students of the Middle Temple to join them, features a description of the conclusion to the role of the appointed organizer (the so-called “Prince of Burning Love”) which has a hint of city comedy plot possibilities about it:

the Prince, wearied with the weight of government, made a voluntary resignation into the hands of the Optimates, intending a private life, wherein he required the advice of his Counsaile. One perswaded him to follow the sea; another to land travaile; a third, to marry a rich widow; and a fourth, to study common lawe; hee choose the last, and refused not the third if she stood in his way.⁹⁰

The Inns’ theatrical entertainments enjoyed a high profile in the first two decades of the seventeenth century, and this excited public curiosity. All four Inns contributed to the major celebration in honour of the 1613 marriage of the King’s daughter, Princess Elizabeth. The celebrations included two masques; one presented jointly by Lincoln’s Inn and the Middle Temple (written by George Chapman, a resident of Gray’s Inn), and another presented by Gray’s Inn and the Inner Temple.⁹¹ An example of the popularity of Inns-related drama can be found in relation to the production of William Browne’s *Inner Temple Masque* of 1614; intended as a private entertainment,

⁸⁹ Susan Wells’ Bahktinian analysis of city comedy alludes to the carnivalesque aspect of the Inns of Court revels, in which “[w]hat had been serious was parodied and profaned [. . . and] normal forms of authority were . . . degraded”: “Jacobean City Comedy and the Ideology of the City,” *English Literary History*, Vol. 48, No. 1 (Spring 1981), 46.

⁹⁰ “Noctes Templariae, or, A Briefe Chronicle of the Dark Reigne of the Bright Prince of Burning Love,” British Library, Harleian MS. 1576, f. 556, cited in *Memoirs of Sir Benjamin Rudyard, Knt.*, ed. James Alexander Manning (London, 1841), 9, and Richardson, *A History of the Inns of Court*, 228.

⁹¹ Richardson, *A History of the Inns of Court*, 228-29.

numerous uninvited spectators pressed themselves up against the windows outside the Inner Temple in hope of seeing the masque.⁹²

Axton described certain sixteenth century revellers of the Inns of Court as “ambitious men with a shrewd appreciation of the possibilities of imitation.”⁹³ If representations of lawyers in city comedy are inflected by the variety of forms and impulses within the genre, the genre’s writers may seem equally to have experimented with the possibilities of representation influenced in part by the theatrical culture of the Inns of Court.

1.4 The private theatres and genre

This section is divided into four subsections. In the first, I examine the idea of rivalry between the two private theatres with which city comedy is principally associated. In the second, I consider ways in which Jonson’s ideas about the role and function of comedy are significant to the interpretation of representation in the genre. In the third, I look to literary and non-literary antecedents with a view to tracing city comedy’s contradictory, antithetical nature. In the final subsection, I provide a survey of criticism, considering the implications for representation of lawyers and law.

(i) Private rivals? The Blackfriars and Paul’s

Andrew Gurr has suggested that readings of city comedy can involve some confusion where they fail to differentiate Paul’s plays from Blackfriars plays; he cites as

⁹² *A Calendar of the Inner Temple Records*, ii, Introduction, xlii-iii.

⁹³ *The Queen’s Two Bodies*, 10.

examples some critics most notably associated with the genre: Gibbons, Leggatt, and Leinwand.⁹⁴ It is worth considering the point in relation to interpretations of city comedy's treatment of lawyers. In order to do so, I first provide some background to the criticism, highlighting points relating to lawyers.

Gurr regards the two main twentieth-century theories about early modern playgoing as flawed for oversimplification and stereotyping.⁹⁵ Alfred Harbage advanced the idea of two "rival traditions." On one hand, said Harbage, Shakespeare exemplified a popular, public tradition aimed at the middle ranks and working people; on the other, city comedy belonged to a "private" tradition, in which boy companies performed before a social elite with a taste for satire.⁹⁶ Harbage's earlier work includes his genial estimation of the typical early modern Inns student:

A student at the Inns of Court was a well-born, affluent, university educated young man in his earlier twenties. He lived in a society devoted to intellectual pursuits and well disposed towards belles-lettres. He must have made a good spectator.⁹⁷

Ann Jennalie Cook challenged Harbage's ideas about the theatre audiences of Shakespeare's London. The social elite were the main patrons not only of the so-called private theatres, said Cook, but of theatre in general: playgoing was the pastime

⁹⁴ Andrew Gurr, *The Shakespearean Playing Companies* (Oxford: Clarendon Press, 1996), 342, 352 n.

13; examples: Gibbons, *Jacobean City Comedy*, 76-7; Alexander Leggatt, *Citizen Comedy in the Age of Shakespeare* (Toronto: University of Toronto Press, 1973), 4; Theodore B. Leinwand, *The City Staged, 1603-1613* (Wisconsin: University of Wisconsin Press, 1986), 14-20.

⁹⁵ Gurr, *Playgoing in Shakespeare's London*, 2nd ed. (Cambridge: Cambridge University Press, 1996), 3-4; this material is omitted from the third edition of the text.

⁹⁶ *Shakespeare and the Rival Traditions* (New York: The Macmillan Company, 1952), 56-7.

⁹⁷ *Shakespeare's Audience* (New York: Columbia University Press, 1941; reissue 1961), xiv. Harbage was not an admirer of the private stage: "The difference between Shakespeare and Fletcher is, in some inverse fashion, the difference between a penny and sixpence" (*ibid.*, 159).

of the privileged.⁹⁸ Puritan William Prynne was a young student at Lincoln's Inn near the end of city comedy's peak popularity. In contrast to Harbage's mild perception of the typical early modern Inns of Court man, Cook was tempted by Prynne's sternly moralizing caricature of Inns of Court playgoers – "Even allowing for Prynne's violent prejudice, his sketch contained a certain amount of truth"⁹⁹ – thus demonstrating her partiality for the kind of stereotypical images against which the puritan lawyer made these charges:

That Innes of Court men were undone but for Players; that they are their chiefest guests and imployment, & the sole busines that makes them afternoons men: that this is one of the first things they learne as soone as they are admitted, to see Stage-playes, & take smoke at a Play-house, which they commonly make their Studie; where they quickly learne to follow all fashions, to drinke all Healths, to weare favours and good cloathes, to consort with ruffianly companions, to sweare the biggest oaths, to quarrel easily, fight desperately, game inordinately, to spend their patrimony ere it fall, to use gracefully some gestures of apish complement, to talke irreligiously, to dally with a Mistresse, and hunt after harlots, to prove altogether lawlesse in steed of Lawyers, and to forget that little learning, grace and virtue which they had before.¹⁰⁰

Gurr rightly points out that ideas about playgoing involve factors more intricate than numbers and stereotypes.¹⁰¹ He notes that Inns of Court students were prominent as playgoers – recognizing that, although their numbers in the different theatres cannot be ascertained, even a small section in an audience was capable of exercising a disproportionate influence over the whole.¹⁰² Yet in a sense Gurr only refines Harbage's bifurcated notion of rival traditions when he says that the Blackfriars presented a "special kind of satire . . . designed to appeal quite explicitly to audiences

⁹⁸ "The Audience of Shakespeare's Plays: A Reconsideration," *Shakespeare Studies* 7 (1974), 283-305;

Cook, *The Privileged Playgoers of Shakespeare's London*, *passim*.

⁹⁹ Cook, *The Privileged Playgoers of Shakespeare's London*, 147.

¹⁰⁰ "Epistle Dedicatory," in *Histrion-Mastix* (London, 1633), F3v.

¹⁰¹ Gurr, *Playgoing in Shakespeare's London*, 2nd ed., 4.

¹⁰² *Ibid.*, 4, 5.

at a higher social and probably critical level than the adult companies and the other boy company [at Paul's]."¹⁰³ Two of the plays I examine, *Poetaster* and *Law Tricks*, were first performed at the Blackfriars; *Ram Alley* was produced at the Whitefriars (used for a while by the Blackfriars' boy company¹⁰⁴); *The Phoenix* and *Michaelmas Term* were presented at Paul's. The Blackfriars' location to the southwest of Paul's made it closer to the Inns of Court, and it is as appealing today as no doubt it was to certain tastes then to think of it as the theatre that "insisted on being outrageous."¹⁰⁵ But did Inns men prefer the Blackfriars over Paul's?

Inns of Court lawyers might scribble short diary entries recording theatre attendance; a brief note by John Greene of Lincoln's Inn is typical: "all the batchelors . . . were at a play, . . . some at blackfriars."¹⁰⁶ But Inner Temple lawyer-poet John Davies's suggestion that "the clamorous frie of Innes of Court / Filles up the private roomes of greater prise" implies that members of the Inns could make up a significant part of the audience in both the Blackfriars and Paul's.¹⁰⁷ Jonson's association with the Blackfriars is probably the main reason for thinking that the venue operated at a higher critical level. Having left Shakespeare's company and the Globe after *Every Man Out of His Humour* was performed there in 1599, Jonson took the first opportunity to snipe at the public theatre in the Induction to *Cynthia's Revels* (1600), which he hoped would, in the new private theatre near the Inns of Court, "come to

¹⁰³ Gurr, *The Shakespearian Playing Companies*, 352.

¹⁰⁴ *Playgoing in Shakespeare's London*, 3rd ed. (Cambridge: Cambridge University Press, 2004), 88-9.

¹⁰⁵ *The Shakespearian Playing Companies*, 338.

¹⁰⁶ E. M. Symonds, "The Diary of John Greene (1635-1657)," *English Historical Review* 43 (1928), 386; cited in Cook, *The Privileged Playgoers of Shakespeare's London*, 139.

¹⁰⁷ Sir John Davies, "In Sillam" (Epigram No. 28), in *Complete Poems*, ii, ed. Alexander Grosart (London: Chatto & Windus, 1876), 27-8. See Harbage, *Shakespeare's Audience*, 80.

learned eares.” But in the same year, Marston performed a similar exercise in favour of Paul’s. In V.ii of *Jack Drum’s Entertainment*, he said that, at Paul’s (as opposed to the public theatres), “A man shall not be choakte / With the stench of Garlicke, . . . [for there] Tis a good gentle audience.”¹⁰⁸ In the Prologue of *Antonio and Mellida* (1599-1600), Marston had appealed already to the “Select, and most respected Auditours” of Paul’s,¹⁰⁹ and in V.vi of *Antonio’s Revenge* (1599-1600) it was acknowledged that plays in the private theatre could count on “gentle presence, and the Sceans suckt up / By calme attention of choice audience.”¹¹⁰ Meanwhile, the idea that audiences at the Blackfriars could always be relied upon to “get it” was arguably proved wrong when Beaumont’s *Knight of the Burning Pestle* (1607) flopped on its first showing, supposedly because the audience, “not understanding the privie mark of *Ironie* about it . . . utterly rejected it.”¹¹¹ The Blackfriars played as a rule to a high critical level, certainly. But the accompanying proposition that Paul’s “never had much notice taken of it” because the plays it staged “never gave much cause for alarm or offence”¹¹² implies no sense of daring at Paul’s, no allusive latency. It seems a

¹⁰⁸ Gurr, *Playgoing in Shakespeare’s London*, 3rd ed., 259; John Marston, *Jack Drum’s Entertainment* (1600) V.ii, in Wood, ed. *Plays*.

¹⁰⁹ John Marston, *Antonio and Mellida* (1599-1600), Prologue.

¹¹⁰ John Marston, *Antonio’s Revenge* (1599-1600) V.vi, ed. Greg, Malone Society Reprints. See Harbage’s comment on Marston in *Shakespeare’s Audience*, 88.

¹¹¹ Comment of the publisher of the First Quarto (1613). See Gurr, *Playgoing in Shakespeare’s London*, 3rd ed., 87; Alexander Leggatt, “The Audience as Patron: *The Knight of the Burning Pestle*,” in *Shakespeare and Theatrical Patronage in Early Modern England*, ed. Paul Whitfield White and Suzanne R. Westfall (Cambridge: Cambridge University Press, 2002), 312-14.

¹¹² Gurr, *The Shakespearian Playing Companies*, 338-9.

surprising conclusion about the theatre in which plays by Middleton and, early on, Marston were performed.

The interconnections between, at the Blackfriars, *Eastward Ho* and, at Paul's, *Westward Ho* and *Northward Ho* point toward a shared audience which could be in on a continuing line of jokes and parody,¹¹³ if *Eastward Ho* does operate at a higher critical level than the two Paul's plays. The *poetomachia* and the series of *Ho* plays show an interaction between the two theatres the spiritedly adversarial nature of which could be expected to appeal to lawyers. The personal and professional quarrels of the dramatists concerned thus enabled a relatively short-lived theatrical enterprise to flourish, and for business purposes the Blackfriars and Paul's may be seen to have co-operated to this end.¹¹⁴

(ii) Jonson's ideas about comedy

The phrase "the end of comedy" would not be out of place in a damning theatrical review. It could be taken to mean something like the death of amusement. To attach the phrase to city comedy might seem to be to follow the example of the critic who said of Shakespeare's comedies that "the funniest thing about [them] is the criticism."¹¹⁵ But that possibility might not be altogether to find fault on Jonson's

¹¹³ Cook, *The Privileged Playgoers of Shakespeare's London*, 213; Clifford Leech, "Three Times *Ho* and a Brace of Widows: Some Plays for the Private Theatre," in *The Elizabethan Theatre III*, ed. David Galloway (Toronto: Macmillan, 1973), 15-17.

¹¹⁴ Adapting an idea of Roslyn Lander Knutson, *Playing Companies and Commerce in Shakespeare's Time* (Cambridge: Cambridge University Press, 2001), i.

¹¹⁵ Malcolm Evans, "Deconstructing Shakespeare's comedies," in *Alternative Shakespeares*, ed. John Drakakis (London: Routledge, 1985), 84.

terms. He says in *Timber* that laughter is not necessarily the aim of comedy: “Nor, is the moving of laughter alwaies the end of Comedy, that is rather a fowling for the peoples delight, or their fooling.”¹¹⁶ By *end*, he means aim or purpose, of course. I regard Jonson’s ideas about comedy as being representative of the approach to writing in city comedy generally.¹¹⁷ He writes, characteristically, under the aegis of classical authority: “For, as Aristotle saies rightly, the moving of laughter is a fault in Comedie, a kind of turpitude, that depraves some part of a mans nature without a disease.”¹¹⁸ What then is the purpose of Jacobean city comedy, and what are the implications for its representations of lawyers and law? For Jonson, comedy should be “an interpretation of life, a criticism of society, and an embodiment of values.”¹¹⁹ The emphasis placed on interpretation and criticism is important. The fact that these plays contain apparent anti-lawyer sentiment does not mean that they are to be taken at face-value; there is interpretation at work, and this invites audience interpretation.

Jonson finds a surprising similarity in the most basic distinction in drama: “The parts of a Comedie are the same with a Tragedie, and the end is partly the same. For, they both delight, and teach.”¹²⁰ Comedy shares ground with tragedy, then, and

¹¹⁶ Jonson, *Timber: or, Discoveries*, in *Workes* (London: 1641), ii, 129.

¹¹⁷ The approach to Jonson’s work is deemed the approach to city comedy as a whole in Gibbons, *Jacobean City Comedy*, 18. Cf. M. C. Bradbrook, *The Growth and Structure of Elizabethan Comedy* (Cambridge: Cambridge University Press, 1979), 141.

¹¹⁸ Jonson, *Timber*, 129-30. On Jonson’s “notorious learning” and twentieth century critical responses to this, see Michael Jamieson, introduction to *Three Comedies* by Ben Jonson (Middlesex: Penguin, 1966), 30; see also Rosalind Miles, *Ben Jonson: His Life and Work* (London: Routledge and Kegan Paul, 1986), 11-17.

¹¹⁹ Jonson, *Timber*, 129-130.

¹²⁰ *Ibid.*, 129.

in the Chorus to the second of the three early “Comicall Satyres,” *Every Man Out of His Humour*, Jonson has the ground threatening to give way in apocalyptic terms: the earth has “cracked with the weight of sin, / Hell gaping under us, and o’er our heads / Black rav’nous ruin . . . / Ready to sink us down and cover us” (Chorus, 6-9).¹²¹

Using the character of the play’s presenter, Asper, Jonson subsequently announces his satiric aim and technique. He will scourge the sinners; he will to his audience’s “courteous eyes . . . oppose a mirror / . . . Where they shall see the time’s deformity / Anatomiz’d in every nerve and sinew” (Chorus, 116, 118-119). This bears a resemblance to the definition of comedy that Aelius Donatus attributed to Cicero: “an imitation of life, a mirror of character, and an image of truth.”¹²² Jonson’s idea of mirroring the time’s deformity in his comedies may be seen as something other than a realist reflection metaphor. Wendy Griswold argues that sheer reflection is too simple a model in this connection,¹²³ and this is relevant to how we view what city comedy

¹²¹ Ben Jonson, *Every Man Out of His Humour*, ed. Helen Ostovich (Manchester: Manchester University Press, 2001), 112-13.

¹²² Aelius Donatus, “On Comedy,” tr. O. B. Hardison, in *Medieval Literary Criticism*, ed. Alex Preminger, O. B. Hardison and Kevin Kerrane (New York: F. Ungar, 1974), 45. The phrase does not exist in any known works by Cicero; see Richard F. Hardin, “Encountering Plautus in the Renaissance: A Humanist Debate on Comedy,” *Renaissance Quarterly*, vol. 60, no. 3 (2007), 791.

¹²³ Griswold observes that reflection has been the dominant metaphor behind most sociological analyses of the relationship between culture and society, but, “while few would deny some connection between social experience and cultural objects, these connections are always mediated by the institutions through which the cultural objects are produced”: *Renaissance Revivals* (Chicago: University of Chicago Press, 1986), 9. Leinwand alludes to the mirror metaphor when qualifying the way in which extra-theatrical reality is represented; the plays are “informed by the social and economic reality in which playwrights found themselves . . . [but] this does not mean that we turn to these dramatizations for a mirror image of the time”: *The City Staged*, 3.

has to say about lawyers and law because of the assumption involved in treating aspects of the plays as unmediated reflections of their time. An example referring to representations of economic history in another of Jonson's city comedies will help to illustrate how it is possible in some respects to misread these plays. Early in the twentieth century one historian enthusiastically suggested that a play might reflect better than anything else the economic situation of the time in which it was written: "a study of the leading characters of *The Devil Is an Ass* . . . would be by far the best introduction to the economic history of the period."¹²⁴ This approach to the plays is vulnerable to the criticism that Jean Howard makes of the old historicist approach of Tillyard. Such an approach may be found to be based on problematic assumptions, namely that history is knowable, and that historians and critics can see the facts of history objectively.¹²⁵ This can lead "to the trivialization of literature: to its reduction to a mere reflection of something extrinsic to itself."¹²⁶ Howard presents for the reader's disapproval what she identifies as the older historicism's distinguishing mark: the assumption that literature was a mirror reflecting something more real and more important than itself.

Jonson may be seen to have recognized this in his time. In the Prologue to *Epicoene* he expresses disapproval of the idea that a play might be viewed as an attempt to represent contemporary life in unmediated literal terms. He disclaims any possibility of defamation, and at the same time cautions audiences to "think nothing

¹²⁴ Gibbons, *Jacobean City Comedy*, 3; citing "Commerce and Coinage" in *Shakespeare's England* (London, 1917), vol. i, 340; original source: George Unwin, *Industrial Organization in the Sixteenth and Seventeenth Centuries* (Oxford: Clarendon Press, 1904).

¹²⁵ Jean E. Howard, "The New Historicism in Renaissance Studies," in *New Historicism and Renaissance Drama*, ed. Richard Wilson and Richard Dutton (London: Longman, 1994), 23.

¹²⁶ *Ibid.*

true,” since a “poet never credit gained / By writing truths, but things (like truths) well feigned” (7, 9, 10).¹²⁷ If realism does deal in things, like truths, well feigned, Jonson’s prefatory disclaimer of defamation doubles as a self-conscious literary strategy in which, while trumpeting the soundness of his ethic, he reminds his audience of the artifice at work in the writing: “think nothing true.” At its most successful, this approach has the result of forming a bond between the playwright and the section of an audience he wishes to reach. Stanley Fish finds this bonding approach in Jonson’s verse, noting that speaker (or writer) and hearer become “mutually constituting members of a self-identifying community.”¹²⁸ It is part of my thesis that Inns of Court lawyers were a favoured part of the target audience for city comedy, and, in drama more directly than in verse, playwrights and Inns men likewise could become, in Fish’s phrase, mutually constituting members of a self-identifying community.

Jonson’s choice of verb in that line from the Chorus to *Every Man Out of His Humour* – he aims to “oppose” a mirror – holds a connotation beyond the straightforward sense of *holding up* a mirror: one of antagonistic contrariety, not out of character for the author. If Jonson can be seen as a guardian of traditional ethics,¹²⁹ he is, at the same time, “a man of paradox and contradiction whose . . . plays are profoundly dialectical.”¹³⁰ Instead of “writing truths,” Jonson and a few others might be interpreted to mirror their time’s deformity by means of a discourse of stylized deformity. By *deformity* I mean the kind of elusive and antithetical discursive practice

¹²⁷ Ben Jonson, *Epicoene, or The Silent Woman*, in “*The Alchemist*” and other plays, ed. Gordon Campbell (Oxford: Oxford University Press, 1995), 123.

¹²⁸ Stanley Fish, “Author-Readers: Jonson’s Community of the Same,” *Representations*, No. 7 (Summer, 1984), 52.

¹²⁹ Wells, “Jacobean City Comedy and the Ideology of the City,” 37.

¹³⁰ Gibbons, *Jacobean City Comedy*, 5.

which, as one of John Marston's characters notes, has become fashionable in educated circles of 1604 London, where "'tis not in fashion to call things by their right names."¹³¹ In his dedication of *Every Man Out of His Humour* to the Inns of Court, Jonson will say only that the Inns' lawyers are "not despis'd."¹³² The disclaimer of anti-lawyer sentiment is made authentic by its inclusion in what comes closest to being a non-fiction part of the text (the dedication), and by the no-nonsense quality of its brevity. If, moreover, the negative expression – not despised – is recognized as an example of litotes, it becomes an emphatic affirmation of laconic regard. I say *emphatic* since expressing an affirmative by negative of its contrary infers that the affirmative is meant to the same degree as the negative is expressed (and "despise" is an emphatically negative verb). This is to sound mathematical or cryptic about emotion, but it may represent the playwright's viewpoint.

Things "like truths" may be feigned in terms of reputation, too. In *Every Man in His Humour*, Jonson articulates the idea that "it holds for good polity ever, to have that outwardly in vilest estimation, that inwardly is most dear to us."¹³³ An idea ostensibly antithetical in character becomes pragmatic advice when applied to a profession. Lawyers in Jonson's audience, for example, may have recognized it as professionally desirable to cultivate identities as formidable adversaries, of "outwardly vile estimation."¹³⁴ Some became *too* formidable, browbeating litigants or

¹³¹ Spoken by Freevil in Marston's *The Dutch Courtesan* (I.ii.103-4): *Four Jacobean City Comedies*, ed. Gāmini Salgādo (Middlesex: Penguin, 1975), 45.

¹³² See *infra*, 108.

¹³³ *Every Man in his Humour* (II.iv.4-6); Ben Jonson, *Five Plays*, ed. G. A. Wilkes (Oxford: Oxford University Press, 1999), 33.

¹³⁴ There were instances of lawyers' disputes escalating to verbal abuse and physical violence. John Davies assaulted Richard Martin in 1598: *Minutes of Parliament of the Middle Temple*, i, 379-80; Hans

witnesses in legal proceedings.¹³⁵ Tangle in *The Phoenix* is vile for his vexatious and dilatory ways: “by the puzzle of suits and shifting of courts, [he] has more tricks and starting holes than the dizzy pates of fifteen attorneys” (I.ii.148-150). But Tangle is only a quasi-lawyer, and as such he is inwardly vile, too. There was uncertainty up to the sixteenth century, and into the seventeenth, about what legitimately defined whether a man could be called a professional lawyer. The large number of different and complicated legal jurisdictions meant that there was no single qualification which automatically allowed a man to practise in them. It is impossible to provide even approximate figures, but it may be presumed that, for centuries, men had acted as legal representatives who possessed no more qualification than that they were thick-skinned and unafraid of public-speaking. Antipathy to amateur lawyers is reflected in the strange episode at the end of *The Phoenix* where ex-lawyer Quietto opens Tangle’s vein in order to bleed him of his vexatious tendencies (V.i.306). The idea may be seen as something like an Inns of Court lawyer’s version of Jonson’s remedy for Crispinus’s verbal idiosyncrasy: the ethical satirist Horace requests that the poetaster be made to vomit offending words and constructions, as Quietto performs his humours-surgery on the offending quasi-lawyer.

Having examined the fashion for an antithetical approach in verbal practice, I want to return to Jonson’s ideas about the function of comedy. Besides the worthy classical authority on which Jonson’s ideas are founded, there seems a self-consciously clever enjoyment in the antithetical notion of a writer of comedy who

S. Pawlisch, *Sir John Davies and the Conquest of Ireland* (Cambridge: Cambridge University Press, 1985), 18-22; see also *The Records of the Honourable Society of Lincoln’s Inn*, ii, 31-2.

¹³⁵ In *The Rise of the Barristers*, 293 n. 27, Prest cites without specifying by name STAC 8/134/3; located at the National Archives: Records of the Court of Star Chamber and other courts, 1558-1649.

wishes to insist that making people laugh is vulgar. There are no detailed contemporary accounts of early modern audience responses.¹³⁶ In the Induction to *The Isle of Gulls* (1606), John Day makes the light-heartedly sceptical suggestion that too “witty” material may sometimes have relied for appreciative responses on the favour of friends: “And where sits his [the playwright’s] friends? hath he not a prepared company of gallants, to applaud his iests, and grace out his play [?]”¹³⁷ It may be over-sceptical to wonder if this aspect of Jonson’s ideas about comedy – making people laugh is vulgar – was in part a matter of authorial convenience: insurance against poor receptions. The possibility that some element of convenience might underpin the intellectual rigour seemed possible in criticism of the 1990s. Jonson was found not above “the perennial techniques of the mountebank who decried the deceptions and the false wares of others the more easily to practise his own deceptions and pass off his own productions as the ‘real thing’.”¹³⁸ There may have been some element of self-insurance on the playwright’s part. One un-amused audience member remarked of a Jonson entertainment that it was “so dull that people say the poet . . . should return to his old trade of brickmaking.”¹³⁹ Another playgoer, student Richard West,

¹³⁶ Charles Whitney remarks on the lack of detailed accounts in “Ante-aesthetics: Towards a theory of early modern audience response,” in *Shakespeare and Modernity*, ed. Hugh Grady (London: Routledge, 2000), 41. See also Andrew Gurr, “‘Within the compass of the city walls’: Allegiances in Plays for and about the City,” in *Plotting Early Modern London: New Essays on Jacobean City Comedy*, ed. Dieter Mehl, Angela Stock, and Anne-Julia Zwierlein (Aldershot: Ashgate, 2004), 122.

¹³⁷ The play is included in *The Works of John Day*, ed. A. H. Bullen, London, 1881.

¹³⁸ Peter Stallybrass and Allon White, “Smithfield and Authorship: Ben Jonson,” in *New Historicism and Renaissance Drama*, ed. Richard Wilson and Richard Dutton (London: Longman, 1994), 216.

¹³⁹ Mary Anne Everett Green, ed., *Calendar of State Papers, Domestic Series, James I, 1611-1618*, vol. xciv (London: Longman Brown, 1858), 512; detail stated: 10 January 1618, Nath. Brent.

admired the didactic aspect of Jonson's comedies, but West's encomium is open to interpretation as a backhanded compliment to a writer of comedy: "Thy scaenes are precepts, every verse doth give / Counsel, and teach us not to laugh, but live."¹⁴⁰

(iii) Antecedents

City comedy's literary and non-literary antecedents give further evidence of its contradictory, antithetical nature, and this contributes to the idea that surface anti-lawyer sentiment ought not to be taken as read.

The genre has three principal dramatic antecedents: the morality play, the Roman intrigue comedy, and the *commedia dell'arte*. The form of the plays derives from the medieval morality play, specifically the estates morality, and the morality play's successor, the Tudor interlude. An opportunist approach in city comedy to the acquisition of sex and money, and reference to recognizable locations in the depiction of urban life, derives from classical Roman intrigue comedy, as exemplified by the comedies of Plautus and Terence. Intrigue comedy's contemporary descendant, the *commedia dell'arte*, is a further influence; its improvised performances featured stock character types and stock trickery episodes, or *lazzi*.¹⁴¹ If city comedy makes the bad or unscrupulous lawyer a famous stock character type, it is not the young Inns of Court lawyer: it is the quasi-lawyer Tangle in *The Phoenix*, the civil Advocate Voltore in *Volpone*, the Inns of Chancery drop-out Throte in *Ram Alley*. The worst that direct allusions to young common lawyers get is to such as the "two-shilling Inns o' Court

¹⁴⁰ *Jonsonus Virbius*, London, 1638: one of the less detailed accounts in Whitney, "Ante-aesthetics: Towards a theory of early modern audience response," 49.

¹⁴¹ See Gibbons, *Jacobean City Comedy*, 4, 12.

men,”¹⁴² careful with money when paying for sex. Quieto, the Puritan ex-lawyer in *The Phoenix*, remains, true to his name, fairly quiet; and Trebatius in *Poetaster* is not only a good lawyer, he represents the utmost in ethics and dignity. The main point in connection with city comedy’s dramatic antecedents is that antithesis is present in the amalgam of them. The Morality tradition and intrigue comedy display contradictory social attitudes; juxtaposed in city comedy, the effect is not unlike the meeting of jurisprudence and miscreants in a courtroom: high-minded ideas confront low-life experience. City comedy’s formal antecedents, then, are contradictory, and an inherent contradiction of form might be seen as an apt foundation for a provocative, antithetical discursive practice, in which context pejorative allusions to lawyers ought not to be taken at face value. The figure of Michaelmas Term in the Induction to Middleton’s play, for example, is riddled with contradiction, even in form. To overlook the unreal, fantastical context of the Induction, where a personified period of time is made corporeal, city-bound lawyer is to be drawn in by deceptive appearance.

I now examine city comedy’s non-dramatic antecedents, in order to show how they affected representations of lawyers. The genre has three principal non-dramatic antecedents: the coney-catching pamphlet, verse satire, and complaint. The coney-catching pamphlet was a minor genre just preceding city comedy, a form of Elizabethan low prose which became popular in the 1590s;¹⁴³ an urban setting and characters are conventional, with emphasis on the trickery of urban thieves. Beyond the episodes of trickery and the urban settings, the relevance of these pamphlets for representations of lawyers in city comedy is the way in which an audience is left with

¹⁴² Marston, *The Dutch Courtesan* (II.ii.29-30).

¹⁴³ A *coney* is a rabbit, and *coney-catcher* was a name attached to vagabonds, the homeless and itinerant poor, who were feared and legislated against in Elizabeth’s reign.

a kind of sympathy, admiration even, for the wrong-doers, including the quasi-lawyers. The playwrights of city comedy may be seen to represent the antipathies of young Inns of Court men, but the latter could be expected at the same time to be thoroughly entertained by Tangle's misdeeds in *The Phoenix*, by Throte's wheeling and dealing in *Ram Alley*, and so on. There is nothing to say that antipathy should not be entertaining. Robert Greene exemplifies the genre's characteristic method of offering readers sensational material disguised as helpful advice on how to avoid being a target of vice. We find here a similar tendency towards contradiction and antithesis to that between Roman intrigue and morality play. Greene's "pleasant tales" of shady behaviour reveal an affection and admiration for their subjects that contradicts the traditional morality framing of the narratives. An analogy may be found in the characteristic last-moment recantations of city comedy's tricksters. The moral didacticism in these plays tends to be ambiguous. City comedy's tricksters see the error of their ways in what can seem a perfunctory manner; the regret may seem so late in the day as to make it to some extent ridiculous or redundant. Quomodo's loss and regret at the end of *Michaelmas Term*, for example, can seem unconvincing; not only in terms of the abruptness with which he is turned around, but because he had a case to argue against Easy, following a significant legal development made some two years or so before the play's first performance.¹⁴⁴ There are patterns of irony and antithesis here, one of the implications of which is that anti-lawyer sentiment ought not to be taken at face value.

Verse satire shared with the coney-catching pamphlet the formal approach of the writer affecting an attitude of disgust with social and moral corruption and folly. Marston's early experience as a verse satirist may have increased his particular

¹⁴⁴ See *infra*, 212.

interest in the organization of ambiguity of motive and personality in his plays.¹⁴⁵

Representations of social and moral corruption in lawyers and others learned in the law from Marston, a Middle Templar, might be expected to involve at least some degree of posture (or *imposture*), of a conventional satirical persona employed in a new and striking way. Lording Barry, on the other hand, was known to operate on the wrong side of the law, and something interesting happens when authorial imposture is directed at imposture in the law. Barry injects an unexpected note of didacticism in *Ram Alley* when he has a quasi-lawyer articulate the idea of removing property from a privileged young man in order to let him experience want.¹⁴⁶

There is something provocative and contradictory, again, about city comedy's use of complaint, a tradition derived from the Church in a genre in which sinful motives, of avarice and lust, are treated light-heartedly and, at least up until the last moment, apparently celebrated. Complaint denotes a different strain of satire. Elizabethan audiences' ability and willingness to involve themselves in plays, often complex ones, is sometimes accounted for by the fact that Church commitments meant that they were accustomed to standing for an hour or more in order to listen to the didactic argument in sermons and homilies.¹⁴⁷ Lawyers were accustomed to taking part in argument, of course, so the sometimes intricate points attaching to the expression of apparent anti-lawyer sentiment would have provided an entertaining diversion. The private theatres may have been even a little quieter than the quite noisy environment in which they had to work: in this period, the courts of King's Bench, Chancery, Common Pleas, and Exchequer were all situated in Westminster Hall; each

¹⁴⁵ See Gibbons, *Jacobean City Comedy*, 87.

¹⁴⁶ See *infra*, 203.

¹⁴⁷ Gibbons, *Jacobean City Comedy*, 19.

court was scarcely out of earshot of the others, and speakers had to compete with the noise made by numerous suitors, lawyers, shopkeepers, cutpurses and sightseers in the body of the hall.¹⁴⁸ The Church had since medieval times had a tradition of using invective – “complaint” – against evils such as greed and ambition; this was a harsher form, comparable to Juvenilian satire, as distinct from Horatian satire, which is more direct about and focused on its targets.¹⁴⁹ Satire involving lawyers in city comedy tends more towards the Horatian form – Jonson has Horace himself trying to escape the company of the poetaster and possible lawyer Crispinus (the need to argue a case in court would add to the resemblance to Middle Templar Marston) with some remarks about the routine trials involved in simply going to court: “Now, let me dye, sir, if I know your lawes; / Or haue the power to stand still halfe so long / In their loud courts, as while a case is argued” (III.i.195-8).

The harshness of complaint, and its resemblance to Juvenilian satire leads me back to dramatic antecedents: specifically to Juvenal, who may seem to have had a particular influence on the playwrights of city comedy in terms of the plays’ arguable status as morally didactic texts. I want to suggest that one of the new and decisively “modern” things which Jonson and other playwrights of satirical city comedy do is to make them, as didactic texts, deliberate failures. The idea is that the playwrights of city comedy reproduce a perceived “error” of the satirists of antiquity, notably Juvenal, with a view to their resembling the ancients more closely in terms of achievement and identity. This contributes to making apparent anti-lawyer sentiment a deliberately failed aspect of the genre. Jonson was critically aware of the possibilities

¹⁴⁸ Baker, *An Introduction to Legal History*, 37.

¹⁴⁹ See John Peter, *Complaint and Satire in Early English Literature* (Oxford: Oxford University Press, 1956).

of shaping identity, and none more so than his own, as evidenced by his suppression of his own popular plays. These included a collaboration with Dekker on a domestic tragedy, *Page of Plymouth* (possibly on the line of *Arden of Faversham*), and historical tragedies on Richard Crookback, Robert II, King of Scots and the Fall of Mortimer.¹⁵⁰ The playwright's reason for excluding *Bartholomew Fair* from his 1616 *Workes* is (or has been) anybody's guess.¹⁵¹ Jonson's desire to be seen to resemble the classical satirists is witnessed early on in the development of city comedy in *Poetaster*, in which he represents himself as Horace and associates with Virgil. Horace's meeting of minds in the play with the revered ancient lawyer-jurist Trebatius creates a setting for poet and lawyer to be in on the deliberate failure of some deliberately predictable anti-lawyer sentiment from fool Tucca and fawn-informer Lupus. Critics have written before, in different respects, of perceived failures on Jonson's part. Edmund Wilson delivered the notorious account of Jonson as anal-erotic: "a hoarder who withholds from others the treasures he collects and remains consistently 'aloof not yielding himself to intimate fellowship'"; Wilson links what he sees as Jonson's "deficiencies of personality" to some perceived "difficulties as an artist," which, for Wilson, are "reflected in characteristic artistic failures . . . [including] a disastrous restriction of range and sympathy that contrasts so markedly with the expansiveness of Shakespeare."¹⁵² And Stanley Fish has questioned the characterization of Jonson's poetry as urbane and polished, finding much of it marked

¹⁵⁰ Bradbrook, *The Growth and Structure of Elizabethan Comedy*, 141.

¹⁵¹ Stallybrass and White, "Smithfield and Authorship: Ben Jonson," 217.

¹⁵² "Morose Ben Jonson," in *The Triple Thinkers* (New York: Octagon Books, 1977), 219-20. See also Fish, "Author-Readers: Jonson's Community of the Same," 40.

by laboured awkwardness.¹⁵³ I would emphasize in this idea the importance of a *deliberate*, affected failure – with a fashionably antithetical aim of success in resembling the ancient satirists. It is possible to see the approach to moralizing in satirical city comedy as an intellectual brutalization of *sprezzatura*:¹⁵⁴ affecting false humility has come to seem old-fashioned; the new thing is to make extravagant show of high intellect, but to do so – again in fashionable, contradictory spirit – using low, sordid subject matter. This is where the example of Juvenal is of relevance. Juvenal is recognized to have “fall[en] into an error very common among intellectual moralists, that of proclaiming a social ideal with his rational mind, and then destroying any hope of its fulfilment by the emotional attitudes he brings to it.”¹⁵⁵ And Peter Green’s observation that there is “a radical split detectable between Juvenal’s moral ideals, and the fashionable intellectual scepticism which he shared with most educated Romans of his day and age”¹⁵⁶ might be adapted to apply to Jonson and the educated Londoners of his day. What may have influenced Jonson and others in this connection is that an esteemed ancient such as Juvenal is seen to “fall” into such an error, so, conscious in their time of image-building as well as aspiration to achievement (self-fashioning), certain early modern writers could be walking into such an “error,” of destroying idealism with attitude, with a view to coming closer to resembling in

¹⁵³ Fish gives the example of the poem in praise of Shakespeare: “Author-Readers: Jonson’s Community of the Same,” 28. The first sixteen lines of Jonson’s poem describe the kinds of praise the poet will *not* offer. Jonson’s announcement at Line 17 “I therefore will begin” introduces a list of poets to whom Shakespeare will *not* be compared.

¹⁵⁴ The paradoxical concept of appearing effortlessly graceful, despite the effort required for mastering the necessary codes of behaviour, as articulated in Castiglione’s *Il Cortegiano* (*The Courtier*).

¹⁵⁵ Juvenal, *The Sixteen Satires*, tr. and ed. Peter Green (Middlesex: Penguin, 1967), 39.

¹⁵⁶ *Ibid.*

reputation and achievement, the ancients. Janet Clare finds Marston following the example of “gloomie Iuvenall” in his verse satire the *Scourge of Villanie* (1598), implicitly preparing to enact the role of free-speaking satirist in exile.¹⁵⁷ For Jonson the ancients are “guides, not commanders”,¹⁵⁸ but they are guides all the while, possibly, to intellectual self-contradictions (in a sense, magnificent failures) such as Juvenal’s.

Thomas Dekker and Thomas Heywood succeed where Jonson, Marston and Middleton choose, so to speak, to fail in this way. In the context of city comedy criticism, Dekker and Heywood seem at times outsiders to the in-crowd of Jonson, Marston and Middleton.¹⁵⁹ But Dekker did perform at least one intentional failure with the purpose of irking Jonson, in his structuring of *Satiromastix*: a conventional historical romance with a response to *Poetaster* inserted as a subplot with conspicuously little of the attention to craft and decorum which Jonson demanded. The distinction between the structural anomalies of *Satiromastix* and, say,

¹⁵⁷ Janet Clare, “Marston: censure, censorship, and free speech,” in *The Drama of John Marston, Critical Re-Visions*, ed. T. F. Wharton (Cambridge: Cambridge University Press, 2000), 195.

¹⁵⁸ L. C. Knights, *Drama and Society in the Age of Jonson* (London: Chatto and Windus, 1968), 192; referring to Jonson, *Timber*, xxi.

¹⁵⁹ In 2004, Stock and Zwierlein summarily dismissed plays by Dekker and Heywood as “sentimental and falsely nostalgic claptrap”: “Our Scene is London,” 18. Knights diminished Dekker as he lionized Jonson, declaring that “[t]o turn from Jonson to Dekker is to be jolted into recognition of the gulf between the higher and the lower ranges of Jacobean dramatic literature”: *Drama and Society in the Age of Jonson*, 228. He continues: “[w]ith a few exceptions Dekker’s plays are uniformly dull, and the effort of attention they require – the sheer effort to keep one’s eyes on the page – is out of all proportion to the reward”: *ibid*, 28. Gibbons recognizes that “one [should not] altogether dismiss the much mocked Thomas Dekker”: *Jacobean City Comedy*, 3. Leggatt defends Heywood in *Citizen Comedy in the Age of Shakespeare*, 12.

Michaelmas Term – where knowledge of the introduction of a contemporary, new remedy for debt recovery is capable of making a difference to an interpretation of the play’s ending – is that, if Middleton’s play’s ending is interpreted as a deliberate failure, it has the lateral function of appearing to destroy idealism with attitude, self-consciously in the style of the ancient satirical poets.

(iv) Criticism

In her recent book, Heather C. Easterling says that the critical habit of comparing Shakespeare with city comedy results often in a reduction of the genre’s purview to “the narrowly local or simply satirical next to Shakespeare’s Ciceronian fullness and expansive scope beyond the local and the commercial.”¹⁶⁰ Jean Howard observed a few years earlier that the continuing monumental presence of Shakespeare in education and culture meant that issues and topics not covered in his plays might be ignored: “If we want to study dramatic depictions of London’s shopkeepers and their wives, we need to look elsewhere.”¹⁶¹ The same might be said of lawyers, since Shakespeare expressly portrayed only one of them. Recent interdisciplinary scholarship in law and literature finds that Shakespeare’s plays, broadly speaking, display disrespect for law and legal processes.¹⁶² The preoccupation with Shakespeare remained evident in the introduction to a 2004 collection of essays on city comedy, in which it is observed that the writers of the genre “may not yet rival Shakespeare” in

¹⁶⁰ *Parsing the City: Jonson, Middleton, Dekker, and City Comedy’s London as Language* (New York: Routledge, 2007), 150 n. 12.

¹⁶¹ “Shakespeare and the London of City Comedy,” *Shakespeare Studies* 39 (2001): 15-16.

¹⁶² See *supra*, 6.

the amount of editorial work and critical acclaim they receive.¹⁶³ The “not yet” may seem over-optimistic. Parity seems unlikely, as city comedy does not have Shakespeare’s variety. Gibbons comments on the first page of his study of Shakespeare about the great abundance in the plays – it may have seemed the more remarkable after his work on city comedy.¹⁶⁴ And Leonard Tennenhouse has written bluntly about the possibility that there can seem at times little variety in the genre, finding that it can be “difficult . . . to remember which of the many characters in city comedy belong to the same play, or for that matter . . . to distinguish one plot device from another.”¹⁶⁵ Even if new work by Easterling, and recent collections edited by Dennis Kezar, and Dieter Mehl and others signal an increase in critical interest,¹⁶⁶ city comedy is, and is likely to remain “a compact subgenre . . . the critical response to [which is] equally compact.”¹⁶⁷

Wells’ notion of city comedy having a “dual audience” may be applied to the reception of legal matter in the genre.¹⁶⁸ Lawyers and student members of the Inns of Court might make something different of complex legal allusions and ironic treatment of conventional anti-lawyer sentiment from a lay audience interested in the law, and familiar with more high-profile legal developments, but lacking detailed knowledge.

¹⁶³ Stock and Zwierlein, “Our Scene is London,” 2.

¹⁶⁴ *Shakespeare and Multiplicity* (Cambridge: Cambridge University Press, 1993), 1.

¹⁶⁵ “Family Rites: City Comedy and the Strategies of Patriarchalism,” 196. Tennenhouse paraphrases Knights’ remark about Middleton’s characters: *Drama and Society in the Age of Jonson*, 258 n. 4.

¹⁶⁶ Easterling, *Parsing the City*; Dennis Kezar, ed., *Solon and Thespis: Law and Theater in the English Renaissance* (Notre Dame, Indiana: University of Notre Dame Press, 2007); Mehl, Stock, and Zwierlein, eds., *Plotting Early Modern London*.

¹⁶⁷ Wells, “Jacobean City Comedy and the Ideology of the City,” 37.

¹⁶⁸ *Ibid.*, 47-8

Wells had something different in mind: a sophisticated, well-educated element, and a broader, less educated public element. The theory of Mikhail Bakhtin is central to her essay “Jacobean City Comedy and the Ideology of the City”.¹⁶⁹ She contends that a proposed critical opposition – the sociological criticism of L. C. Knights and the generic criticism of Brian Gibbons – can be overcome by analysing city comedy as a response to “specific contradictions within hegemonic ideology concerning the City of London.”¹⁷⁰ The main argument in the analysis is that city comedy is an attempt to recover pre-industrial harmony between commerce and celebration – things which have become contradictory aspects of the marketplace – such harmony having been compromised by rapid growth, commercial development, and royal domination of the city during the Jacobean period. The language of early modern satire, says Wells, is: “the ‘billingsgate’, the language of abuse, the language of the body.”¹⁷¹ If this is the case, though, the proposition of an intellectually stratified dual audience for these “billingsgate” satires seems not to corroborate the idea of an attempt to recover harmony, or to reconcile contradiction. The conventional view that these plays are hostile to the legal profession is paradoxical because Inns of Court lawyers were an element of the audience for the plays, and the plays play on this obvious contradiction not in order to recover harmony, but in order rather to segregate certain of those working in the legal system outside of the Inns of Court. Lording Barry’s *Ram Alley*, for example, can be interpreted as favouring the members of the Inns of Court in the enforced segregation of attorneys and others to the Inns of Chancery.¹⁷²

¹⁶⁹ Wells, “Jacobean City Comedy and the Ideology of the City,” 38; reference to Mikhail Bakhtin, *Rabelais and his World*, tr. Helene Iswolsky (Cambridge, Massachusetts: MIT Press, 1968).

¹⁷⁰ *Ibid.*, 37.

¹⁷¹ *Ibid.*, 38.

¹⁷² See *infra*, 193-5.

Theodore B. Leinwand's analysis of city comedy's stereotypical characters may be applied in such a way as to break the commonly negatively perceived stereotype of the lawyer. Leinwand argues that the discussions and disagreements Londoners were having about the way they perceived their city and those who populated it offer a key to accounting for the plots and stock character types of city comedy.¹⁷³ These types become familiar in the plays' *dramatis personae*, and come to give a readymade idea of the plot-line to follow. Leinwand incorporates into his account the idea that the people of Jacobean England cultivated a "status ideology,"¹⁷⁴ and suggests that city comedy is a measure of the way the inhabitants of Jacobean London perceived each other:¹⁷⁵ it is a satire of the stereotypes which, he proposes, Londoners tolerated for the purposes of identifying one another.¹⁷⁶ These satirical plays encompass more than folly and vice, or at least they find folly in stereotypes: they "embody men's attitudes, not merely their vices . . . To laugh at the foolishness figured in one of city comedy's merchants, gallants, or wives would have been to laugh at attitudes that were already stale and inadequate."¹⁷⁷ In the same way, then, to laugh at vexatiousness and greed in one of city comedy's lawyers might be to laugh at an attitude already stale and inadequate. Leinwand says the playwrights were able to

¹⁷³ Leinwand, *The City Staged*, 20.

¹⁷⁴ Historian Perez Zagorin writes of Jacobean England as a status-conscious society: *The Court and the Country: The Beginnings of the English Revolution* (London: Routledge & Kegan Paul, 1969), 124.

¹⁷⁵ Leinwand, *The City Staged*, fly leaf.

¹⁷⁶ *Ibid.*, 18.

¹⁷⁷ *Ibid.*, 14. Cf. the idea that plays are "provocations to thought and patterns for action": Louis A. Montrose, "The Purpose of Playing: Reflections on a Shakespearean Anthropology," *Helios*, New Series, 7 (1979-80), 68. Knights suggested that the playwrights played with contemporary attitudes: *Drama and Society in the Age of Jonson*, 188, 266.

suggest the inadequacy of a denigrating stereotype by exaggerating and parodying it.¹⁷⁸ There is exaggeration and parody in, for instance, Tangle's copious spouting of law-related Latinisms in *The Phoenix*, but there are other reasons for this besides exaggeration and parody, relating to a drive for increased organization and professionalism on the part of the young lawyers and students of the Inns of Court. Stereotypes were to be found in non-dramatic literature, too. Francis Lenton penned a prose example of the stereotype of the Inns of Court student in *Characterismi*:

A yong Innes a Court Gentleman . . . is one that for the most part forgets his errand, and studies Poetry instead of Perkins [a reference to a contemporary legal text, Perkins' *Profitable Book*¹⁷⁹] . . . His Recreations and loose expence of time, are his only studies (as Plaies, Dancing, Fencing, Tauerns, Tobacco,) and Dalliance . . . [these recreations] are the alluring baits of ill disposed extrauagants. He is roaring when hee should be reading, and feasting when he should be fasting . . . Amorous Sonnets, warbled to the Vvall are his Coelestiall Harmony, and if you put a Case betweene you make a great discord. Hee loues sense better than reason, and consequently not so fit to make a Lawyer.¹⁸⁰

The stereotype of the sonneteering Inns student is used at the end of *The Phoenix*, again in the mouth of Tangle. Only here the allusion has not to do with any loose expense of time, but is tied to the rhetorical horror of his own (or his own type's) immolation at the hands of the member of the new profession:¹⁸¹ "here, here, here, here; quickly dip your quills in my blood, off with my skin and write fourteen lines of a side" (IV.i.124-5).

¹⁷⁸ Leinwand, *The City Staged*, 93.

¹⁷⁹ Inner Temple man John Perkins' *Incipit perutilis tractatus magistri Johnis Perkins sive explanation quorandam capitulorum valde necessarie* (the original title of his practical interpretation of the land law) was first printed in law French in 1530; an English translation appeared in 1555.

¹⁸⁰ Francis Lenton, *Characterismi: or, Lentons Leasvres. Expressed in Essayes and Characters, Neuer before written on* (London, 1631), F4r-F5v.

¹⁸¹ See *infra*, 115.

One commentator feels that Leinwand may exaggerate the plays' capacity to arouse an audience's scepticism about the London they dramatize.¹⁸² But this seems unjustly to underestimate contemporary audiences, particularly the audience for these plays; it is in any event a matter impossible to determine. Leinwand acknowledges one more example of the antithetical nature of satirical city comedy, and a potential obstacle for his analysis: "at the very moment that the plays seek to disabuse their audience of prejudice, they implicate themselves in these same prejudices by re[enacting them]."¹⁸³ Where lawyers and Inns students are concerned, the playwrights of city comedy were doing something more than rendering negative stereotypes stale by exaggeration and parody. Sometimes it is as simple as having an obviously foolish character express a provocative opinion for pantomimic effect – Tucca in *Poetaster* is an example of this. Negative representations *are* sometimes plainly negative, but subtle points make such representations relate not to Inns of Court lawyers, but to other workers in the legal system – amateur, quasi-lawyers such as Throte in *Ram Alley*, or civilians such as Voltore in *Volpone*. The plays do not function to disabuse audiences of prejudices about lawyers so much as they use prejudices simultaneously to engage the lawyers and Inns students in the audience, and to valorize the profession for the non-lawyers in the audience.

Griswold's suggestion that city comedy may present "an indirect, transformed, or even inverted image of social reality" emphasizes that tricks are played with

¹⁸² Michael Taylor, introduction to *A Mad World, My Masters*, by Thomas Middleton, in "A Mad World, My Masters," and other plays (Oxford: Oxford University Press, 1995), xxi. Leinwand's critic may seem to subscribe to the school of thought that "Renaissance English dramatists achieved what they did despite their . . . audiences": Whitney, "Ante-aesthetics: Towards a theory of early modern audience response," 40.

¹⁸³ Leinwand, *The City Staged*, 93.

representation in the genre.¹⁸⁴ This corresponds with the point made in the section concerning Jonson's ideas about comedy about city comedy importing an elusive and antithetical discursive practice, and with Axton's drawing of attention to Inns men's appreciation of the possibilities of imitation.¹⁸⁵ When Griswold says it can be "tempting to interpret the genre as reflecting the mores of the late Elizabethan and Jacobean period, an era of increasing materialism, cynicism, and sharp dealing, or . . . reflect[ing] an abhorrence for these developments,"¹⁸⁶ the verb "tempting" implies that audiences should look for more beyond this, and, as I suggested in relation to the idea of Jonson's reflecting the time's deformity, Griswold says that reflection is too simple a metaphor.¹⁸⁷ She proposes that these plays contain "nervous hymns to social degree".¹⁸⁸ By this she appears to be saying that the playwrights of city comedy endorse a traditional, conservative position on social hierarchy. Griswold's view places emphasis on contemporary anxieties about increasing social mobility as a threat to stability and social order, and about a modern conception of social rank based on achievement rather than birth; she concludes that city comedy "simultaneously displayed economic mobility while soothing social anxieties."¹⁸⁹ Middleton's characterization of Tangle in *The Phoenix* includes sympathetic allusions

¹⁸⁴ *Renaissance Revivals*, 26.

¹⁸⁵ See *supra*, 33, 43.

¹⁸⁶ *Renaissance Revivals*, 25.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*, 52: "especially late ones like [John Fletcher's 1614 play] *Wit without Money* and [Philip Massinger's 1621 play] *A New Way to Pay Old Debts*."

¹⁸⁹ *Ibid.*, 51, 54.

to the hardship the amateur, quasi-lawyer has endured, showing that city comedy offered more complex representations of legal figures in particular.¹⁹⁰

Lawyers are implicitly included in Tennenhouse's affirmation of common opinion: "critics who feel that those in . . . the middle rank . . . were receiving shabby treatment at the hands of Jacobean playwrights are correct. An assortment of groups . . . were being represented in decidedly negative terms."¹⁹¹ Tennenhouse finds a tension, though, between patriarchal endings of plays and the metropolis they held at bay.¹⁹² There seems some contradiction in being prepared to take at face value apparently negative representation of lawyers and other groups, and then *reading in* structural tension to the plays. If tensions are recognized in the structure of the plays, it would seem consistent to acknowledge that tensions may exist in representation of lawyers and others – that their representation may be more complex than it appears on the surface.

Some critics have expressed doubt about the continuing viability of *city* comedy as a genre. Gale H. Carrithers' decision to consider Jonson and Middleton separately in order "to reduce somewhat the violence inevitably done to whole works and discrete bodies of work by any thematic focus" is an argument against the concept of genre *per se*.¹⁹³ Douglas Bruster is more specific in asserting that the concept of city comedy has outlived its usefulness as an aid to understanding plays of the era.¹⁹⁴

¹⁹⁰ See *infra*, 123.

¹⁹¹ Tennenhouse, "Family Rites: City Comedy and the Strategies of Patriarchalism," 205.

¹⁹² *Ibid.*, 195.

¹⁹³ Gale H. Carrithers, "City-Comedy's Sardonic Hierarchy of Literacy," *Studies in English Literature, 1500-1900*, vol. 29, no. 2, Elizabethan and Jacobean Drama (Spring 1989), 338.

¹⁹⁴ *Drama and the Market in the Age of Shakespeare* (Cambridge: Cambridge University Press, 1992), 30.

This sounds more radical than it is. Bruster's argument is that "the concept of *place*, once crucial to a social analysis of the plays, is ultimately less important . . . than a concern with material life which underlies the themes and structures of the drama."¹⁹⁵

By this stage in city comedy's critical history, Bruster would find little disagreement from anyone that the plays' concerns with material life are at least as important as the concept of place. The subordination of the concept of place to a concern with material life is immanent in most analyses of city comedy since the first edition of Gibbons' study (Wells' essay is an exception). Representation of the Inns of Court in the plays is an example of location and material life being of equal interest, and the induction to *Michaelmas Term*, for just one example, will always invite a reader to consider the significance of location – in that case, the difference made between city and country. Perhaps the point for any who doubt the continued viability of the denomination *city* comedy is that it can be an inconvenient label. Dekker's *The Shoemakers' Holiday* is set in the city, but is often used as an example of what satiric city comedy is not: genial, romantic, sentimental. The use of *city* as an adjective describing certain comedies by Jonson, Marston, Middleton and a few others signifies an attitude and a style at the same time as (and always more than) it connotes London the place: in these comedies the urban implies a robust and characteristically ironical urbanity.

In bringing this examination of genre to a close, I want to highlight the generally understated impact of plague on representation in Jacobean city comedy. There is underplayed significance, for example, in the information that: "[w]hen the theat[re]s reopened after the plague in 1604, they rapidly developed a topical and

¹⁹⁵ Ibid.

urban satiric comedy.”¹⁹⁶ Anxiety about the mortality rate in plague-hit London must have affected ideas about the long years of study and training necessary to becoming a lawyer, all of which could turn out to be futile. Statistics for admissions at the Inns of Court do show an increase across decades,¹⁹⁷ but, as Prest notes, “a plaguy summer depressed income from admissions and chamber entry fees.”¹⁹⁸ A sense of mortality may be expected to have contributed to the discourse used in city comedy, which played to an audience conscious of the possibility that family, friends and neighbours might drop dead for sharing bad air, and aware that they might be next. If “plague mortality exhibited a clear social bias,” even those who enjoyed some degree of privilege “could draw little reassurance from statistical probabilities of infection if some of their friends and neighbours were attacked”: several leading lawyers and a justice of the peace were numbered among the victims of plague in the seventeenth century.¹⁹⁹

Jacobean city comedy was still in its ascendancy artistically in 1606. Today a critic may look back and observe that, in the theatre, “it was a rich time, in plays if not income.”²⁰⁰ Yet Paul’s closed in 1606 (the year, too, of the Act of Abuses), and the

¹⁹⁶ Bliss, *The World’s Perspective: John Webster and the Jacobean Drama*, 7. Leggatt writes: “[w]hen [the private theatres] re-opened after the plague in 1604, there was a tremendous burst of activity in citizen comedy among the boys’ companies”; *Citizen Comedy in the Age of Shakespeare*, 8.

¹⁹⁷ See *supra*, 21.

¹⁹⁸ *The Inns of Court*, 89. In this connection, see *The Records of the Honourable Society of Lincoln’s Inn*, i, 339; ii, 37; *Minutes of Parliament of the Middle Temple*, i, 335.

¹⁹⁹ See Paul Slack, *The Impact of Plague in Tudor and Stuart England* (Oxford: Clarendon Press, 1990), 193.

²⁰⁰ Andrew Gurr, “The Blackfriars Boys, 1600-1613,” ch. 20 in *The Shakespearian Playing Companies* (Oxford: Clarendon Press, 1996), 353.

notion of “a rich time,” even in plays, may have seemed an idea not quite in line with contemporary perception. Dekker’s *Seuen deadly Sinnes of London* (published in 1606) gives a sense of the effect plague had on contemporary theatre, on morale, and on morality, and how this impacted on ideas about comedy. Comedy is likened to tragedy, but not with Jonson’s expressed purpose of affirming classical theory. There seems an idea of an “end of Comedy” which signifies less comedy’s purpose, more its subduing, as intimations of mortality begin to close upon all walks of London life:

The Players themselves did never worke till now, there Comodies are all turned to Tragedies, there Tragedies to Nocturnals . . . Thinke you to delight your selves by keeping company with our Poets? . . . their Muses are more Sullen then old Monkeys, now that mony is not stirring, they neuer Plead cheerfully, but in their Tearme times, when the Two-peny Clients, and Peny Stinkards swarme together to here the Stagerites . . . no, no, there is no good doings in these dayes but amongst Lawyers, amongst Vintners, in Bawdy houses and at Pimlico. There is all the Musick, (that is of any reckoning) there all the meetings, there all the mirth, and there all the mony.²⁰¹

Lawyers are first-mentioned in a short list of those who continue to profit in time of adversity, but the character of the piece is one above all of end-of-the-tether bitter mockery about plague-hit London, with conventional targets drawn impassively together for fuller apocalyptic effect. In Dekker’s rhetorical account of the impact of plague, comedies are turned to tragedies at the hands of sullen playwright-poets. Dekker’s association of plague with vengeance – it is “[t]he purple whip of vengeance”²⁰² – participates in the type of contemporary superstition and religious over-zealousness which would insist that God sent plague as he sent any other form of natural disaster against the sins of mankind: “[p]articuliar epidemics were . . . to be explained by national vices, such as swearing, negligence in attending church,

²⁰¹ *The Seuen deadly Sinnes of London: Drawne in seuen seuerall Coaches, Through the seuen seuerall Gates of the Citie Bringing the Plague with them* (London, 1606), B1r.

²⁰² *Ibid.* *Oxford English Dictionary*, 2nd ed., s.v. “plague”: “Affliction, esp. as divine punishment.”

atheism, play-going, covetousness and extravagant female fashions.”²⁰³ In Jacobean city comedy we see the kind of irony and scepticism with which we would today view those who seek to explain natural disaster as divine retribution. The same irony and scepticism plays with, and against, conventional anti-lawyer sentiment.

Jonson is described in *The Return from Parnassus: or The Scourge of Simony* (1606) as “a pestilent fellow” (II.iv). The adjective “pestilent” reads on the surface like a form of insult. But earlier in the play Jonson is characterized as witty, bricklaying poet in a sequence concerning outstanding contemporary writers (I.ii), thus supporting an interpretation of the subsequent apparent insult as an approving description of Jonson’s “pestilent,” mordant wit. This is a wit, the author of the play may have intended to suggest, figuratively merciless and unpredictable as the plague which in Jacobean England daily threatened the end not only of comedy but of everything – lawyers and law included.

1.5 Literature and law

A recent study highlighted the cultural importance of English legal developments when asking literary questions about matters such as representation, interpretive habit, and generic expectation.²⁰⁴ But the value of literature’s representation of law-related phenomena has been queried. Jonathan Rose feels that literary sources “might be of greater interest if they reflected doctrinal and institutional insights and provided knowledge about the operation of contract, tort, and property law or courts, juries,

²⁰³ Slack, *The Impact of Plague in Tudor and Stuart England*, 26.

²⁰⁴ Erica Sheen and Lorna Hutson, introduction to *Literature, Politics and Law in Renaissance England* (Basingstoke, Hampshire: Palgrave Macmillan, 2005), 1.

legal procedure, and pleading.”²⁰⁵ Rose notes that literature is, first, fiction, and, second, indirect evidence, but he recognizes the possibility that the sources may enhance understanding and knowledge.²⁰⁶ G. Edward White finds the very idea of interdisciplinary study of law to mitigate the meaning and intelligibility of a disciplinary perspective, thus diminishing the concept of an academic discipline, while J. M. Balkin doubts altogether the idea of interdisciplinarity, calling it one discipline’s attempt to colonize another.²⁰⁷ Law tends to regard its language as univocal and authoritative,²⁰⁸ and it is this that makes it resist (or believe it resists) what Balkin calls the colonization of interdisciplinarity: because law is a professional, not an academic discipline. In spite of the objections, interdisciplinary study of law and literature flourishes in America, and it is an area that attracts increasing interest in Britain.²⁰⁹ City comedy may seem to have something special to offer in the field. The period in which the genre flourished was a time of unique mutual curiosity and

²⁰⁵ Jonathan Rose, “English Legal History and Interdisciplinary Legal Studies,” in *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe*, ed. Anthony Musson (Aldershot: Ashgate, 2005), 176.

²⁰⁶ *Ibid.*

²⁰⁷ G. Edward White, “Reflections on the ‘Republican Revival’: Interdisciplinary Scholarship in the Legal Academy,” *Yale Journal of Law and Humanities* 61 (1994), 28-9; J. M. Balkin, “Interdisciplinarity as Colonization,” *Washington and Lee Law Review* 53 (1996), 650; White and Balkin are cited in Rose, “English Legal History and Interdisciplinary Legal Studies,” 171.

²⁰⁸ See Peter Goodrich, *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis* (Basingstoke, Hampshire: Macmillan, 1987), 176-7.

²⁰⁹ Julius discusses the interest on both sides of the Atlantic in his introduction to *Law and Literature*, xi-xxv. See also Rose, “English Legal History and Interdisciplinary Legal Studies,” 169, 175.

engagement between the two vocations, which tend to be seen before and after this time as, in effect, mutually exclusive.²¹⁰

One key area of interest is *the law of literature*.²¹¹ This pertains to the various laws which regulate literature, such as, in the modern day, copyright law, and, going back to early modern times, laws restricting obscenity and blasphemy, and the law of defamation. The notion of a law of literature represents a disparate set of legal sources – among them, statutes and precedent – which affect the production of literary texts. The law of literature area examines the relationship between the two, and thus is inclined to emphasize an essentialist view of “law” and “literature” as separate, independent discourses. Allegations and disclaimers of topical and seditious allusion became part of the business of city comedy, and Jonson engages with the notion of a law of literature with the debate on defamation and satire in *Poetaster*. In the play, Jonson adopts in all but name the defamation doctrine of *mitior sensus* in anticipation of allegations of writing defamatory material.²¹² This provides an insight into the relationship between law and literature that will go on to characterize the genre.

Another area of interest is *legal and literary hermeneutics*. This asks what the interpreters of legal sources and literary texts may learn from each other. Answers may be problematic. A key difference in purpose between legal and literary interpretation centres on the matter of ambiguity, which is at once a friend to literary criticism and an enemy to legal analysis. Literary critics search it out in order to explore it; lawyers tend to seize on it for partisan advantage, or wipe it out in distaste.

²¹⁰ The observation about the vocations is made in Prest, *The Rise of the Barristers*, 184.

²¹¹ The summary descriptions of this and the other key areas of interdisciplinary interest are informed by Julius’s introduction to *Law and Literature*, xi-xxv.

²¹² See *infra*, 105.

The commonly advanced advantage of applying legal and literary hermeneutics is that dry, abstract law might be profitably supplemented by the moral and psychological examples of literature, while literature might acquire verisimilitude and gravity by engaging with the practicalities of law.²¹³ The implications in law are generally regarded as dangerous. A judge inclined to deliberate with the creativity of a literary theorist would be liable to transgress the function of applier of law to become *maker* of law.²¹⁴ Barbara Shapiro has shown, though, that sixteenth century justices of the peace were advised to use classical rhetorical texts, such as Cicero's *De Inventione*, in preparation for pre-trial examinations of suspects.²¹⁵ It may be anachronistic, therefore, to view this kind of creativity on the bench as having always been too obviously a dangerous proposition. One example of an area of creativity in law which is regarded as a positive thing is the concept of the legal fiction – an agency by which the law could be brought into harmony with the present needs of a changing society. I suggest that Day's *Law Tricks* incorporates allusion to the concept of legal fictions, and that reflection of a concept capable of being seen quite differently by lay and lawyer members of an audience opens the play up to esoterically positive interpretation.²¹⁶

²¹³ Point paraphrased from Jane B. Baron, "Interdisciplinary Legal Scholarship as Guilty Pleasure: The Case of Law and Literature," in *Law and Literature*, ed. Michael Freeman and Andrew Lewis (Oxford: Oxford University Press, 1999), 21.

²¹⁴ Richard A. Posner's argument in *Law and Literature*, revised ed. (Cambridge, Massachusetts: Harvard University Press, 1998), 237.

²¹⁵ Barbara Shapiro, "Classical Rhetoric and the English Law of Evidence," in *Rhetoric and Law in Early Modern Europe*, ed. Victoria Kahn and Lorna Hutson (New Haven: Yale University Press, 2001), 55-9, 61-70.

²¹⁶ See *infra*, 147.

One more area of interest in law and literature studies is *the law in literature*. Modern scholarship in the field repudiates earlier referential and symbolic studies of lawyers and legal processes as misreadings. Older studies of representations of lawyers and law tended to be concerned with how accurate an account of aspects of a legal system were, or what larger subject law represented in a literary text.²¹⁷ City comedy can be seen to reflect ideas about change in the law which show a desire for the formality of legal frameworks where provision was poor to non-existent. The darkly comic approach taken to the deed of sale of a wife in *The Phoenix* shows characters going through quasi-legal motions in order to supplement a deficiency in the law: the virtual impossibility for all but the very rich of legitimately dissolving a marriage. Different types of anti-lawyer sentiment *are* apparent in city comedy, but ambiguity remains to the present, and the phenomenon invites investigation.

Critics of the interdisciplinary study of literature and law, such as White and Balkin, point out the artifice involved at the interface of disciplinary perspectives, and find it flawed for incommensurability. Interdisciplinarity does involve artifice. But both literature and law resort to artifice individually: literature for its reliance on aesthetic strategies; law, for example, in the lawyer's need to defend even unlikely cases, and, in the past, the judge's countenancing of legal fictions. From the first play I examine, *Poetaster*, the playwrights of city comedy recognize and represent a connection between poet and lawyer as practitioners of the art or artifice of persuasion. If one wholly accepts the views of critics of interdisciplinary study, the whole law and literature studies movement now flourishing is defeated. A parallel may be made to western epistemology. Berkeley's and Hume's recognition of the

²¹⁷ Older criticism commonly featured literal readings of legal matter in Dickens' novels and symbolic readings of Kafka's: Julius, introduction to *Law and Literature*, xvi.

impossibility of objective knowledge was solved (for philosophers, at least) by Kant's contingent proposition of the transcendental unity of apperception.²¹⁸ In an analogous way, *if* one wants to study phenomena incorporating both literary and legal aspects, we should view interdisciplinarity not as one discipline's attempt to colonize another, but in a contingent, Kantian way, as something capable of generating debate made possible through, if never a transcendental unity, then a transcendental commensurability, of individual disciplines.

A barrister of the Middle Temple recently asserted that interdisciplinary research work could reveal hidden facets of a subject, adding that it ideally requires specialist knowledge of the respective disciplines, since law-related interdisciplinary studies often neglect the specific and wider legal context.²¹⁹ In principle, it is difficult to disagree. But there is always more to know for everyone. And non-lawyers can research legal sources in order to acquire knowledge, without being specialist professionals. The point made might be qualified to refer to the ethic inculcated, and the attitude underpinning, legal education and practice, rather than the knowledge acquired. The lawyer's ethic was recently caricatured as being, among other things, dry, abstract, unyieldingly rigid, and contentious.²²⁰ The commentator calls these things a reductive characterization. Yet these are all ingredients in the law-modelled

²¹⁸ See, for example, Bertrand Russell, *History of Western Philosophy*, 2nd ed. (London: George Allen & Unwin, 1961); Roger Scruton, *From Descartes to Wittgenstein: A short history of modern philosophy* (London: Routledge & Kegan Paul, 1981).

²¹⁹ Anthony Musson, "Crossing Boundaries: Attitudes to Rape in Late Medieval England," in *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe*, ed. Anthony Musson (Aldershot: Ashgate, 2005), 96.

²²⁰ Guyora Binder, "The Law-as-Literature Trope," in *Law and Literature*, ed. Michael Freeman and Andrew Lewis (Oxford: Oxford University Press, 1999), 68.

rigour which appealed to Jonson when writing *The Arraignment* before he gave the play the main title *Poetaster*.²²¹ And, rigidity apart, other disciplines might actually aspire to the same list of qualities.

²²¹ See *infra*, 75.

Chapter two

Defamation and anti-lawyer sentiment in *Poetaster*

In this chapter I examine Jonson's construction of a debate on defamation in Poetaster. I argue against the conventional view that the playwright is, without qualification, hostile to the legal profession in the play. I suggest in the first section that it is Jonson's engagement in legal debate and his use of the language of the law that allows him to defend the proscribed literary mode of satire, and that his engagement in this discourse demonstrates respect for legal method. I also argue in the first section that Jonson is to be credited with the early drawing of a distinction between slander and libel in the 1601 play, a distinction normally said to be post-Restoration. Jonson and his fellow (or rival) playwrights had a good motive to look for a distinction between oral and written defamation, since players' oral improvisations might turn a studiously unoffending script into a recklessly offending public performance. In the second section of the chapter, I examine examples of apparent anti-lawyer sentiment in Poetaster, and I contend that these are not to be taken at face value. I suggest that Jonson plays on the defamation doctrine of mitior sensus, and I look at the author's admiration of particular lawyers, as expressed in dedication and allusion. It is hoped that the chapter goes towards resolving the paradox that a genre popular among lawyers should be indiscriminately hostile to the legal profession.

The subject of defamation had become a significant cultural phenomenon in England by the time that Ben Jonson wrote *Poetaster*.¹ The high importance attached to honour and reputation in Elizabethan and Jacobean England is witnessed in Coke's suggestion that "libelling . . . robs a man of his good name, which ought to be more precious to him than his life."² Jonson says as much in *Poetaster*, where Horace uses

¹ Ina Habermann says that the fear of being the object of unfavourable representations and becoming a victim of detraction was such a conspicuous phenomenon in early modern England that it is surprising it has received so little critical attention: *Staging Slander and Gender in Early Modern England* (Aldershot: Ashgate, 2003), 1. Habermann argues that defamation played a part in the cultural history of femininity, which, she says, was fashioned between praise and slander.

² *The Reports of Sir Edward Coke, Knt.*, vol. III, part V, 125-6. See also Debora Shuger, "'Paper Bullets': Texts, Lies, and Censorship in Early Modern England," in *Solon and Thespis: Law and*

the same figurative expression as Coke: “no malicious thiefe / Robs my good name, the treasure of my life” (III.v.69-70). While the play is best remembered now for being part of a personal conflict between rival dramatists, its central purpose is to debate the function of satire, by then a popular but a proscribed form, against a matter of universal contemporary interest: the phenomenon of defamation. Jonson insists, in the “Apologeticall Dialogue” attached to the end of *Poetaster*,³ that he is defamed for being called defamer. He counter-argues against the charge that he has, among other things, “tax’d / The Law, and Lawyers . . . / By their particular names” (68-70). Not so, says Jonson: “These are meere slanders” against *him* (73). Unfavourable representation and detraction came to excite public fascination on the stage, in the form of satire, as the law on harmful words evolved (probably more noisily⁴) in the English courts. Jonson’s three “Comical Satyres” are recognized for being part of the *poetomachia*, or war of the theatres – an antagonistic exchange that reached full-scale confrontation in Jonson’s *Poetaster* and Dekker’s *Satiromastix*.

Lawyers of the Inns of Court were greatly interested in the matter of negative representation for several reasons. For one, because defamation actions were said to bring them as much work, “if not more, than any branch of the law whatsoever.”⁵ For another, because lawyers could find it necessary to defend their reputations from the abusive words of unsuccessful litigants and others: “Thou art no barrister, thou art a

Theater in the English Renaissance, ed. Dennis Kezar (Notre Dame, Indiana: University of Notre Dame Press, 2007), 167, 190 n. 10.

³ Jonson’s preface tells us that the “Apologeticall Dialogue” was “only once spoken vpon the stage.”

⁴ On the suggestion that the courts were noisier than the playhouses, see Baker’s description of Westminster Hall in *An Introduction to Legal History*, 37. See also Herrup, *The Common Peace*, 141.

⁵ John March, *Actions for Slaunder, or a methodicall collection under certain grounds and heads, of what words are actionable in the law, and what not* (London, 1647), 2.

barretor. . . . Thou study law? Thou hast as much wit as a daw.”⁶ Then, there was potential always for sensationalistic entertainment in the quest for justice in this area – be it on the facts of an allegation or arguments in defence. In 1607, for example, Lady Morrison succeeded against a defendant who said that a justice of the peace had “reported that he hath had the use of [her] body at his pleasure” – thus overcoming notable Lincoln’s Inn lawyer Sir Henry Hobart’s argument that the words could be taken to mean that the justice “ha[d] the use of her body as a tailor, in measuring.”⁷

2.1 Defamation and satire in *Poetaster*

In this section I suggest that Jonson’s defence of satire in *Poetaster* is informed by defamation law, and that his construction of a legal debate gives a comedy set in ancient Rome topical appeal; at the same time, the playwright sets the tone for the new genre of city comedy. I argue, as well, that Jonson contributes to the drawing of a distinction between slander and libel.

Jonson is recognized for transferring to the stage the formal characteristics and moral and social preoccupations of verse satire.⁸ Richard Dutton characterizes Jonson’s decision to write what he called “Comicall Satyres” as a gesture of defiance typical of the young playwright – the first Comicall Satyre, *Every Man Out of His Humour* (1599) came only months after Archbishop Whitgift and Bishop Bancroft had denounced and proscribed satire, destroying verse examples by, among others,

⁶ *The Reports of Sir Edward Coke*, xii, 71; cited in Prest, *The Rise of the Barristers*, 294.

⁷ *Morrison v. Cade* (1607) Cro. Jac. 162 (George Croke, *Reports*, Part 2, tr. H. Grimston [London, 1661]). Harvard Law School MS. 105, F106v; cited in Baker, *An Introduction to Legal History*, 442.

⁸ Gibbons, *Jacobean City Comedy*, 12, 58.

Middleton and Marston; Jonson was working, conspicuously, in a proscribed mode.⁹ The playwright makes this a noble fight in *Poetaster* – implicitly, by identifying with the great poet Horace, and expressly in the action of the play. Horace’s battle against suppression and denigration in Augustan Rome figures Jonson’s defence of satire in London, the Roman poet declaring that he “will write satyres still, in spight of feare” (III.v.100). The arbitrary nature of the punishment writers risked from indiscriminating officials after the proscription of satire is figured in the play by the foolish military captain Tucca’s complaint of Horace, who is: “all dogge, and scorpion; he carries poison in his teeth, and a sting in his taile . . . I’le haue the slaue whipt one of these daies for his satyres, and his humours” (IV.iii.115-18). But there is more to all this than a reckless challenge of authority. The playwright is informed by the law. His defence in *Poetaster* of poetry generally, and of the proscribed mode of satire in particular, coincides with a defence of his personal honour and reputation. This much might have been more expected under the play’s original title. Original audiences saw a play called not *Poetaster* but what Jonson subsequently turned into a subtitle: *The Arraignment*.¹⁰ Article became possessive pronoun for the subtitle: *Poetaster, Or His Arraignment*. If Jonson’s decision to change the play’s title suggests the original may have been thought deceptively solemn – giving no indication of the comedy’s briskness and bite – it may explain, too, why this remains lesser known among subtitles, and why it has been largely ignored in critical studies. A different reason for the overlooking of the subtitle may be the heavy emphasis

⁹ “Jonson’s satiric styles,” in *The Cambridge Companion to Ben Jonson*, ed. Richard Harp and Stanley Stewart (Cambridge: Cambridge University Press, 2000), 58. The clergymen publicly destroyed a number of satires on 1 June 1599.

¹⁰ Cain, introduction to *Poetaster*, 19 n. 40.

placed on the play's generic self-definition, *Comicall Satyre*.¹¹ In any event, the word *arraignment* refers to a genre of legal narrative, which has conventions including both the representations made in court by prosecutors, and a type of pamphlet describing trials or justifying their verdicts.¹² It is the case that Jonson aims in the play to establish both guilty act and guilty mind on the part of his fictitious defendants to defamation, Crispinus and Demetrius. Greenfield has argued that Jonson thus allows legal narrative to qualify, frame and displace the conventions of verse satire.¹³ This might be a useful argument for my thesis – for emphasizing the legal characteristics of this comedy and others following it. But Jonson comes to praise satire, not to bury it, as the verb *displace* suggests. The more persuasive argument may be that use of legal narrative in *Poetaster* is most valuable for highlighting what is distinctive about law and literature separately, not for subsuming both in one generality.¹⁴

Jonson gives an example of the poet's interest in law with this play, but what might be an example of the law's interest in literature? I propose one example concerning the distinction between slander and libel, in order to show that, in the case of Jacobean city comedy, there is regard between lawyers and literary texts that is neither odd nor unreciprocated – this being the way the relationship is described in current interdisciplinary law and literature scholarship.¹⁵ Jonson alludes expressly to

¹¹ Reason proposed in Matthew Greenfield, "Trial by Theater: Jonson, Marston, and Dekker in the Court of Parnasus," in *Solon and Thespis: Law and Theater in the English Renaissance*, ed. Dennis Kezar (Notre Dame, Indiana: University of Notre Dame Press, 2007), 20.

¹² *Ibid.*

¹³ *Ibid.*, 21.

¹⁴ The conclusion of Deak Nabers, "Epilogue: The True Image of Authority," in *Solon and Thespis: Law and Theater in the English Renaissance*, edited by Dennis Kezar, 271.

¹⁵ Julius, introduction to *Law and Literature*, xiii.

slander on three occasions in *Poetaster* (including the “Apologeticall Dialogue” attached to the written text), and on twelve occasions to libel.¹⁶ What might be the significance of this?

The first thing to be aware of is that defamation became actionable at common law only in the sixteenth century.¹⁷ Before the sixteenth century defamation was deemed a spiritual matter, coming within the jurisdiction of the Church courts. The immorality of lies and rumours was dealt with in what were in effect criminal proceedings, and guilty parties could be sentenced to penance, performed publicly in a white sheet. The Court of Star Chamber dealt occasionally with defamation matters of a more public nature. The first noted common law action for defamatory words dates from 1507; jurisdiction went to the Court of King’s Bench. Baker notes that, since the innovation is not contested in any surviving reported case, the reason for the change in jurisdiction can only be guessed at.¹⁸ Coke’s rationale for the common law remedy was the prevention of public disorder: “the party grieved ought to complain for every injury done him in an ordinary course of law, and not by any means to revenge himself, either by the odious course of libelling, or otherwise.”¹⁹ When the action first became available, defamation cases often outnumbered cases of *assumpsit* in the plea rolls of the common law courts, and even when cases of *assumpsit* greatly increased,

¹⁶ Slander: III.iv.282; twice in the “Apologeticall Dialogue.” Libel: III.v.132; IV.vii.11; V.iii.30-2 (four times); V.iii.45 & 48; V.iii.548; four times in the “Apologeticall Dialogue.”

¹⁷ Material on defamation law informed by Baker, *An Introduction to Legal History*, ch. 25. See also M. Lindsay Kaplan, *The Culture of Slander in Early Modern England* (Cambridge: Cambridge University Press, 1997).

¹⁸ For speculation, see *An Introduction to Legal History*, 438.

¹⁹ *The Reports of Sir Edward Coke*, iii, part v, 125-6.

defamation cases came second in number.²⁰ By 1601, when Jonson wrote *Poetaster*, notions of honour and allegations of damaged reputation were, therefore, high on the conversational agenda, particularly in the part of London where the Inns and law courts, and the private playhouses, were situated. Conversely, a legal treatise from 1573 recognizes a link between defamation and comedy in a proposed definition for slander:

Sclaunder is an accusation made for hatred, unknowen to him that is accused, wherein the accuser is beleued, and hee that is accused is not called to giue answer, or to denye any thing, and this definition standeth on three persons, euen like as matters of Comedies doe that is, by the Accuser, and by him that is accused, and by the hearer of the accusation.²¹

The threat of defamation and sedition was clearly recognized in the field of literature, then, and a notional link to comedic drama could be recognized in the field of legal study. Beyond these associations, how do Jonson's remedies for defamation compare with contemporary remedies? Coke summarizes the law's penalties for defamation thus:

A libeller . . . shall be punished either by indictment at the common law, or by bill, if he deny it, or . . . on his confession, in the Star-chamber, and according to the quality of

²⁰ In the Court of King's Bench in Michaelmas Term, 1510, there were six slander actions and five *assumpsit*: National Archives, plea rolls of the Court of King's Bench KB 27/997; in the Court of Common Pleas in 1535, there were thirty-four slander cases pleaded to issue, and only six *assumpsit*: National Archives, plea rolls of the Court of Common Pleas CP 40/1084-1087; cited in Baker, *An Introduction to Legal History*, 441 n. 29.

²¹ *A Plaine description of the Auncient Petigree of Dame Slaunder, together with hir Co-heires and felllowe members, Lying, Flattering, Backebyting, (being the Diuels deare darlings) Playnly and Pithely described and set forth in their colours from their first descent, of what linage and kinred they came off* (London, 1573), B1v.

the offence he may be punished by fine or imprisonment; and if the case be exorbitant, by pillory and loss of his ears.²²

Jonson retains something of the pre-sixteenth century idea of defamation as a spiritual matter in *Poetaster*, if his treatment of spirituality involves a degree of poetic licence. As if to outdo his own bravado in including in the play Ovid and Horace (not to mention the great Roman lawyer Trebatius), Jonson goes to the literary top, and has Caesar's court presided over in the final scene by Virgil, making him something like an omniscient poet-god. Virgil's judgment in favour and support of Horace perpetuates the idea of a spiritual concept in the penitential sentence given to Crispinus, who, at the end of the play, is made to vomit up his "spurious snotteries" (V.iii.476 & 481), representing Marston's linguistic idiosyncrasy. Thus, Jonson represents the legal process affirmatively – poets do not displace lawyers in the play; their association with lawyers, and assumption of legal roles functions to affirm the gravity and justness of the best examples of their vocation.

What of the three allusions to slander and the twelve to libel in *Poetaster*? The current understanding, at least in literary studies, is that the modern distinction between libel and slander was post-Restoration, and that the terms were used interchangeably before 1660.²³ The first query one might have following on from this is why Jonson's allusions to libel should outnumber those to slander by four to one. The difference between common law suits for damages and criminal prosecutions by the Crown might be informative in this connection. The common law drew no remedial distinction between written and spoken defamation before 1660: the author of a common law primer could insist even in 1656 that: "It matters not how

²² *The Reports of Sir Edward Coke*, iii, part v, 126.

²³ Shuger, "Paper Bullets," 190 n. 10.

[defamatory] words (if they be actionable) be published or divulged, whether by writing or speech; for the action is maintainable in both cases.”²⁴ Written defamation began to be treated differently at criminal law, though, shortly before Jonson alluded to the subject of harmful words in *Poetaster*. By the latter half of the sixteenth century, the criminal law had begun to recognize a difference in the respective degrees of danger posed by verbal and written defamation. Written matter might be considerably more dangerous. It could be disseminated in any number of places at the same time, and the possibility of expressing controversial ideas while maintaining anonymity might embolden a writer. Recognition of the potential for a difference in the degree of danger may be witnessed in subtle differences in criminal penalties towards the end of the sixteenth century. Statutes of 1554 and 1558 had made it a misdemeanour to speak or write with malicious intent “false and slanderous words” of the monarch, but declarations of 1580 and 1581 made writing such words felony, while speaking such words became felony only on second conviction.²⁵ The Court of Star Chamber had, in addition, a reputation in Jonson’s time for punishing some written defamation prosecutions with “sharp sentences.”²⁶ This deals with the matter of a pre-Restoration remedial distinction between written and spoken defamation, but what of a semantic distinction?

I argue against the idea that the terms slander and libel were, without qualification, used interchangeably in a semantic sense before 1660. If there should be

²⁴ W. Sheppard, *Epitome* (London, 1656), 21. Baker asserts that the common law drew no distinction between written and spoken defamation before 1660: *An Introduction to Legal History*, 445.

²⁵ W. S. Holdsworth, *A History of the English Law* in sixteen volumes (Boston: Little, Brown-Methuen, 1927-66), iv, 511-12; see also Kaplan, *The Culture of Slander in Early Modern England*, 127 n. 5.

²⁶ *Edwardes v. Wooton* (1607), uncollected report cited in J. H. Baker and S. F. C. Milsom, *Sources of English Legal History: Private Law to 1750* (London: Butterworths, 1986), 649. Location unspecified.

doubt that a semantic distinction between slander and libel existed before 1660 (the first example given for the relevant definition of “libel” in the *O.E.D.* dates from 1631,²⁷ still some thirty years after Jonson; the notion mentioned above of speaking *or writing* false and slanderous words supports the idea of interchangeable use of terms), I would argue that a terminological distinction is to be found in *Poetaster*, and, in view of the dates involved, this would mean that Jonson is to be credited with making, at the least, a distinguishing contribution to the etymology of the words slander and libel. What does legal history say about the distinction between the two? Baker acknowledges that the modern distinction is of uncertain origin, and that, “it bears the unsightly scars of a historical accident.”²⁸ Jonson can be imagined to have disapproved of the idea of two words being used interchangeably: his renowned learning and pedagogic impulse may well have inspired him to design a distinction

²⁷ *Oxford English Dictionary*, 2nd ed., s.v. “libel” (definition 5): “Any published statement damaging to the reputation of a person. In a wider sense, any writing of a treasonable, seditious, or immoral kind. Also, the act or crime of publishing such a statement or writing.” The *O.E.D.* does cite *Poetaster* in connection with the verb-form of “libel”, but under a formally non-specific definition of the word (definition 2): “To defame or discredit by the circulation of libellous statements; to accuse falsely and maliciously”. “Circulation” might be achieved verbally, and since the first cited specific definition of the noun dates from 1631 – thirty years after *Poetaster* – the allusion in the verb definition to “libellous statements” is unhelpfully tautological. The *O.E.D.* cites Tucca from IV.vii: “Thou shalt libell, and I’le cudgell the Rascal.” It is part of Tucca’s characterization that he is not one to take care with his choice of words. The examples attached to the *O.E.D.*’s definitions of “slander” go back to the thirteenth century, but the definitions tend to be open to interchangeable use; for example, the noun is defined as an “utterance or dissemination” (the latter might be in written form); one definition of the verb is: “*to write or speak evil of*” (my italics).

²⁸ *An Introduction to Legal History*, 446.

that appears now only part of a so-called historical accident.²⁹ Referring back to the play's original title, and subsequent subtitle, the definition of the word "Arraine" in Cowell's *Interpreter* locates its origin in the French verb *arranger*, meaning "to set a thing in order or in his [*sic.*] place."³⁰ Besides the things Jonson obviously attempts to set in order in the play (proper satire), or to put in their place (bad poets), he might be said, too, to attempt to set in place a distinction, where one is thought not to have existed, between slander and libel.

Slander's derivation from the Latin for scandal could corroborate the idea of interchangeable use – scandalous words might be written or spoken. Libel's derivation from the Latin for book, on the other hand, might imply an inherently specific signification of written defamation. Cowell offers no definition of slander in his 1607 legal dictionary *The Interpreter*, but he notes that libel "signifieth a little booke [... and] also a criminous report of any man cast abroad, or otherwise unlawfully published in writing, but then for difference sake, it is called an infamous libell."³¹ The allusion to a "criminous" report may seem to pick up on the distinction made between written and spoken defamation at criminal law, but the non-specific notion of a report "cast abroad" and the qualification of unlawful publication in writing being distinguished "for difference sake" as an *infamous* libel seems still to support the idea of interchangeable semantic use.

So, how may Jonson be said to contribute to the semantic distinction between slander and libel? As mentioned, he uses the word libel four times more often than he uses the word slander in *Poetaster*. Where he uses the word libel, it attaches most

²⁹ See *supra*, 39 n. 118.

³⁰ Cowell, *The Interpreter*, s.v. "arraine."

³¹ *Ibid.*, s.v. "libel."

often recognizably to the written word, or, as if to make absolutely clear the drawing of a semantic distinction, to graphic representation.³² In act III, scene v, for example, Jonson has his alter-ego Horace disdain “lewd verses; such as libels bee” (III.v.130); in act V, scene iii, the fawning tribune Lupus seeks to incriminate Horace in Augustus’s court, claiming that an emblem in the poet’s possession amounts to: “A libell, Caesar. A dangerous seditious libell. A libell in picture” (V.iii.43-4). Libel signifies here, then, defamatory matter in permanent form – be it written (such as the lewd verses) or graphic (such as Horace’s emblem). Where Jonson uses the word slander, as with the “meere slanders” that he says in the “Apologeticall Dialogue” have been made against him, these appear to attach to defamation in evanescent form, such as the oral slights dispensed by “Fellowes of practis’d, and most laxatiue tongues” (76). Thus, Jonson’s allusions anticipate the distinction currently thought to be post-Restoration.

The sole allusion in the play proper to slander is made by the actor Histrio to the bumptious Captain Tucca about the “play-dresser, and plagiarist” (V.iii.212) Demetrius Fannius – widely recognized to be a representation of Dekker (from the first by Dekker himself). Demetrius, says Histrio, “ha’s one of the most ouer-flowing ranke wits, in Rome. He will slander any man that breathes, if he disgust him” (III.iv.337-8). This, directed at a writer, could seem an allusion to written defamation, or at least an interchangeable use of the term. But there are two other possibilities. The less satisfactory is that Histrio, as a player, is not to be expected to be punctilious about semantics in his description of Demetrius. The more plausible idea is that a way

³² An example of a picture capable of being construed as libel in early modern English law would be the image of a gallows drawn on someone’s door; a false accusation of felony amounted to defamation: Kaplan, *The Culture of Slander in Early Modern England*, 77-8.

with oral depreciation, in particular, is part of Demetrius's characterization in the play. In act IV, scene iii, the play-dressing poet delights Tuca with jibes directed at Horace: "Alas, sir, Horace! hee is a meere sponge; nothing but humours, and obseruation, he goes vp and downe sucking from euery societie, and when hee comes home, squeezes himselfe drie againe. I know him, I" (IV.iii.104-7). Jonson makes himself – in the guise of Horace – the butt of envious Demetrius's oral slight. Following *Every Man in His Humour* and *Every Man Out of His Humour*, he is the writer known for his "humours" plays, and the idea of sucking from every society only to squeeze himself dry at home figures Dekker's complaint that Jonson did too little to conceal, in the name of decorum, the identity of the targets of his satire. Jonson expressly refutes this charge in the "Apologeticall Dialogue" attached to *Poetaster*. He claims, earnestly, "To spare the persons, and to speake the vices" (72). But the playwright himself had already declared in *Every Man Out of His Humour* the purpose of the Comical Satyres to be simply mirroring the time's deformity (Prologue: 125-7), and the mirror metaphor holds a suggestion of no-holds-barred exposé. Jonson is personal even about himself in *Poetaster*. Demetrius's jibe doubles, in an odd mix of, on one hand, over-flowing, rank hack wit for the purpose of the play-dresser's characterization, and, on the other hand, something deeper than artificial humility, something more like confessional pathos on the part of Jonson, as the man beneath the fashioned didactic poet persona. This juxtaposition Jonson achieves in a personal joke at his own expense – perhaps in an attempt, ingenuous or not, to mitigate the hubris of identifying himself with the venerable ancient Horace. If the notion of a sponge sucking from every society may connote a taste for alcohol and a liking for company as much as it does a capacity for observation, there is a punning, funny-sad suggestion in Demetrius's jibe that the Horace of *Poetaster* (that is, Jonson)

habitually returns home from gregarious nights out on the town to the isolation of his own excellent company, and only “squeezes himselfe drie” in a masturbatory sense. Read in this way, the jibe implies a development in the idea of the satiric playwright and satire itself as more inward-looking. Jonson puns throughout the play on the word *satyr*. In its Roman form, the satyr was a lustful woodland deity, in human form but with goat’s ears, tail, legs, and budding horns.³³ The soldier Tucca, for example, says of Horace: “Hang him fustie satyre, he smells all goate” (III.iv.300), and later: “But this is humours, Horace, that goat-footed enuious slaue; hee’s turn’d fawne now” (IV.vii.12). Demetrius’s jibe turns the sensual, lustful aspect of the satyr in on itself, and, as this stage comedy demonstrates, the writer and accordingly the genre of satire become more inward-looking yet openly self-gratifying: a paradoxical mix of introvert exhibitionism.

What of the remarks Jonson makes at others’ expense? Ina Habermann observes that the negative fashioning of others can be an implicit part of establishing one’s own identity.³⁴ In *Poetaster*, while engaging directly and indirectly in a debate on defamation for the entertainment and interest of the lawyers in the audience, the playwright’s negative fashioning of others is self-consciously a means of setting himself apart as an artist; at the same time, he sets the tone for an evolving genre of pungently worded, urban stage satire: the city comedies that will follow on from the *Comicall Satyres*. Jonson, conscious of appearing hubristic for identifying himself with Horace, uses the play as, on one level, an exercise in first articulating then justifying the high opinion he has of himself. Only enough signs of artificial humility are injected to make the celebration of the playwright’s own talent palatable. What

³³ The Greek version had horse’s ears and tail.

³⁴ Habermann, *Staging Slander and Gender in Early Modern England*, 1.

sets Jonson apart from his contemporaries in this respect, though, is not the identification with a satirist of classical antiquity, but his alias's ruthlessly efficient negative fashioning of Crispinus and Demetrius – figures for Marston and Dekker respectively. Crispinus is a “Poetaster, and plagiarist” (V.iii.211) and “strong tedious talker” (III.i.199) given to “lewd solecisms and worded trash” (III.i.107). Horace looks for any excuse to escape Crispinus's wearying company: “I must craue his leaue to pisse anon” (III.i.102). Jonson makes Crispinus a court pleader as well as a writer in order to make still clearer the allusion to Marston, a lawyer member of the Middle Temple,³⁵ and he fits in some business about the arguing of cases in the courts. Horace is not only dismissive; he answers Crispinus's prose in blank verse, demonstrating his superiority as a poet even in formal arrangement on the page:

Crispinus

I am to appeare in court here, to answere to one that has me in suit; sweet Horace, goe with mee, this is my houre: if I neglect it, the law proceeds against me. Thou art familiar with these things, pray thee, if thou lou'st me, goe.

Horace

Now, let me dye, sir, if I know your lawes;
Or haue the power to stand still halfe so long
In their loud courts, as while a case is Argued. (III.i.207-14)

In spite of this, and the ruthless negative fashioning of Demetrius/Dekker, Jonson implies throughout the play that he himself, in the figure of Horace, is a blameless victim in a vicious age. He complains in the dedication to *Poetaster* of the “malice of the times” (19). It is a theme taken up by Envy, the presenter of the play's Induction, who invites the audience's assistance in damning the author “With triple malice”

³⁵ See Philip J. Finkelpearl, *John Marston of the Middle Temple: An Elizabethan Dramatist in His Social Setting* (Cambridge, Massachusetts: Harvard University Press, 1969).

(52).³⁶ Contemporary developments in the English law on defamation tell us that the playwright's characterization of the age can be seen, on this occasion at least, as something other than righteous indignation: it reflects a shared view. Near the end of the sixteenth century, Chief Justice Sir Christopher Wray complained in the Court of King's Bench that defamation actions "abounded more than in times past, and the intemperance and malice of men ha[d] increased."³⁷ Had it come to his attention, Jonson might be sure to have taken personally the advice of a 1594 manual on honour and reputation, as well: "the best name is soonest blemished by the malignant. He that is famous and in better fauour aboue others, shalbe sure to haue many meanes wrought to deface him."³⁸ There was a perceived cultural change at this time, then, involving a heightened sensitivity about honour and reputation, and attacks upon them, so, Jonson was in authoritative company in finding the age itself endemically malicious. To what extent did malice figure in the legal process for a defamation suit? Alleging malice was common form in a defamation action, though the matter was not normally questioned – its main relevance was as a way of rebutting defences. These points of defamation law find contemporary parallels in the evolving genre of stage satire. Jonson alleges malice in *Poetaster*, and he takes it upon himself to set things in order, to arraign things, as he saw them. But the *poetomachia* was throughout quasi-litigious in character, being based in effect around complaints, defences, rebuttals of

³⁶ Kaplan notes that Spenser identifies envy with slander in *The Faerie Queene* (V.xii), where Envy and Detraction are paired in the representation of the disgracing of Lord Grey: *The Culture of Slander in Early Modern England*, 66.

³⁷ *Stanhope v. Blythe* (1585), report cited in Baker and Milsom, *Sources of English Legal History*, 641.

³⁸ Charles Gibbon, *The Praise of a good Name. The reproach of an ill Name. Wherein euery one may see the Fame that followeth laudable Actions, and the infamy that cometh by the contrary. With certain pithy Apothegues, very profitable for this Age* (London, 1594).

defences, and counterclaims – all concerning matters of honour and reputation. If interest in the “War of the Theatres” was dwindling in the 1970s,³⁹ there has been renewed interest in the phenomenon in the last ten years.⁴⁰ At a time when interest in interdisciplinary study of literature and law is increasing, it is the interdisciplinary nature of *Poetaster* – its juxtaposition of literary and legal matter (for example, in the distinction recognized in the first section of the chapter between “libel” and “slander”) – that means the play should claim the attention of a wider audience, still more so than for the reasons Tom Cain proposes; namely, that it is among the most ideologically interesting of English Renaissance plays, and that it is the first, perhaps the most powerful, statement of an Augustan literary programme in English.⁴¹

As Chief Justice Wray had observed of the age in which the *poetomachia* would catch playgoers’ imagination, the sequence of supposedly aesthetic exchanges seemed to display increasing malice and intemperance. The exchanges appear to have been borne of a misunderstanding, but real opprobrium resulted from it. Would any of the

³⁹ In 1973, the war was said to be “dead and buried, and nowadays hardly anyone who is interested in the Elizabethan period wants to resurrect it”: Norbert H. Platz, “Ben Jonson’s *Ars Poetica*: An Interpretation of *Poetaster* in its Historical Context,” *Salzburg Studies in English Literature*, 12 (1973), 1. See also Cain, introduction to *Poetaster*, 19.

⁴⁰ The long disrepute into which the topic of the poets’ war fell during the twentieth century meant that the topic was persistently under-researched: Charles Cathcart, *Marston, Rivalry, Rapprochement, and Jonson* (Aldershot: Ashgate, 2008), 1. There have been book-length studies in the last ten years: Matthew Steggle, *Wars of the Theatres: The Poetics of Personation in the Age of Jonson* (Victoria: University of Victoria, 1998), which looks at Roman antecedents; James Bednarz, *Shakespeare and the Poets’ War* (New York: Columbia University Press, 2001), which examines the impact on Shakespeare of the *poetomachia*. See also Greenfield, “Trial by Theater,” and Shuger, “Paper Bullets.”

⁴¹ Cain, introduction to *Poetaster*, 19.

opprobrium have been actionable at common law, with poet plaintiff and defendant? First, in what sense may the exchanges have been borne of a misunderstanding? Marston is thought to have had the good intention of complimenting Jonson in his first play *Histriomastix* when drafting the character of Chrisoganus, a worthy corrector of society's ills.⁴² Arguably as a result of flawed characterization, Chrisoganus becomes a caricature of the playwright. Jonson replied in his next play, *Every Man Out of His Humour* (1599) in which the verbose Clove becomes an oblique representation of Marston, who responded by making the self-important Brabant Sr. a representation of Jonson in his next play, *Jacke Drum's Entertainment*. In *Cynthia's Revels* (1600) Jonson, again obliquely, attacks Marston, as one of a pair of characters called Hedon and Anaides: "The one a light voluptuous reveller, / The other a strange arrogating puffe, / Both impudent, and ignorant inough" (III.iii.25-8). Dekker seems now to have assumed that he was the other one of the pair, for he quotes these lines in a satirical subplot to his conventional historical romance *Satiromastix*, in which apparent formal liberties may have been included only to increase Jonson's annoyance. Marston seems to represent Jonson as Lampatho in *What You Will* (1601), thereby criticizing Jonson's capacity for theorizing. To call a writer a voluptuous reveller, or an "arrogating puffe" might seem then, as now, not to prejudice his artistic reputation; there would be those, as well, who would find such characteristics typical of writers – fair comment. These descriptions are, in any event, mere expressions of personal antipathy. Jonson's thinly disguised labelling of Marston and Dekker as poetasters and plagiaries could have represented something more, though. A common law defamation action centred not on the opprobrium itself

⁴² Marston satirized Anthony Munday as Posthaste in *Histriomastix*, as well. Summary of the *poetomachia* informed by R. W. Ingram, *John Marston* (Boston: Twayne Publishers, 1978), 44-50.

but on its effects in terms of recognizable temporal loss;⁴³ for example, where a plaintiff had lost credit with someone who had dealt with them before an alleged scandal.

Common law actions tended to fall within three main categories: words alleging commission of a crime or endangering liberty, words alleging occupational incompetence, and words imputing certain diseases – principally, the “French pox” (syphilis) and leprosy.⁴⁴ If the three categories of imputation combined offer something like a template of areas in which one should aim to offend when writing a conventional city comedy, the category I want to look at briefly here is the one concerning words alleging occupational incompetence, since *Poetaster*, in particular, is concerned with the competence or non-competence of paid writers⁴⁵ – an exercise which might have been argued to have the potential to cause recognizable temporal loss for the writers inferred. Words alleging occupational incompetence regularly gave rise to defamation actions in the sixteenth century. Jonson’s representation of legal process in *Poetaster* shows an admiration (not to say envy) for the way that lawyers could claim justice. In the context of defamation, for example, lawyers themselves could bring actions when income from their profession was endangered. In *Woode v. Frogge* (1517), a barrister received £40 after he lost clients as a result of an accusation of treason and murder.⁴⁶ Professional qualification could make some

⁴³ See Baker, *An Introduction to Legal History*, 438.

⁴⁴ French pox became epidemic in Tudor England, and imputation of it was regarded as peculiarly harmful: *ibid.*, 438-40 for information on the three categories.

⁴⁵ The turning of the play’s original title, *The Arraignment*, into its subtitle figures the parallel yet secondary concern with lawyers.

⁴⁶ *Woode v. Frogge* (1517), National Archives, plea rolls of the Court of King’s Bench KB 27/1022; cited in Baker, *An Introduction to Legal History*, 439 n. 18.

allegations actionable which would not be otherwise. It was not normally actionable to say that a man was ignorant or illiterate, but to say the same of a barrister made the words actionable, since it was necessary for a barrister to know some law, and he would get no work if it was believed he did not. In *Palmer v. Boyer* (1594),⁴⁷ therefore, a barrister of Lincoln's Inn was able to bring a case against an accusation that he had "as much law as a jackanapes", and in *Bankes v. Allen* (1615),⁴⁸ a barrister brought a case following an accusation that he was "no lawyer" and unable to draft a lease. *Poetaster*, and the plays of the *poetomachia* generally, work on inference – "application" as Dekker called it, and he thought Jonson conspicuously unsubtle with his application. By law, words alleged to be defamatory needed to be understandable in a defamatory sense by the person or persons to whom they were disseminated:⁴⁹ but where words themselves were not explicit, a complainant could include an innuendo clause in his pleading. The device of innuendo was developed in the context of common law defamation actions in the 1540s,⁵⁰ in order that courts could look beyond indefinite words where an allusion left little to the imagination. For a writer of

⁴⁷ *Palmer v. Boyer* (1594) Cro. Eliz. 342 (Croke, *Reports*, Part 1; see *supra*, 74 n. 7).

⁴⁸ *Bankes v. Allen* (1615), Henry Rolle, *Abridgement des Plusieurs Cases* (1658), vol. i, 54.

⁴⁹ "[T]he words ought to be spoken to one who knowes the meaning of them, otherwise they are not actionable": John March, compiler, *Reports: or, New Cases; with Divers Resolutions and Judgements given upon solemn Arguments, and with great deliberation. And the Reasons and Causes of the said Resolutions and Judgements* (London, 1648), B2v. Baker cites in *An Introduction to Legal History*, 444 n. 52, examples of contemporary cases affirming the point: *Anon.* (1584) Moore KB 182 (where the words were in Welsh); *Jones v. Dawkes* (1597), Rolle, *Abridgement*, vol. i, 74 (words in Latin); and *Price v. Jenkins* (1601) Cro. Eliz. 865 (in Welsh).

⁵⁰ Where defamatory meaning was not evident from the words in question, the pleading device of innuendo could be applied; the device was first developed in order to explain indefinite pronouns: for example, "he (*innuendo*, a plaintiff lawyer) has as much law as a jackanapes."

some established reputation even by innuendo to label a rival writer poetaster and plagiarist might cause the latter to lose credit with someone who had dealt with him previously. Such a loss of credit might not be recognizable in relation to playgoers themselves, who might withdraw their patronage for any number of capricious reasons, but the accusations might have caused a writer to lose the individual patronage of a wealthy benefactor, or repeat commissions from a theatrical employer. Had a defamation action been brought in connection with the *poetomachia* the debate about whether *author* could at the time be considered a sufficiently creditable occupation for the purpose of alleging loss of credit would have made interesting reading. From a modern perspective, the writer called poetaster and plagiarist might seem analogous in principle to the barrister with the successful 1594 “jackanapes” claim in the area of occupational incompetence. The debate in act III, scene v between Horace and Trebatius may suggest Jonson gave at least passing consideration to the possibility of a claim as plaintiff, if the great Roman satirist and lawyer are meant to mirror (as seems likely) Jonson and the play’s lawyer-dedicatee Richard Martin. Jonson uses his knowledge of the law, at any rate, to make a point about inferior writing; contrary to being anti-lawyer in character, the play affirms the legal process.

Jonson enacts a discussion about a claim against him as prospective defendant in the “Apologeticall Dialogue” attached to the end of the play. The dialogue is apologetic in the sense of being a reasoned defence: it is (predictably) nothing like an acknowledgment of fault. The author has one of his interlocutors, Polyposus, put to him the allegation that he has “tax’d / The Law, and Lawyers; Captaines; and the Players / By their particular names” (68-70). An early modern writer that actually named the targets of his satire might be presumed, had he not maintained his own anonymity, to have had a death-wish. Jonson demonstrably had a survival instinct, but

equally he liked to be seen to live dangerously. He may not have expressly identified his targets, but in his first response to Polyposus's allegation – "It is not so. / I vs'd no name" (70-1) – he sounds every bit the verbal tactician clinging cautiously to a technical defence. There could seem small possibility of accident when certain material in Jonson's plays was felt to be understandable in a defamatory sense by an audience; he may have used no names, but an innuendo could be more entertaining, and, as mentioned above, innuendo had been recognized in common law defamation actions since the 1540s, so that indefinite words could still provide the cause to an action where an allusion left little to the imagination. One textual omission indicates Jonson's daring, but also his pragmatism in this connection. The 1601 quarto of *Cynthia's Revels* omits the courtier Asotus's boast that his accomplished style of dancing is "the very high way of preferment" (IV.v.70). The allusion had been recognized as a satirical dig at Sir Christopher Hatton, an Inner Temple man known to non-admirers as "the dancing chancellor," with an inference that it was solely his skills in courtly arts such as dancing that won him his position.⁵¹ The playwright's defence of using no names demonstrates a lawyerly instinct, and his participation in technical arguments of exculpation is an example of the bonding approach whereby

⁵¹ Hatton indulged briefly in drama, as well, writing the fourth act of the original version of an Inner Temple tragedy performed for Elizabeth in 1567-8, *Gismond of Salerne* (two manuscripts of his version survive; British Library: Lansdowne 786, Hargrave 205); Axton, *The Queen's Two Bodies*, 56. On the nickname "the dancing chancellor," see Janet Clare, "Art Made Tongue-Tied by Authority," in *Elizabethan and Jacobean Dramatic Censorship* (Manchester: Manchester University Press, 1990), 84; on Hatton see also Shuger, "Paper Bullets," 166. F. D. MacKinnon notes for posterity the stupefaction at Hatton's appointment in *Inner Temple Papers* (London: Stevens & Sons, 1948), 33, 59.

speaker (or writer) and hearer (the lawyers in his audience) become “mutually constituting members of a self-identifying community”.⁵²

The satirical jibe Seagull makes about the Scots in *Eastward Ho!* (at III.iii.38-45) was cancelled in all but two existing quarto copies of the play.⁵³ The conspicuous delay of the King’s response – his anger descended on the playwrights in September 1605, three to six months after the original production⁵⁴ – raises an interesting issue in relation to the possibility of finding defamatory matter in drama. I mentioned that statutes of 1554 and 1558 had made it a misdemeanour to speak or write with malicious intent “false and slanderous words” of the monarch, and that declarations of 1580 and 1581 made writing such words felony, while speaking such words became felony only on second conviction.⁵⁵ If satire of the kind contained in *Eastward Ho!* about the Scots could be argued to be or not to be slanderous *of the monarch per se*, impolitic inference of royal folly was clear enough. R. E. Brettle explains the delay in the King’s response by suggesting that an unlicensed production of *Eastward Ho!* was performed while the King was on his Oxford Progress (July-September 1605), and that rumours about the proposed performance were circulating when the King returned to Whitehall in mid-September.⁵⁶ Brettle speculates that actors in the said

⁵² Fish, “Author-Readers: Jonson’s Community of the Same,” 52.

⁵³ C. G. Petter, ed., *Eastward Ho!* by Ben Jonson, George Chapman, and John Marston (London: A. & C. Black, 1994), 61 n. 38-45.

⁵⁴ *Ibid.*, xxiii-xxiv.

⁵⁵ Holdsworth, *A History of the English Law*, vol. iv, 511-12; see also Kaplan, *The Culture of Slander in Early Modern England*, 127 n. 5.

⁵⁶ R. B. Brettle, “*Eastward Ho*, 1605; by Chapman, Jonson, and Marston; Bibliography and Circumstances of Production,” *The Library*, IX (1928-29), 287-302; see also C. G. Petter, ed., *Eastward Ho!*, xxiv.

production may have made their own inflammatory additions.⁵⁷ The implications of the possibility that even one line in a strategically written, technically non-offending play-script might be transformed on the stage into oral defamation by players' improvisations must have become increasingly clear to the writers of stage satire. On one hand, it no doubt inspired Jonson and other playwrights to become more fastidious about the matter of actors keeping to an author's words. In the Induction to *Poetaster*, Envy's scheme for destroying the play looks hopefully to those players who can be relied on to "wrest, / Peruert, and poyson all they heare, or see, / With senselesse glosses, and allusions" (Ind.). On the other hand, the possibility of players' distortions would have offered playwrights the corollary possibility of a plausible defence to allegations of oral defamation where plays performed had yet to be printed – be such a defence pleaded in good faith or not. Perhaps it was such a contingency that allowed John Day to hold on to his liberty while the leading boys of the Blackfriars company were imprisoned in Bridewell for the airing of seditious matter following a performance in February 1606 of Day's Jonson-influenced comedy *The Isle of Gulls*.⁵⁸

Jonson would later find cause to add a second prologue to *Epicoene* (1609) following, as he puts it, "some person's impertinent exception."⁵⁹ He mentioned, as ever, no name, but the person concerned was Lady Arabella Stuart (1575-1615), a first cousin of the King. She complained that the play introduced an allusion to her,

⁵⁷ Ibid.

⁵⁸ See Gurr, *The Shakespearean Stage 1574-1642*, 69-70.

⁵⁹ The subheading to "Another" – the second Prologue: *Epicoene*, in "*The Alchemist*", and other plays, ed. Gordon Campbell (Oxford: Oxford University Press, 1995), 122.

with inference of a high-profile matrimonial intrigue.⁶⁰ Jonson insisted again in *Epicoene* that “persons were not touched, [and that he endeavoured only] to tax the crimes” (Another [Prologue], 4). He reiterates the complaint that his work is misread by those who “make a libel which he made a play” (14), and it is here that Jonson’s insistence on a no-name defence is at its most technical. He does allude expressly in *Epicoene*, through the character of La Foole, to the Prince of Moldavia (at V.i.20-1). This was not the name of his alleged and, it might be said, too apparent target, Stephano Janiculo, but it was the title of the person Janiculo pretended to be. A point of curiosity arises here, too. The playwright refers, in La Foole’s same breath, to “his [the Prince’s] mistress, Mistress Epicoene” (V.i.21). If we are to accept the respective dating of the play and the events of Lady Arabella Stuart’s life, we find a most remarkable example of life imitating art. Mistress Epicoene was not, plainly, the name of Jonson’s aristocratic complainant, so Jonson could again insist with technical accuracy that he had used no name in the play. But Lady Arabella, imprisoned for contravening restrictions placed on her marriage in 1610 – the year after the play’s production – escaped in 1611 from the Bishop of York, in whose charge she was by then, by playing an epicene part in boy’s clothes.⁶¹ Jonson scholar D. Heyward Brock’s suggestion that the incident may have been alluded to in *Epicoene*⁶² overlooks the fact that the date of the play’s production precedes by two years the

⁶⁰ The allusion is consistent with the fact that one Stephano Janiculo, who pretended to be Prince of Moldavia, had in 1608 – the year before the production of *Epicoene* – announced in Venice his engagement to Lady Arabella; he was already married to a Venetian woman: *ibid.*, 463 n. 17.

⁶¹ D. Heyward Brock, *A Ben Jonson Companion* (Brighton: The Harvester Press, 1983), 266. On a contemporary suggestion that common lawyers preferred Lady Arabella as Elizabeth’s potential successor, see Axton, *The Queen’s Two Bodies*, 96-7.

⁶² Brock, *A Ben Jonson Companion*, 266.

real-life drama of the disguised Lady Arabella's escape from the Bishop of York. These things considered, if Jonson was alluding to Lady Arabella in *Epicoene* – and the pointed mention of the Prince of Moldavia suggests he was – the playwright's decision to name and fashion the Lady's alleged analogue "Mistress Epicoene" seems not a libel by Jonson against the house of Stuart but a clever script which a real-life character turned out to follow.

What, then, is the relationship between defamation and satire in *Poetaster*? Jonson not only denies defaming individuals in the play – "I vs'd no name" – he expressly condemns defamation, through his alter ego Horace. Horace debates the value and function of satire with the lawyer Trebatius, who warns him: "There's iustice, and great action may be su'd / 'Gainst such, as wrong mens fames with verses lewd" (III.v.128-9). Horace approves enthusiastically, saying in effect that it is poets that give satire a bad name. Contrary to being defamatory and seditious, says Jonson, true satire performs a valuable function for the state. The poet deters individuals from vice, a role that ought to afford, within the notional bounds of poetic decorum, certain liberties of subject matter and expression for the writer. The vision corresponds with a description of the role of the satiric poet of antiquity by Julius Caesar Scaliger in the *Poetics*, a text which Jonson alludes to in his *Discoveries*.⁶³ The poet then, said Scaliger, "could abuse individuals with impunity, on the ground that a deterrent fear of a bad reputation would reconcile men's minds to virtue and restore them to socially beneficent living."⁶⁴ It may be, finally, that controversy about defamation and anti-

⁶³ Parallel made in Kaplan, *The Culture of Slander in Early Modern England*, 65.

⁶⁴ Ibid. Kaplan cites an interim source for the quotation: O. J. Campbell, *Comicall Satyre and Shakespeares "Troilus and Cressida"* (San Marino, CA: The Huntington Library, 1970), 5-6. The

poet/anti-lawyer sentiment in the play perform in part the function of decoy for a more dangerous target of satire. Jonson may well be inferring sympathy for the Second Earl of Essex, who was executed early in 1601 (the year of the play's composition), following his attempted rebellion in London against the government. For all his bravado, Essex's undoing is said to have come about through malicious innuendo.⁶⁵ In *Poetaster*, the tribune Lupus is supported by others when in the final scene he attempts to defame the ethically centred poets Horace and Virgil before Caesar. Jonson has Horace earnestly condemn courtiers who conspire against individuals under the specious guise of protecting the state, making a most poignant condemnation of defamation, and a daring demonstration of the value of satire to the state:

They are the moths, and scarabes of a state;
 The bane of empires; and the dregs of courts;
 Who (to endear themselves to any employment)
 Care not, whose fame they blast; whose life they endanger:
 And vnder a disguis'd, and cob-web masque
 Of loue, vnto their soueraigne, vomit forth
 Their owne prodigious malice; and pretending
 To be the props, and columnes of his safety,
 The guards vnto his person, and his peace,
 Disturbe it most, with their false lapwing-cries. (IV.viii.15-24)

2.2 Anti-lawyer sentiment in *Poetaster*

If anti-poet/anti-lawyer sentiment may be a decoy for a more controversial target of satire, then particular examples of ostensible anti-lawyer sentiment in *Poetaster* are not to be taken at face value. I put forward four things in support of this. One, I say

other writings of Julius Caesar Scaliger (1484-1558) included polemics against Erasmus. He was the father of Renaissance scholar Joseph Justus Scaliger (1540-1609).

⁶⁵ Cain, introduction to *Poetaster*, 41.

that Jonson plays on the defamation doctrine of *mitior sensus*, whereby harmful words in common law actions for defamation were construed in their mildest sense. Two, I say that the dedications of *Poetaster* and the previous Comical Satyre, *Every Man Out of His Humour*, demonstrate admiration for the legal profession. Three, I say that the inclusion in *Poetaster* of the revered ancient lawyer Trebatius, who is made a kindred spirit for Jonson's alias Horace, demonstrates the playwright's sense of identification with lawyers. Four, I say that the presence in the narrative of the courtroom judgment scene has an ideological function, showing Jonson's respect for legal method.

The conventional view that *Poetaster* is hostile to the law as a profession is understandable on a surface reading. The play opens with the young Ovid defying his father's wish that his son should become "pleader, not play-maker" (I.ii.9). Ovid prefers to "studie not the tedious lawes; / And prostitute [his] voyce in euerie cause" (I.i.47-8) – he will devote his time instead to writing poetry.⁶⁶ A troubled choice between the vocations of law and poetry is something members of the audience could be expected to relate to: in *Law Tricks*, Day makes a feature of the son, Polymetes, earning his father the duke Ferneze's disapproval for preferring poetry to law. The allusions in *Poetaster* to the tedium of studying law and of prostituting oneself look pejorative. But this represents a point of contact between lawyers and poets: there is an element of masochistic boastfulness in the way they construct their vocations as the highest challenge to perseverance.⁶⁷ And masochistic boasting would seem only

⁶⁶ The words Jonson uses derive from Marlowe's translation of Ovid's *Amores*. See Cain, introduction to *Poetaster*, 80 n. 43-84.

⁶⁷ Prest characterizes the attitude of Coke and contemporary barristers to the rigours of the lawyer's life as one of masochistic boastfulness in *The Rise of the Barristers*, 258.

too appropriate an activity for the personality type proposed in the first section of this chapter: the introvert exhibitionist.⁶⁸ No one spoke more enthusiastically about the tedium of studying the law than lawyers themselves:

I will a little relate unto thee the travail and pains of a lawyer, of whom I may say this, that as he is generally a mover in other mens cumber . . . so hath he this recompense, that he never hath rest but is always in cumber himself. For in riding to term, at term forenoon he goes to the Hall, in summer in heat, winter in wet and cold, stands there bareheaded at the bar . . . after dinner he is tied to his chair and to read evidences while he can see, and to advise and be advised, without rest if he be in great practice and if in mean it is not worth following abroad and term being done he returns to circuit and country practice and so never hath rest and is most a stranger at home.⁶⁹

The masochistic boastfulness of the poet, on the other hand, cries willing poverty, looking to demonstrate absolute commitment to art through indifference to worldly, financial reward. Jonson adapts the words of Ovid's father in *Tristia* (IV.v.21.2) to this end: "*Sape pater dixit, studium quid invtile tentas? / Mæonides nullas ipse reliquit opes.*" (A. D. 108-9; "Often my father said, 'why do you try a profitless pursuit? Even the Maeonian [i.e. Homer] left no wealth.'"⁷⁰) Similarly, in *Every Man in His Humour*, Jonson has old Knowell despair of his son's "Dreaming on naught but idle poetry, / That fruitless and unprofitable art" (I.i.17-18).⁷¹ Both lawyer and poet articulate what they think others might think the negatives of their vocations, but both anticipate reward for perseverance with their labours. An "ancient song" sung in the

⁶⁸ See *supra*, 85.

⁶⁹ Inner Temple lawyer Sir John Lowther's "Autobiography," in *Lowther Family Estate Books, 1617-1675*, ed. Colin B. Phillips (Gateshead: Northumberland Press, 1979), 213; cited in Prest, *The Rise of the Barristers*, 11.

⁷⁰ Translation by Cain, introduction to *Poetaster*, 87.

⁷¹ From the 1617 revised version, set in London; reference to *Five Plays*, ed. G. A. Wilkes (Oxford: Oxford University Press, 1999), 1-97. In the 1598 original, Lorenzo Senior is Knowell's predecessor.

Inner Temple in the early modern period shows that the lawyer might draw strength from the knowledge that:

By learning men advanced be
To places of high dignity,
When pains and toils are overpast,
Thence come the joys which ages last.⁷²

Swinburne criticized as a confusing flaw Jonson's decision to introduce his play with Ovid,⁷³ but the representation of the young, idealist aesthete (along with his friends Gallus, Tibullus, and Propertius) provides in terms of this notion of reward a necessary distinction from the two other sets of poets: the ethically preoccupied Horace and Virgil, and the poetaster hacks, Crispinus and Demetrius. The renowned classical poets are concerned in different ways with honour and reputation: Ovid, perhaps more with reputation, Horace and Virgil perhaps more with honour. Ovid's reward will be a reputation beyond this life; in his conversation with his father's servant, Luscus, he declares: "Thy scope is mortall; mine eternall fame" (I.i.47-9).⁷⁴ By comparison, Horace and Virgil are earthbound, ethically preoccupied. They look for justice in this world, and insist on the maintenance of honour. The fictional but recognizable poets, Crispinus and Demetrius, will write only what will sell: their own honour and reputation figure little in their reckoning, so they are reckless with others'.

Another example of anti-lawyer sentiment comes in the play's second scene, where the tribune Lupus says: "a simple scholer, or none at all may be a lawyer"

⁷² J. H. Baker, "The Old Songs of the Inns of Court," *LQR*, 90 (1974): 188; cited in Prest, *The Rise of the Barristers*, 258.

⁷³ Algernon Charles Swinburne, *A Study of Ben Jonson* (London: Chatto & Windus, 1889), 25. Owing in part, perhaps, to a misapprehension that the original audience saw a play called *Poetaster*, when they saw a play called *The Arraignment: Cain*, introduction to *Poetaster*, 19 n. 40.

⁷⁴ The words derive from Ovid, possibly via Marlowe; see n. 62.

(I.ii.102-3). This is really an indication of Lupus's character-type. He is a fool, a fawn, an informer, and he represents the stereotype of the self-important magistrate without formal legal education. Christopher Brooks finds evidence to show that lawyers educated in the Inns of Court were never among the majority on commissions of the peace, and that, outside of London, lawyer-Justices' professional advice was often ignored where local loyalties and the desire for patronage influenced non-lawyers' judgments in a particular direction.⁷⁵ Lupus urges Ovid to continue studying law partly out of fawning deference to the important Ovid Senior; he does so partly in order to perpetuate an image of himself as representative of the law – an image subdued by the end of the play by Caesar. Following Lupus's malicious remark about Inns-educated lawyers, it is another foolish and self-important character, the military captain Tucca, who diminishes the law as a profession in the play. According to Tucca, the prospective lawyer must have "patience to plod inough, talke, and make noise inough, be impudent inough, and 'tis inough" (I.ii.106-7). This is the pot calling the kettle black for comic purpose. Tucca is every bit the bombastic soldier, as Captain Bobadil/Bobadilla is in *Every Man in His Humour*. He talks, makes noise, and holds himself out as superior, while his actions are characterized only by opportunism and inconsistency, as Caesar recognizes in the play's final judgment scene. I mentioned in relation to Lupus the malice and envy that motivate the negative fashioning of the good and just by those without merit; this is a main theme in the play, and one for which Jonson employs the authority of Virgil to put right in the play's final scene:

First you must know
That where there is a true and perfect merit,
There can bee no deiection; and the scorne

⁷⁵ Brooks, "The Common Lawyers in England," 58.

Of humble basenesse, oftentimes, so workes
 In a high soule vpon the grosser spirit,
 That to his bleared, and offended sense,
 There seemes a hideous fault blaz'd in the obiect;
 When only the disease is in his eyes.
 Here-hence it comes, our Horace now stands taxt
 Of impudence, selfe-loue, and arrogance,
 By these, who share no merit in themselues;
 And therefore, thinke his portion is as small.
 For they, from their owne guilt, assure their soules,
 If they should confidently praise their workes,
 In them it would appeare inflation:
 Which, in a full, and wel-digested man,
 Cannot receiue that foule abusiue name,
 But the faire title of erection. (V.iii.341-58)

Virgil might as well be talking to the lawyers in the audience: the impudence, self-love, and arrogance of which Horace stands accused corresponds with the anti-lawyer sentiment dispensed by fawning informer Lupus and bombastic turncoat Tucca – two fools who have no merit in themselves. Through the imposing authority of Virgil, Jonson says his audience must know that where there is real merit there can be no dejection.

Returning to Ovid's preference for poetry over law, lawyers agreed too well that study of the law was tedious, but turned this into a badge of resilience: as earlier indicated, common lawyers characteristically relished grumbling about the rigours of the lawyer's life. As for Ovid's suggestion in the play that lawyers prostitute their voice in every cause, this is the perennial equation of the youthful idealist the young Ovid here represents: penury becomes idealistically linked with greatness and mythologizing notions of honour, so, by the reverse, the very possibility of earning money begins to resemble a sell-out. The young idealist looks back wistfully to a time when men

would admire bright knowledge, and their minds
 Should ne're descend on so vnworthy obiects,
 As gold, or titles: they would dread farre more,
 To be thought ignorant, then be knowne poore.

“The time was once, when wit drown’d wealth: but now,
 “Your onely barbarisme is t’haue wit, and want.
 “No matter now in vertue who excells,
 “He, that hath coine, hath all perfection else.[’]” (I.ii.212-19)

Jonson answers directly in the “Apologeticall Dialogue” the accusation that he has,
 “tax’d / The Law, and Lawyers; . . . / By their particular names” (68-70):

those former calumnies you mention’d.
 First, of the Law. Indeed, I brought in Ovid,
 Chid by his angry father, for neglecting
 The study of their lawes, for poetry:
 And I am warranted by his owne words.
Sape pater dixit, studium quid invtile tentas?
*Mæonides nullas ipse reliquit opes.*⁷⁶
 And in farre harsher termes elsewhere, as these:
Non me verbosas leges ediscere, non me
*Ingrato voces prostituisse foro.*⁷⁷
 But how this should relate, vnto our lawes,
 Or their iust ministers, with least abuse,
 I reuerence both too much, to vnderstand! (102-14)

Expressly, Jonson reveres contemporary law and lawyers. And if a disclaimer of this kind tends rarely to seem genuine in stage satires from this time, this is one of the occasions where it does, since Jonson demonstrably reveres both the laws and their just ministers (allowing an exception for unjust ministers, as represented in the play by Lupus) in *Poetaster*.

I look now at four matters supporting the idea that ostensible anti-lawyer sentiment in *Poetaster* is not to be taken at face value. First, I examine the defamation doctrine of *mitior sensus*, according to which harmful words in common law actions for defamation were construed in their mildest sense. In order to examine the relevance in a dramatic context, I begin by outlining the development of common law actions for

⁷⁶ See *supra*, 100 n. 70.

⁷⁷ “Nor learning garrulous legal lore, nor set my voice for common case in the ungrateful forum.”

Derived from Ovid’s *Amores* I.xv.5-6. Translation by Cain, ed., *Poetaster*, 87. Cf. I.i.47-8.

defamation in the sixteenth century. Common law lawyers and judges are typically caricatured as attracting litigation, but, as with the *Statute of Jeofails* of 1540, which was passed with the aim of preventing objections on trivial errors of form in court pleading (even though it back-fired),⁷⁸ judges and lawyers sought to limit defamation actions, which they felt had become too common, being brought for “every trifling thing.”⁷⁹ In the 1570s, consequently, the courts implemented a policy for reducing the high number of defamation cases – they introduced the *mitior sensus* doctrine. The idea of the doctrine was that ambiguous or doubtful words were to be construed in the mildest sense possible (*in mitior sensu*), and, as such, they would not be actionable at law. Lawyers and judges recognized even at the time that the policy could be applied with absurd results. The case of *Holt v. Astgrigg* (1607) offers a prime example of the absurdities of construction that became possible with the application of the *mitior sensus* doctrine. One aspect of *mitior sensus* was that defamation actions were restricted to allegations of punishable crimes. In *Holt v. Astgrigg*, the defendant in the case said that the plaintiff “struck his cook on the head with a cleaver, and cleaved his head; the one part lay on the one shoulder, and another part on the other.”⁸⁰ Construed *in mitior sensu*, the court held that even this vivid description was ambiguous as an imputation of a crime. The cook, said the court, could have survived, in which case

⁷⁸ See *infra*, 151.

⁷⁹ Staunford J, approving Dyer J: *Anon.* (1557), National Archives/Derbyshire Record Office, Anthony Gell MS. Report, F32v; cited in Baker and Milsom, *Sources of English Legal History*, 638 n. 20.

⁸⁰ *Holt v. Astgrigg* (1607), uncollected report cited in Baker and Milsom, *Sources of English Legal History*, 643. Location unspecified.

there was no punishable crime, but merely a trespass.⁸¹ Jonson may be said to adopt the policy of *mitior sensus* in *Poetaster*. He has Caesar deplore any who would be “too wittie in anothers worke” (V.iii.128), and leaves it to the poet Virgil to formulate a concept of defamation in the context of satire’s value to the state whereby, in effect, the audience (not the satirist) as alleged accuser is the potential miscreant:

’Tis not the wholesome sharpe moralitie,
Or modest anger of a satyricke spirit,
That hurts, or wounds the bodie of a state;
But the sinister application
Of the malicious, ignorant, and base
Interpreter: who will distort, and straine
The generall scope and purpose of an authour,
To his particular, and priuate spleene (V.iii.132-9).

The base interpreter is to blame, says Jonson. Ina Habermann’s notion of a slander triangle corresponds with Jonson’s idea.⁸² But Jonson goes a stage further and complains of the base interpretation of his own work, while assuming he knew best about Marston’s. Jonson’s vision effectively aims at making satire an unusual “pro-defendant” form in the way that *mitior sensus* was an unusual pro-defendant form. What does this mean? Legal scholar Daniel Klerman argues that the common law had, historically, a pro-plaintiff bias: since plaintiffs chose the forum, courts competed, he suggests, by making the law more favourable to plaintiffs.⁸³ The

⁸¹ Baker, *An Introduction to Legal History*, 442 n. 41. The doctrine continued to exist until 1714, when it was ruled that words should be taken in their most natural and obvious sense: *Harrison v.*

Thornborough (1714), report cited in Baker and Milsom, *Sources of English Legal History*, 645-6.

⁸² Habermann’s slander triangle involves accuser, victim and audience; parties may change positions and play different roles at different times: *Staging Slander and Gender in Early Modern England*, 2.

⁸³ Daniel Klerman, “Jurisdictional Competition and the Evolution of the Common Law: An Hypothesis,” in *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early*

commonplace view in legal education now – that the common law was pro-defendant – is a result of pro-defendant doctrines developed in the nineteenth century.⁸⁴ The common law courts' application of the doctrine of *mitior sensus* works against the idea of an historical pro-plaintiff bias, though, and Jonson's rebuttal and counterclaim against "the sinister application / Of the malicious, ignorant, and base / Interpreter" is unusual for its attempt to work on a presumption of mild meaning.⁸⁵

Jonson's dedications are the second matter supporting the idea that ostensible anti-lawyer sentiment is not to be taken at face value. The dedication to lawyers of *Every Man Out of His Humour* and *Poetaster* demonstrate the playwright's respect for members of the legal profession. In a short paragraph, Jonson's dedication of *Every Man Out of His Humour* plays off stereotypical ideas about Inns of Court men while demonstrating admiration in a distinctly male way:

TO THE NOBLEST NOVR CERIES OF HVMANITY, AND LIBERTY, IN THE KINGDOME: The Innes of Court.

I vnderstand you, Gentlemen, not your houses: and a worthy succession of you, to all time, as being borne the Iudges of these studies. When I wrote this Poeme, I had friendship with diuers in your societies; who, as they were great Names in learning, so they were no lesse Examples of liuing. Of them, and then (that I say no more) it was not despis'd. Now, that the Printer, by a doubled charge, thinkes it worthy a longer life, then commonly the ayre of such things doth promise, I am carefull to put it a seruant to their pleasures, who are the inheriters of the first fauour borne it. Yet, I command, it lye not in the way of your more noble, and vse-full studies to the publike: For so, I shall suffer for it. But, when the gowne, and cap is off, and the Lord of liberty raignes; then, to take it in your hands, perhaps may make some Bencher, tinted with humanity, reade: and not repent him.

By your honourer, Ben. Ionson.

Modern Europe, ed. Anthony Musson (Aldershot: Ashgate, 2005), 149. In connection with the idea that courts "competed," see *supra*, 17 n. 49.

⁸⁴ Klerman, "Jurisdictional Competition and the Evolution of the Common Law," 150.

⁸⁵ Klerman acknowledges that defences in defamation law are problematic for his argument: *ibid.*, 163.

The opening line, “I vnderstand you, Gentlemen, not your houses”, has the sound of a brusque greeting made at arm’s length, but it is Jonson’s reputation that makes the reader look too hard for the curt in the courtesy. The playwright deplores base interpreters of his work, but the tone of the writing might seem a provocation to misinterpretation, as if he is spoiling for a fight. Here, Jonson only makes literal the metonymy at the front of the dedication. He is, he explains with deceptive simplicity, addressing the gentlemen of the Inns, not the Inns themselves. Realization of the mildness of the phrase diffuses the tension initially produced in its sharp sound. Jonson is recognized as having had obvious confidence of the Inns’ gentlemen’s approval, invoking a bond of common literary sympathies,⁸⁶ and it has been argued that there is also a bond of a complementary corrective function.⁸⁷ There is obvious fondness and respect here: the writer has counted “diuers in [the Inns’] societies” among his friends, admiring them as examples of living as he does their accomplishment in his beloved learning. He will say no more than that these lawyers were “not despis’d.” This is not only a disclaimer of anti-lawyer sentiment made authentic by its brevity, but, if the negative expression – not despised – is recognized as an example of litotes, it is an emphatic affirmation of laconic male regard. Jonson establishes some confederacy with the members of the Inns, then, aiming for the private breaking of stereotypes which it might be entertaining or expedient to keep up in public. The dedication to *Poetaster* is a personal one:

TO THE VERTVOVS, AND MY WORTHY FRIEND, Mr Richard Martin.

⁸⁶ *The Works of Ben Jonson*, 11 vols., ed. C. H. Herford and Percy and Evelyn Simpson (Oxford: Clarendon Press, 1925-52), i, 11-12.

⁸⁷ Kaplan, *The Culture of Slander in Early Modern England*, 65.

Sir, A thankfull man owes a courtesie euer: the vnthankfull, but when he needes it. To make mine owne marke appeare, and shew by which of these seales I am known, I send you thu [*sic*] peece of what may liue of mine; for whose innocence, as for the Authors, you were once a noble and timely vndertaker, to the greatest Iustice of this kingdome. Enioy now the delight of your goodnesse; which is to see that prosper, you preseru'd: and posteritie to owe the reading of that, without offence, to your name; which so much ignorance, and malice of the times, then conspir'd to haue suppress.

Your true loue, Ben. Iohnson (5-21).

The virtue and worthiness of Jonson's dedicatee is emphasized by a subtle distinction to someone the author would have considered vicious and unworthy, and both persons were legal practitioners. Jonson's express affection for Richard Martin demonstrates his recognition of the virtuous and worthy practitioner of the law. Martin was a distinguished lawyer of the Middle Temple. His defence of *Poetaster* won the King's favour after the play's early performances attracted controversy.⁸⁸ Seventeenth century antiquarian John Aubrey noted that Martin was "a very handsome man, a graceful speaker, facetious, and well beloved."⁸⁹ The dedication includes a subtle distinction, between the good lawyer of integrity, Martin, and the ironically, ambiguously alluded to "greatest Iustice of this kingdome". The greatest justice of the kingdom could seem an all-embracing notion celebrating the probity of English justice; it is more likely to have been an ironical allusion to the Lord Chief Justice Popham, alleged by critics at the time to be part of a conspiracy against the Earl of Essex.⁹⁰ Jonson's allusion to "what may liue of mine" (13) anticipates the poet's sense of making a mark, perpetuated with Ovid in the play's first scene: "Thy scope is mortall; mine eternall fame" (I.i.49). The play's dedication to Richard Martin suggests it is wrong to say without qualification that Jonson is hostile to the legal profession:

⁸⁸ Brock, *A Ben Jonson Companion*, 169.

⁸⁹ John Aubrey, *Aubrey's Brief Lives*, ed. Oliver Lawson Dick (Harmondsworth: Penguin, 1976), 156.

⁹⁰ See Cain, introduction to *Poetaster*, 42.

he respects and admires an upright lawyer, and is hostile only to those who abuse the position of administering justice.

Jonson's bond of gratitude to, and respect for, Richard Martin seems to be figured in *Poetaster* in the connection between Horace and Trebatius. The inclusion in the play of the revered ancient Roman lawyer and jurist Trebatius is the third matter supporting the idea that ostensible anti-lawyer sentiment is not to be taken at face value. Gaius Trebatius Testa was a protégé of Cicero; he was made legal advisor to Julius Caesar and, subsequently, Augustus Caesar. No primary texts by Trebatius survive, but he was revered and cited by, among others, his eminent pupil Marcus Antitius Labeo, whose ideas survive in Justinian's *Digest*. In act III, scene v satirist Horace and lawyer Trebatius find they are kindred spirits in a debate on the value and function of satire. There is no evidence to support the idea that the scene was added later,⁹¹ and the notion that Trebatius's presence was intended "to silence the legal carpers in London"⁹² would seem to be mistaken for two reasons. In the first place, it operates on a presumption that Jonson must have had some ulterior motive for the inclusion of material *positive* in character about lawyers, when the matters discussed here suggest this is to insert a disclaimer where there is nothing really to disclaim. Secondly, it omits, again, to recognize that original audiences saw a play called not *Poetaster* but the legal-flavoured *The Arraignment*. The inclusion of an historical lawyer in a play called *The Arraignment* could only have been more to be expected than the inclusion of poets and poetasters. Trebatius performs a central function in the

⁹¹ Kaplan goes only so far as to say that "[i]t is possible that III.v. was added later": *The Culture of Slander in Early Modern England*, 74.

⁹² Rationale proposed in *The Works of Ben Jonson*, ed. Herford and P. & E. Simpson, iv. See also Kaplan, *The Culture of Slander in Early Modern England*, 131 n. 21.

play, and his presence demonstrates the playwright's respect for, and sense of identification with, lawyers. Good, right-minded poet and lawyer (represented by Horace and Virgil, and Trebatius) are distinguished from bad poet, legal charlatan and foolish state official (represented by Crispinus, Demetrius, Lupus and Tuuca).

If the connection between Jonson and Richard Martin seems figured in the meeting of minds in act V, scene iii between Horace and Trebatius, the identification between poet and just representative of the law is perpetuated to its highest level by the play's end, in act V, scene iii, where the poet Virgil is invited by Augustus Caesar to preside over the hearing of poetaster Crispinus and play-dresser Demetrius. Taking Caesar as the law, and Virgil his poet-judge, the most unifying identification between virtuous poet and lawyer is given to Augustus:

Caesar, and Virgil
 Shall differ but in sound; to Caesar, Virgil
 (Of his expressed greatnesse) shall be made
 A second sur-name, and to Virgil, Caesar (V.ii.2-5).

Dedications and identification with lawyers show that Jonson was not hostile to the legal profession. But it is the presence in the narrative of the closing judgment scene, in which Virgil provides the play's justice, that provides the fourth and most straightforward matter supporting the idea that ostensible anti-lawyer sentiment in *Poetaster* is not to be taken at face value. Jonson's use of the courtroom has an ideological function, taking narrative and aesthetic conflict into a rule-bound legal forum. This demonstrates the author's respect for the law and legal process, and it tends to be overlooked as a result of the subsequent imitation by other playwrights of this kind of scene as a plot device.

Chapter three

The Phoenix and the rise of the new profession

*In this chapter I examine ways in which Middleton articulates problems in England's legal system in *The Phoenix*, and I argue that the play reflects the contemporary rise of what J. H. Baker calls the new profession. The old, stereotypical members of the legal profession in the play, Tangle and Falso, represent not what the young lawyers and law students in the audience are destined to become, but what they should feel confident of overcoming. In the first and main section, I establish ways in which the play reflects a confused and complicated legal system in need of change, and I suggest that Middleton uses the play's title as a guiding theme to positive end – anticipating the rise of a more efficient profession from, in effect, the ashes of the old. In the second section, I examine representations in the play of the politically sensitive relationship between law and monarchy at the time in which the play was staged. I argue against the view that lawyers “opposed” the King, and I suggest that *The Phoenix* is consistent with a commonsense view: lawyers, of all people, would have been aware of the penalties for criticizing the King, and lawyers are to be found on both sides of any legal question.*

If Middleton satirizes a negative in relation to lawyers and law in *The Phoenix*, he simultaneously articulates a positive. The title of the play provides an immediately positive connotation: of something new rising, like the mythical bird, with renewed youth from the ashes of something old. There are at least four ways in which the play can be seen to signify a sense of new-from-old. The first, most obvious one relates to the new monarch: James I had recently succeeded Elizabeth I. The eponymous character in Middleton's play, the earnest young prince, bears allusive similarities to the new King, and James was often referred to as a phoenix (as Elizabeth I had been).¹ The new King might be considered to have represented for many of his

¹ W. Power suggests that the ageing Duke is to be identified with Elizabeth, Phoenix with King James, and Proditor, who plots to kill the Duke, with Raleigh, contemporaneously found guilty of treason: “Thomas Middleton vs King James I,” *Notes and Queries*, ccii (Dec. 1957); Margot Heinemann proposes some alternatives – the young Prince Henry for Phoenix, and Cecil or Northampton for Proditor – before questioning the idea of such correspondences: *Puritanism and Theatre: Thomas*

subjects a second sense of new-from-old: three years in, a feeling of a fresh, proper beginning to a still-new century. A third sense of new-from-old relates to dramatic form: *The Phoenix* is an example of a new type of comedy that appears when the theatres in the locality of the Inns of Court re-open after the plague. I want to concentrate on the fourth sense of new-from-old which can be attached to *The Phoenix*: the sense of new things rising from old in England's legal system.²

3.1 Tangle and the legal profession

There are two denigrating legal stereotypes in *The Phoenix*. The main one is Tangle, who looks like a straightforward perpetuation of the conventionally negative representation of the lawyer. Tangle provides Latin-pattered knavish counsel to clients partly in order to finance his own vexatious law-suits. It is clear to an audience before Tangle even arrives on the stage that anything he says is to be approached with some scepticism, following the exposition from the villainous Captain of his artfulness:

I haue acquaintance with an olde craftie Client, who by the puzzle of suites & shifting of Courts, has more tricks & starting holes, then the dizzie pates of fifteene Attorneys: one that has beene muzled in Law like a Beare, and lead by the Ring of his spectacles from office to office (I.ii.147-51).

Then there is Falso, a corrupt Justice of the Peace whose standpoint on judicial bribery and corruption is demonstrated in his open willingness to sell his judgment: "Please me and please yourself" (I.vi.2). But Tangle is not a qualified professional –

Middleton and opposition drama under the early Stuarts (Cambridge: Cambridge University Press, 1982), 72.

² It is possible at the same time to find a sense of something ending even as it begins in city comedy: as soon as generic conventions become recognizable, they are burlesqued in *Eastward Ho!* See *supra*, 3.

he is conspicuously an unqualified quasi-lawyer. And Falso admits to having been a thief in his youth, and says of his position: “I think I am a greater thief now, and in no danger” (III.i.60-1). Importantly, emphasis is placed on Tangle’s and Falso’s age. Tangle is old – in years and in practical approach. He has forty-five years’ experience in the law (I.iv.122), and the word “old” is applied to him on seven occasions in the play. As for Falso, the distinction he makes about his stage in life – “I have been a scholar in my time, though I’m a justice now” (I.vi.106-7) – is a statement as much (if not more) about age as about position and power. Besides the simple association of the word “scholar” with youth, Middleton has Falso imply that, for this Justice of the Peace, the position is not compatible with a scholarly approach, and he is content to leave sound, reasoned judgment to young lawyers and student-scholars.

Tangle’s and Falso’s age and lack of qualification or credibility makes a difference. These characteristics set them against the Inns of Court men in the audience for the play. Younger, and with an increased focus on qualification, they aim at making a new, more organized profession: J. H. Baker writes of “the new [legal] profession” arising in this period.³ Only since 1590 had the four Inns had a broadly similar set of professional qualifications, these replacing the former vague criteria of undefined “learning” and unspecified “convenient continuance.”⁴ Increased emphasis

³ *An Introduction to Legal History*, 162-5. Prest says that the profession was, in effect, reconstituted along modern lines at this time: *The Rise of the Barristers*, 2. And Brooks says change came in part as the result of a new sense of vocational pride among London lawyers: “The Common Lawyers in England,” 52.

⁴ *A Calendar of the Inner Temple Records*, i, 346, 431; ii, 207; *Minutes of Parliament of the Middle Temple*, i, 280, 394; ii, 605; *The Pension Book of Gray’s Inn (Records of the Honourable Society)*, 1569-1669, ed. Reginald J. Fletcher (London, 1901), i, 131, 308-9; *The Records of the Honourable Society of Lincoln’s Inn*, ii, 103, 109.

was placed in the law on education and qualification, one author warning against “the rash adventures of sundry ignorant men that meddle so much in . . . weighty matters . . . [who only] have some law books in their houses”: men offering legal services, he said, should have acquired their knowledge and skill “by education, or . . . not have it at all.”⁵ In spite of the stereotypical image of the law student as not much more than a playgoing gallant,⁶ an Inns of Court education of the time encouraged diligence and independence. Augustine Baker, who had the uncommon experience of having been educated at both the Inner Temple and Gray’s Inn, wrote that: “what is . . . therein to be done, he [a student] must do himselfe, and supply with his own industry, experience and the assistance of his fellow students.”⁷

What is new about the representation of legal figures in *The Phoenix* is that Tangle and Falso, in effect, rue their own type’s passing. This becomes clear in a curious verbal duel between the two which comes to signify not only a change in the method by which men settle their quarrels, but a change in the approach of the young men who study and practise the law. The background to this requires some explanation. If the formulation of clear qualification for the bar was still relatively recent, the approach to dispute resolution generally had changed, too, in the course of the sixteenth century. Parties to arguments now preferred by far to settle matters by litigation, where many would once have chosen to settle quarrels by means of

⁵ William Sheppard, *A Touchstone of Common Assurances*, 1641 ed. Richard Preston (London, 1820), xxi-xxii; cited in Prest, *Inns of Court*, 151-2.

⁶ See the example by Lenton: *supra*, 58.

⁷ *Memorials of Father Augustine Baker*, ed. J. McCann & R. H. Connolly (Catholic Record Society, xxxiii, 1933), 45; Baker gave up a successful practice to become a Benedictine monk – see Prest, *Inns of Court*, 140, 217; Richardson, *A History of the Inns of Court*, 73 n. 59. On Baker, see James Norbert Sweeney, *Life and Spirit of Father Augustine Baker* (London, 1861).

physical fighting, taking on opponents on Sundays and public holidays armed with sword and buckler.⁸ Stow says the practice of fight by sword and buckler was:

frequent with all men until the fight of rapier and dagger took place, and then suddenly the general quarrel of fighting abated, which began about the 20 year of Queen Elizabeth; for until then it was usual to have frays, fights and quarrels upon the Sundays and holidays, sometimes twenty, thirty, and forty swords and bucklers, half as well by quarrels of appointment as by chance . . . And although they made great show of much fury and fought often, yet seldom [was] any man hurt, for thrusting was not then in use; . . . But the ensuing deadly fight of rapier and dagger suddenly suppressed the fighting with sword and buckler.⁹

This knowledge is significant to understanding what is said in the scene in which Tangle and Falso take up foils for a sporting duel while simultaneously conducting a verbal duel of legal terms.¹⁰ The two characters represent part of an old legal order: the old legal disorder. For now, this prevails. But when Tangle advises Falso that “our lawyers are good rapier and dagger men” (II.iii.172)¹¹ he speaks of new lawyers and of their aspiration: an approach not cumbersome and dilatory, like the sword and buckler men these two are, but thrusting and incisive. Tangle says of the new lawyers: “they’ll quickly dispatch your . . . money” (II.iii.172-3). The remark sounds like a

⁸ A buckler is a small, round shield. On the replacement of violence with resort to law, see Stone, *The Crisis of the Aristocracy*, 240-2; Brooks, *Pettyfoggers and Vipers of the Commonwealth*, 90-1.

⁹ *A Survey of London* (London, 1603; 1631), 1023. Jean C. Marshall has argued that rapier fencing became a rhetorical and practical keystone of the gentleman-courtier’s identity: that it was by no means limited to the duel: “‘Come and see the violence inherent in the system’? The Multifarious Nature of Elizabethan and Jacobean Rapier Fencing” (paper presented at the annual meeting of the Renaissance Society of America, Miami, Florida, March 2007), programme and abstract book, 275.

¹⁰ This type of duel has analogies in two of the Comicall Satyres: see IV.vi of *Every Man Out of His Humour* (Fastidius Briske and Signior Luculentio), and V.iii & iv of *Cynthia’s Revels* (Amorphus).

¹¹ On this allusion, see R. B. Parker, “Middleton’s Experiments with Comedy and Judgement,” in *Jacobean Theatre: Stratford-upon-Avon Studies I*, ed. J. R. Brown and B. Harris (London: Edward Arnold, 1965), 182.

description of grasping materialists, whose greed for money outstrips any sense of care for their clients' best interests. But that would be to describe Tangle and Falso themselves. The word "dispatch" is used at III.i.11 of *A Chaste Maid in Cheapside* (1611) similarly to signify completion of business, and the word already denotes promptitude, efficiency and rapidity at this time¹² – ideas generally against Tangle's vexatious and dilatory approach to the law. Significance may be found in the use of the adverb "quickly," and the ellipsis (in the play-text) before the word "money." Tangle enjoys being the cause of vexation and delay with his puzzle of suits and shifting of courts, so the idea that anything at all should be done quickly in the law is anathema to the old, wilfully plodding lawyer that he is. The ellipsis might be taken to suggest that Tangle was about to say "case" or "suit" instead of "money," but he corrects what would be an obvious positive by projecting onto the young "rapier and dagger men" the negative which describes him and Falso.

Elsewhere, Tangle alludes sarcastically to a new type of lawyer, "an honest, conscionable fellow [who] takes but ten shillings of a bellows-mender" (IV.i.126-7). Tangle's contempt may be explained by the fact that ten shillings would not have been an exorbitant fee for a lawyer to charge, even if it would have represented something like two weeks' wages for a bellows-mender.¹³ Tangle's vocal inflection should become more acerbic, no doubt, as he continues: "Here's another deals all with charity" (IV.i.127-8). It becomes clear that a different type of lawyer is emerging. Earlier, Tangle has tried to accuse the new lawyers of quickly dispatching their

¹² *Oxford English Dictionary*, 2nd ed., s.v. "dispatch."

¹³ A skilled worker's wages in Elizabethan London seems to have been in the area of ten to fourteen pence a day: George B. Harrison, ed., *Shakespeare: Major Plays and the Sonnets* (London: Benn), 1084; cited by Brooks, ed., *The Phoenix*, 341.

clients' money, implying that as a sole purpose. As he becomes more exasperated, there is no elliptical hesitation, no self-censorship, and his sarcastic dismissal of honest and conscionable lawyers shows an old type threatened by a new type, who will be more conscious of trying to deal with cases efficiently, and charging conscionable fees, or worse yet, handling charitable matters.¹⁴

What of Tangle's name? If the character was based on a real person, he has been caricatured beyond straight recognition.¹⁵ In small part, one syllable-sharing candidate may be Inner Temple man Sir Lawrence Tanfield. By this time a judge, Tanfield presided at the hearing of a cause to which he was effectively a party, apparently untroubled by the possibility of being seen to be not altogether impartial.¹⁶ More clearly, England's legal system up to this time could rightly be described as a tangle. Tangle's "puzzle of suits and shifting of courts" (I.ii.148) exemplifies the confusion and complication generated by the numerous courts and various unregulated types of lawyers working within different, conflict-prone jurisdictions.¹⁷ Tangle declares that he is conducting twenty-nine law-suits at the same time, with "all not worth forty shillings" (I.iv.129 & 131). One commentator feels this is a clear exaggeration – "obviously no real person could or would carry on twenty-nine suits at the same time."¹⁸ But in 1629 the East India Company's lawyer's reported workload of twenty-six separate suits was not excessively heavy by contemporary standards, while courtier and projector Sir Arthur Ingram was at one point in his career engaged in conducting simultaneously twenty-one actions in five different Westminster

¹⁴ See *supra*, 10.

¹⁵ So says Brooks, ed. *The Phoenix*, 226-7 n. 129.

¹⁶ Prest, *The Rise of the Barristers*, 304 n. 52.

¹⁷ See *supra*, 11 n. 28.

¹⁸ Brooks, ed. *The Phoenix*, 226 n. 129.

courts.¹⁹ Tangle's character plays to the ostensibly negative stereotype of the vexatious lawyer, but the view might equally be taken that a lawyer who failed to take advantage of the manifest flaws of the system as it existed, at least in his client's best interests, would be still more a negative representation.²⁰

The end of *The Phoenix* brings a strange, exaggerated cure for Tangle's legal-type. The mood is sombre, not humorous, and the action seems more like a piece of magic realism. A stage direction casually directs that ex-lawyer Quieto "Opens Tangle's vein" in order to bleed him of his vexatious tendencies (V.i.306). Tangle had seemed to be rhetorically anticipating a harsh fate when inviting the young lawyers to skin him and write sonnets using his blood for ink. But the peculiarity of the play's end points to a serious idea: that the negative idea of the vexatious, dilatory type Tangle represents should not be allowed to continue in the public's perception. The dramatic punishment coincides with a characteristically harsh suggestion made around this time by Egerton to his colleagues on the Bench for an appropriate real-life remedy to slander: the practice of "the Indians by drawing blood out of the tongue and ears, to be offered in sacrifice."²¹ But the event in the play can be interpreted more widely as a call to untangle the confused legal system.²² Quieto holds up a basin to

¹⁹ *Calendar of State Papers Col., 1625-29*, 674; A. F. Upton, *Sir Arthur Ingram c.1565-1642* (1961), 204-7; cited in Prest, *The Rise of the Barristers*, 299.

²⁰ See the point made about Henry Sherfield, for example: *supra*, 12.

²¹ *Attorney-General v. Pickering* (Court of Star Chamber, 14 May 1605): Hawarde, *Les Reports del Cases in Camera Stellata 1593 to 1609*, ed. W. P. Baildon (1894), 229; cited in Knafla, *Law and Politics in Jacobean England*, 63.

²² At least one sixteenth century lawyer seems also to have practised surgery: in 1533, Lincoln's Inn man Robert Maycote left a collection of books on surgery to his attorney son Richard; J. H. Baker interprets this as evidence that Maycote's Kent practice may have taken in surgical patients, as well:

Tangle, and applies oil to his forehead to sooth him. There may be a pun on the Inns in Quieto's incantatory speech – "Thy stormy temples I allay" (V.i.320). There is also something of a Christ-like image, as if Tangle is by implication figuratively dying for old lawyer-kind's sins. Quieto's instruction to give up the devil and "keep thee bare in purse and back" (V.i.321, 323) represents conventionally strict Puritan objections to excessive earning and ostentatious apparel (the gains of the legal profession could be regarded by some as a sign of kinship to the Devil²³). Coke performed an ingenious reversal of objections of this kind, by suggesting that the prosperity of accomplished lawyers such as himself was a clear sign that God looked with special favour on their practice.²⁴ In the play, for all Tangle's faults, Quieto's instruction to keep bare in purse and back shows the latter as a fanatic, as vicious by (extremist) virtue of his own Puritan fervour as Tangle has been in his vexatious legal meddling.

Whether or not Tangle represents the tangled legal system, and allowing that an image of Christ dying for old lawyer-kind would probably not have been a widely shared interpretation, what is significant is that Phoenix, the young heir to Ferrara, administers justice in the play, and oversees the reform of Tangle and Falso. This is

National Archives, PROB11, 8 Hogen; suggested in Baker, "The English Legal Profession, 1450-1550," in *Lawyers in Early Modern Europe and America*, ed. Prest (London: Croom Helm, 1981), 22.

²³ Wilfrid Prest, "The English Bar, 1550-1700," in *Lawyers in Early Modern Europe and America*, ed. Prest, (London: Croom Helm, 1981), 70; 83 n.16. The devil-lawyer identification is discussed in: E. F. J. Tucker, "Ignoramus and Seventeenth-Century Satire of the Law," *Harvard Library Bulletin*, vol. 19 (1971), 313-30.

²⁴ Wilfrid Prest, "Counsellors' Fees and Earnings in the Age of Sir Edward Coke," in *Legal Records and the Historian: Papers presented to the Cambridge Legal History Conference, 7-10 July 1975, and in Lincoln's Inn Old Hall on 3 July 1974*, ed. J. H. Baker (London: Royal Historical Society, 1978), 164; see also Prest, "The English Bar, 1550-1700," 70.

not to suggest that justice resides *outside* the legal profession. Rather, the message is that the King's central courts dispense justice, and amateur quasi-lawyers such as Tangle, and corrupt, old provincial Justices such as Falso are to be distinguished from the new profession.

When Tangle first meets with Falso, there is the irony of a situation which finds two negative legal-types passing negative judgments on a new type of lawyer. Expressed in mathematical terms, the sum of the two negatives may be said to amount to a positive. Falso connives to profit from his dead brother, who was "too honest to live" (I.vi.79-80), making at the same time an incestuous play for his grieving niece. By implication, any Justice of the Peace would be in a position to indulge an opportunist appetite for all kinds of unethical, even criminal, conduct. But the representation of Falso can be interpreted as having a polemical purpose in favour of Inns of Court lawyers. Justices of the Peace were drawn mainly from local knights and gentry, but all commissions of the peace had been required by statute since the fourteenth century to include at least two "men of the law" in their quorum.²⁵ The proportion of lawyers to lay J.P.s began to rise noticeably from the mid-sixteenth century, inferring both that more lawyers wanted the position, and that more were wanted for it. John H. Gleason suggests "there can be no question that most of the future J.P.s [of this time] really studied law."²⁶ But the proportion of J.P.s actually qualified in the Inns of Court seems throughout the period not to have exceeded one third.²⁷ It is possible that the heightened involvement of lawyers may have caused

²⁵ Justices of the Peace were supervised in this period by the assize judges acting on the instructions of the king's council; see Cockburn, *A History of English Assizes*, 153-87, and Baker, *An Introduction to Legal History*, 25.

²⁶ *The Justices of the Peace in England, 1558-1640* (Oxford: Clarendon Press, 1969), 91.

²⁷ *Ibid.*, 26, 45.

some occasional resentment, but what little evidence there is in this area is taken to suggest that lay J.P.s characteristically respected and valued the contribution of their Inns of Court lawyer colleagues.²⁸ Lay members may naturally have been influenced in their own judgment by that of their qualified colleagues, and a contemporary manual writer's suggestion that J.P.s not legally qualified could "for want of knowledge of the many and particular statutes in force . . . seek to be exempt out of the commission of the peace"²⁹ could be interpreted not only as a simple ploy to encourage lay J.P.s to buy his book, but a recognition that there was new competition for posts, with legally qualified candidates increasingly at an advantage. For these reasons, Falso, the unqualified and corrupt J.P., can be seen as a polemical representation – in favour of the rising number of Inns of Court men ready and better able to do his job.

Age reinforces Middleton's representation of Tangle's redundancy, as a thing about to pass. Tangle's forty-five years' experience coincides in length in the text with the old Duke's forty-five year reign (I.i.7) – the Duke anticipates his succession by young prince Phoenix – and in the play's context with the late Elizabeth I's reign (1558-1603). The figure of forty-five years might contemporaneously have seemed a topical allusion to a period reasonably long in duration, in many ways respectable, but now past. The reign of the old Duke in *The Phoenix* does not correspond with an actual Duke of Ferrara: none of the five Dukes reigned for forty-five years. Thirty-eight years was the longest reign: Alfonso II, who acquired the title in the year

²⁸ See Prest, *The Rise of the Barristers*, 239 n. 12. Cf. Knafla, *Law and Politics in Jacobean England*, 61 n. 4.

²⁹ Michael Dalton, *The Countrey Justice* (London, 1618), A6v; cited in Prest, *The Rise of the Barristers*, 238.

following Elizabeth I's coronation was the longest reigning Duke of Ferrara (1559-1597).³⁰ This adds subtly to making *The Phoenix's* Ferrara setting a thinly disguised version of England, and in particular London.

A less frequently considered aspect of the early modern lawyer-figure is subtly represented in *Tangle*: the matter of the hardship endured in attaining, or maintaining, one's position and standard of living in the early seventeenth century. Middleton fleshes out his characterization by including some explanation for the old lawyer's vexatious impulse. *Tangle's* look back on his forty-five years' experience reveals an insecure, vicissitudinous life, again by implication not uncharacteristic of any number of other lawyers' careers. He has been "at least sixteen times beggar'd, and got up again; and in the mire again, that [he has] stunk again, and yet got up again" (I.iv.123-25). A degree of malevolence might seem not altogether surprising, and the playwright makes potential for sympathy even in *Tangle's* negative representation. It has been suggested that the common law in early seventeenth century England was pre-eminently a career open to talent.³¹ But, talent or not, the law could seem a lottery for lawyers as much as for litigants, with records documenting professional failures supported from their Inns' poor-boxes and some practitioners who remained financially at or below the subsistence level of the yeomanry.³²

Nina Taunton singles out Jacobean city comedy when considering dramatic genre as giving rise to stereotypical characters (and conventional situations) of age in

³⁰ John E. Morby, *Handbook of Kings and Queens* (Hertfordshire: Wordsworth, 1994), 104.

³¹ Prest, *Inns of Court*, 210.

³² *Ibid.*, 22; citing Harrison, *Description of England, 173-4; The Just Lawyer, his conscionable complaint, against auricular or private informing and soliciting of judges, by their menialls, friends, and favourites* (London, 1631), 18-19; *Diary of the Rev. John Ward, A.M., Vicar of Stratford-upon-Avon, extending from 1648 to 1679*, ed. Charles Severn (London: Henry Colburn, 1839), 292.

conflict with youth.³³ The fact that Middleton represents Tangle and Falso as old men does not in itself function as a negative of the kind Georges Minois claims for early modern art and literature: simple disgust for decline and decrepitude.³⁴ The conflict between the young Inns of Court men in the audience and the figures of old Tangle and Falso corresponds with the characterization of city comedy as championing the young, and affirming life and continuity, if incidentally.³⁵ The principal function of Tangle's and Falso's age is that it contributes to making them plainly different from the young members of a new profession.

Tangle's copious and unnecessary use of Latin terms may well have been another way of showing the young Inns men in the audience how old-fashioned his approach to the law was. Taunton examines early modern notions about the indecorous use of inkhorn terms and the barbarism of spouting Latin terms as part of an argument about the innate indecorousness of old age.³⁶ But what about the use of Latin in particular relation to legal training and practice? The law had been taught and conducted in Latin in the early Middle Ages, but it had changed to three languages by the thirteenth century – Latin, English, and French – of which the last was predominant.³⁷ By the early seventeenth century, it is doubtful whether the lawyers of

³³ *Fictions of Old Age in Early Modern Literature and Culture* (London: Routledge, 2007), 38-9.

³⁴ *History of Old Age: from Antiquity to the Renaissance* (Cambridge: Polity Press, 1989), 249; cited in Taunton, *Fictions of Old Age*, 6.

³⁵ *Fictions of Old Age*, 39.

³⁶ *Ibid.*, 75-8. Such notions are contained in English manuals on court style, including Thomas Wilson, *The Art of Rhetorique*, 1560; George Puttenham, *The Arte of English Poesie*, 1589; and Henry Peacham, *The Compleat Gentleman*, 1622. Cf. Sheen and Hutson, introduction to *Literature, Politics and Law*, 8: "Latin learning . . . was associated with a distinctly forensic habit of mind."

³⁷ Richardson, *A History of the Inns of Court*, 138.

the Inns of Court needed more than a rudimentary knowledge of Latin, and the young members of the Inns used law-French as a form of technical shorthand.³⁸ Law-French was a compound of French, English, and Latin, liked by some lawyers for its precision, but disliked by laymen for its supposed obfuscation and “demeaning associations with the Norman Yoke.”³⁹ Besides being old-fashioned, continued use of classical Latin might present a problem for its closer association with the popish civil law. In Middleton’s *A Chaste Maid in Cheapside*, Yellowhammer struggles with the Latin in his son Tim’s letter from university; his wife Maudline recommends he seek advice from her cousin at the Inns of Court, to which he responds “Fie they are all for French, they speak no Latin” (I.i.80). The satire points to an increasing suspicion of classical Latin; Maudline recommends the parson, but even a parson now “disclaims it, calls Latin ‘Papistry’” (I.i.82). Here is another degree of separation between the old, Latin-spouting stereotype and the young Inns men in the audience – Tangle does not represent them.

There is another, simple point against the conventional view that Middleton is genuinely hostile to the legal profession in *The Phoenix*. He good-humouredly castigates *all* professions as being corrupt – so why should the law be singled out? Phoenix suspects “infectious dealings in most offices, and foul mysteries throughout all professions” (I.i.109-10), and towards the play’s end he tells the audience in an aside: “I’m sick of all professions” (IV.ii.98). This raises the issue of what a “profession” was at the time. Attempts to trace a history of the professions have been problematic. Until relatively recently, the concept of the profession as a significant historical phenomenon seemed to be regarded by historians and social theorists as a

³⁸ Prest, *The Rise of the Barristers*, 108.

³⁹ *Ibid.*, 109.

product of the Industrial Revolution.⁴⁰ The so-called “learned professions” – law, medicine, the clergy – clearly existed long before the arrival of the industrial age. The ideological approach of those commentators who associated the modern profession with the Industrial Revolution was apparent in the explaining away of old, traditional professions as “mere parasitic appendages of the *ancien régime*’s landed ruling elite.”⁴¹ More recently, phases much earlier in English history than the industrial age have been seen to have had an impact on the professions, and the word itself has come to be recognized as a subjective, value-laden term, capable of only broad historical tracing.⁴² In any event, the word “profession” can be said to have been more general in its application in the early modern period than it was later to become.

Shakespeare’s *Julius Caesar* opens with the tribune Flavius berating a carpenter, cobbler, and other Plebeians who, “Being mechanical, . . . ought not walk / Upon a labouring day without the sign / Of [their] profession” (I.i.3-5). A profession in this period might, then, be taken to mean simply the way a man earned his living.

Yet *The Phoenix* demonstrates recognition of a concept of something semantically and substantially above the standard trade or occupation, more defined than any broad, unqualified sense of profession. The villainous Captain in the play interrupts the reading of a deed drafted on his behalf only for the reason that he thinks the description in the deed of the type of work he does is insufficient. As Fidelio, disguised as a scrivener, recites the deed, the Captain objects furiously: “out with ‘occupation,’ a captain is of no occupation, man” (II.ii.124). The Captain insists that

⁴⁰ Talcott Parsons, “The Professions and Social Structure,” in *Essays in Sociological Theory* (Glencoe, Ill.: Free Press, 1954), 34-49; M. S. Larson, *The Rise of Professionalism: A Sociological Analysis* (Berkeley: University of California Press, 1977), xvi, chs. 1-2; Prest, *The Rise of the Barristers*, 1 n. 1.

⁴¹ Prest, *The Rise of the Barristers*, 1.

⁴² *Ibid.*, 2.

the work of a ship's captain is something more than a mere "occupation." His view of what he does points to a pride-driven, status-based concept of something more like a profession. The Inns of Court men in the audience may have been amused by the seaman's delusion of grandeur, since having claimed apparently superior status, he finds no contradiction in his ready admission to being illiterate: "Sfoot, dost take me to be a penman? I protest I could ne'er write more than A B C, those three letters in my life" (II.ii.199-201).

How might the word "profession" be characterized in an early modern context in comparison with the sense in which we now understand its application in the concept of a "new profession"? In connection with the law, Prest attempts a broad idea of what the word signified in this period: a non-manual, non-commercial occupation sharing some measure of institutional self-regulation and reliance upon bookish skills or training.⁴³ The one element of Prest's definition yet to be properly implemented in the first decade of the seventeenth century was institutional self-regulation. The legal profession was amorphous and diverse up to the mid- to late sixteenth century – in a sense, even to use the term profession is "to indulge in an anachronistic shorthand which makes only a limited contribution to the precise description of reality."⁴⁴ While recognizing that the word "profession" is more general in application in early modern England, I have suggested that the Captain's

⁴³ Prest, *The Rise of the Barristers*, 2. See also *Oxford English Dictionary*, 2nd ed., s.v. "profession": references going back to the sixteenth century define a profession as "A vocation in which a professed knowledge of some department of learning or science is used in its application to the affairs of others or in the practice of an art founded upon it. Applied specifically to the three learned professions of divinity, law and medicine."

⁴⁴ Brooks, "The Common Lawyers in England," 42; *idem*, *Pettyfoggers and Vipers of the Commonwealth*, 12.

distaste for the word “occupation” in *The Phoenix* infers that superiority, notional or real, already attached to the classification of “profession.” This finds support in connection with the law in one of Middleton’s masques, *The World Tost at Tennis* (1619-20). Here, one lawyer gives another his opinion of “our profession.”⁴⁵ As with the Captain’s (misplaced) pride in *The Phoenix*, we find in this text a pride-driven, status-based concept in direct application to the law. The lawyer in the masque describes the legal profession as performing, next to the clergy, “the most grave and honorable function / That gives a kingdom blest.”⁴⁶ This positive characterization of the legal profession does not appear to require its speaker to convey any sense of irony, nor does the speaker’s character suggest that the opinion is to be taken implicitly ironically – the speaker’s earnest attitude to responsible work means that pride is this time not misplaced.

It was not unusual for a writer to express a sentiment about bad lawyers while acknowledging that the vocation of law itself was a good, virtuous one. Robert Herrick saw the potential for individual abuses, but recognized it could be “a dangerous madness to envy generally against lawyers.”⁴⁷ The lyrical apostrophe to law in *The Phoenix* is a significant example of the bad-lawyer / good-law topos. But the prince’s soliloquy only makes explicit what I suggest is implicit in this and other plays in the genre, and it ought not to seem unusual for Middleton.⁴⁸ There *are*

⁴⁵ *The Works of Thomas Middleton*, ed. A. H. Bullen (London, 1885), vii, 187.

⁴⁶ *Ibid.*

⁴⁷ *The Poems of Robert Herrick*, ed. Leonard C. Martin (Oxford: Oxford University Press, 1965), 244.

⁴⁸ Cf. Daniel B. Dodson, “Thomas Middleton’s City Comedies” (Ph.D. dissertation, Columbia University, 1954), 95: “I know of no other instance in Middleton where law receives other than contempt.” Cited in *The Phoenix*, ed. Brooks, 231.

villains, says Phoenix (or one villain, figuratively), but these are only to be expected, and there is no reason to turn isolated bad examples into grand over-generalization:

Thou angel sent amongst us, sober Law,
 Made with meek eyes, persuading action,
 No loud, immodest tongue,
 Voic'd like a virgin, and as chaste from sale,
 Save only to be heard, but not to rail;
 How has abuse deform'd thee to all eyes,
 That where thy virtues sat, thy vices rise?
 Yet why so rashly, for one villain's fault,
 Do I arraign whole man? Admired Law,
 Thy upper parts must need be sacred, pure,
 And incorruptible; they're grave and wise:
 'Tis but the dross beneath 'em, and the clouds
 That get between thy glory and their praise,
 That make the visible and foul eclipse;
 For those that are near to thee are upright,
 As noble in their conscience as their birth;
 Know that damnation is in every bribe,
 And rarely put it from 'em; rate the presenters,
 And scourge 'em with five years' imprisonment,
 For offering but to tempt 'em.
 This is true justice exercis'd and us'd:
 Woe to the giver when the bribe's refus'd!
 'Tis not their will to have law worse than war,
 Where still the poor'st die first;
 To send a man without a sheet to his grave,
 Or bury him in his papers.
 'Tis not their mind it should be, nor to have
 A suit hang longer than a man in chains,
 Let him be ne'er so fasten'd. They least know
 That are above the tedious steps below:
 I thank my time, I do. (I.iv.193-223)

The question “How has abuse deform'd thee to all eyes [?]” may be interpreted in two ways. The obvious interpretation relates to workers in the law who have committed individual abuses, and who thus unjustly give lawyers a bad name in general. But Middleton's question can be interpreted, too, to apply to sensationalizing, generalized negative representations of the legal profession, in which case it is writers who commit the abuse by giving a “deform'd” perception of law and lawyers to all eyes. All of this begins to sound in keeping with the concerns about comedy and writing generally which Jonson expresses in his examples of the genre.

Phoenix praises upright lawyers in the apostrophe, those who would not have “A suit hang longer than a man in chains” (220). The allusion points to the arbitrary nature of the penal system, but Falso’s subsequent observation that the old “gallant swaggerers” (II.iii.176) are gone demonstrates by means of contrast recognition of a new profession more conscious of efficiency, and this is reinforced by Tangle’s gibe in II.ii about quick dispatch. Another of Tangle’s dismayed comments on the change in the Inns of Court men of the day – “Oh, sir, the property’s altered” (II.iii.177) – is an allusion to a plea associated with Middle Templar Edmund Plowden (1518-85). Plowden is reputed to have once in a while conducted a case in swaggering and dilatory fashion, before the promise of an increased fee promptly made him perk up and perform at full power, with an announcement that the property or case had altered – a story which would become the source for the title of Jonson’s *The Case Is Altered*.⁴⁹ The allusion in *The Phoenix* to the phrase associated with Plowden thus implies in Tangle fond reminiscence for old ways less likely to be found in a better organized and more conscientious new profession.

I suggested that Phoenix’s question “How has abuse deform’d thee to all eyes[?]” could be taken to apply to writers’ abuse in expressing generalized anti-lawyer sentiment. This thesis argues that the representation of lawyers in city comedy is more complex than has hitherto been assumed; in *Twelfth Night*, a different type of comedy, the representation of Malvolio is similarly complex. The treatment of the character makes an interesting parallel for several reasons. He can be viewed as a paradigm of a contemporary preoccupation with status and advancement⁵⁰ – a preoccupation that often features in representations of lawyers in city comedy; the

⁴⁹ Brock says the play was first acted in or around 1598: *A Ben Jonson Companion*, 34.

⁵⁰ See the note on Zagorin: *supra*, 57 n. 174.

character's name connotes malevolence, and city comedy relates to its social context by recognizing the time expressly as "an ill-thinking age."⁵¹ Most of all, there is the complex, fluctuating balance of scorn and sympathy with which an audience may be left if it agrees with Olivia that Malvolio has been "most notoriously abus'd" (V.i.374).⁵² How much sympathy might an audience have for Malvolio? Then or now, depending on how the role is performed, quite a lot, perhaps. He is imprisoned effectively for pomposity, and this might seem a miscarriage of justice – a notorious abuse which can cause an audience half to laugh, half to sympathize. Even then, actresses playing the part of Olivia can inject widely varying degrees of sincerity into the sentiment contained in those few words in V.i – quite in the way that apparent anti-lawyer sentiment can be expressed with anything between bitter seriousness and good-humoured irony.

Malvolio's sore exit line "I'll be reveng'd on the whole pack of you!" (V.i.377) has no analogue in *The Phoenix*, though Tangle's caricature might be viewed as an abuse if taken to apply to all lawyers. Tangle perpetrates notorious abuses of the legal process, and, with Quieto's Puritanical bleeding of him, is himself notoriously abused in the end. How much sympathy might the audience have for Tangle? Not much, perhaps. Middleton provides a degree of sympathy, with the old swaggerer's vicissitudinous forty-five years in the law, but he appears uninterested in giving Tangle or Falso the real pathos one can find in Malvolio. Phoenix's pomposity and Quieto's abject "bare in purse and back" Puritanism might estrange their

⁵¹ *A Mad World, My Masters* (III.i.105); cf. Jonson in *Poetaster*, and Wray CJ in *Stanhope v. Blythe* (1585): see *supra*, 87.

⁵² William Shakespeare, *Twelfth Night, or What You Will*, ed. J. M. Lothian and T. W. Craik (Walton-Thames: Thomas Nelson & Sons, 1997), 152.

characters from the audience, but Tangle nonetheless needs untangling. If the strange bleeding ritual seems to offer a prospect of rendering Tangle as spiritually and mentally harmless as Quietos, it is only because Tangle and his kind are over, and the good rapier and dagger men are waiting in the wings. It is they who will, in effect, be revenged on the whole pack of Tangles, Falsos and Quietos, while seeking only to reform their relationship with, not to oppose, their Phoenix. The apparent anti-lawyer sentiment in Middleton's play is consequently an example of negative fashioning of old and unqualified practitioners to which the rising new profession had an antipathy, and, as such, the play may be taken implicitly to favour young Inns of Court men.

3.2 Law and monarchy in *The Phoenix*

On one level, *The Phoenix* is a simple variation on the conventional disguised-duke plot.⁵³ But it is possible to find topical significance in the play's detail. Prince Phoenix oversees the administration of his idea of justice; he identifies himself on occasion with God and the law, and in exposing Proditor's plot to murder the Duke, Phoenix makes treason and irreligion synonymous: Proditor is guilty of treason for having "irreligiously" persuaded someone to carry out the prospective murder of the sovereign (V.i.71-72). This may have provided some resonance with current affairs

⁵³ Other examples appearing at or around the same time included Marston's *The Malcontent* and *The Fawn*, and Shakespeare's *Measure for Measure*. See Gibbons, *Jacobean City Comedy*, 68-74.

for members of the play's audience. James I had expressed his views on the concept of the divine right of kings in *The Trew Law of Free Monarchies*. A king has a duty to do more than rely on his birthright, said James, even if that birthright is not to be questioned.⁵⁴ A connection becomes apparent early on in Middleton's play, where Phoenix announces: "That king stands sur'st who by his virtues rises / More than by birth or blood" (I.i.130-1). The play can be seen to flatter the new King, since Phoenix is the upholder of law.⁵⁵ And the prince's apostrophe to law may have held appeal for the Inns of Court men in the audience, who would have shared the antipathy to Tangle and Falso. But Phoenix's assumptions about law and justice would probably have been at variance ideologically with the ideas of at least some lawyers in the audience for the play, if disagreements between law and monarchy could be misunderstood.

According to an older view of political history, lawyers, led by Coke, were allies of the gentry in a struggle to wrest political power from the absolutist-minded James.⁵⁶ Gibbons adopts this view, saying that lawyers became the spearhead of the opposition to absolute government.⁵⁷ But this can seem now a too-simple description of a complex situation, or perhaps even a mistaken view. In practice, while there were disagreements in Parliament in the early seventeenth century, most sessions began with goodwill and a spirit of compromise on both sides.⁵⁸ Even hypothetically, the

⁵⁴ *King James VI and I: Political Writings*, 64

⁵⁵ It may have been intended for James's Christmas celebrations in 1603; it was, in any event, probably performed before the king on 20 February 1604: Brooks, ed. *The Phoenix*, 24-63.

⁵⁶ Paraphrased from Brooks, "The Common Lawyers in England," 59.

⁵⁷ *Jacobean City Comedy*, 36; following Wallace Notestein, *The Winning of the Initiative by the House of Commons* (Oxford: Oxford University Press, 1924), 47-8. See *supra*, 25-6.

⁵⁸ According to Brooks, "The Common Lawyers in England," 59. See also Conrad Russell, *Parliaments and English Politics, 1621-1629* (Oxford: Clarendon Press, 1979), 8.

idea that lawyers *opposed* the King might seem doubtful; lawyers, of all people, would have been sufficiently aware of the legal penalties for criticizing, let alone opposing kingly rule.⁵⁹ Despite Coke's dismissal from judicial office in 1616, he was not really an opponent of kingly rule. He is fairly characterized as possessing an "idiosyncratic but profoundly conservative" view of the common law as arbiter between King and parliament;⁶⁰ his conservatism made him the King's servant, but the outspoken, idiosyncratic articulation of his commitment to the development of the common law could make opposition apparent if not real.

The way in which *The Phoenix* can be seen to articulate an apt-to-be-misunderstood problem between law and monarchy is where Proditor and Falso complain before the Duke in the closing scene that the disguised prince "has his hand fix'd at the throat of law" (V.i.113). I contend that this has to do with a disagreement about ideas between law and monarchy. The play can be interpreted to represent some lawyers' desire for recognizing a distinction between law and justice – an aim complicated by the King's ideas about monarchical supremacy. In the play, the accusation that Phoenix has his hand fixed at the throat of the law suggests that the law (as distinct from justice) will be badly administered if it remains arbitrarily determinable by the-King-in-the-name-of-God. An inference of this kind would have resembled both treason and heresy in early modern England. Jurisprudential statements of the period characteristically invoked God, probably not only because they had to, but because of genuine faith. Coke's pronouncements do this, but he begins to articulate ideas about legal thinking which can be viewed as quite new. Orthodox legal thinking is represented in *The Phoenix*. The prince's apostrophe to

⁵⁹ Prest, *The Rise of the Barristers*, 269. See also Russell, *The Crisis of Parliaments*, 296.

⁶⁰ Prest, *Inns of Court*, 229.

law, as but one example drawn from the play, is based on belief in the existence of a “true justice” (I.iv.213), and this corresponds with accepted legal thinking:

Laws framed by man are either just or unjust. If they be just, they have the power of binding in conscience, from the eternal law whence they are derived, according to Proverbs viii. 15: “By Me kings reign, and lawgivers decree just things.” . . . On the other hand, laws may be unjust in two ways: first by being contrary to human good . . . [Such laws] are acts of violence rather than laws, because, as Augustine says, “A law that is not just, seems to be no law at all.” . . . Secondly, laws may be unjust through being opposed to the divine good . . . and laws of this kind must nowise be observed because, as stated in Acts v. 29, “we ought to obey God rather than men.”⁶¹

Aquinas’s *Summa Theologica* was a key text in the prevailing jurisprudential view of James’s time, and this extract from it sets out some of the main ideas on which the doctrine of natural law is founded. But in spite of the debate about what is just and unjust (and therefore law or seemingly no law) in Aquinas, and for all of the prince’s assumption in administering self-defined justice in *The Phoenix*, nothing causes conflict in legal thinking like the conflation of law and justice. The play can be seen to articulate a desire for establishing a clear distinction between the two – a distinction complicated by the King’s claim to absolute supremacy in the legal scheme, and I suggest that Middleton’s notion of a hand fixed at the throat of the law coincides with a jurisprudential shift: from the doctrine of natural law to a more modern concept of what we would now call legal positivism. Even today, some people can find some themselves put off by the key ideas of legal positivism, notably the point that “it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though they have often done so.”⁶² The legal positivist’s problem with natural law is well summarized by Alf Ross:

⁶¹ Thomas Aquinas, *Summa Theologica* Q96 A4; cited in Howard Davies and David Holdcroft, *Jurisprudence: Texts and Commentary* (London: Butterworths, 1991), 158-9.

⁶² H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1993), 181-2.

To invoke justice is the same thing as banging on the table: an emotional expression which turns one's demands into an absolute postulate. That is no proper way to mutual understanding. . . . The ideology of justice leads to implacability and conflict, since on the one hand it incites to the belief that one's demand is not merely the expression of a certain interest in conflict with opposing interests, but that it possesses a higher, absolute validity.⁶³

James made absolute postulates. In doing so, he relied on judgment to which he felt God and nature gave higher, absolute validity. But it was the King's assumption that the law was grounded in ordinary reason, so that any logical mind might understand it, that drew a response from Coke which, while embracing God and nature, distinguished legal thinking from ordinary ethical thinking:

. . . true it was, that God had endowed His Majesty with excellent science, and great endowments of nature; but His Majesty was not learned in the laws of his realm of England, and causes which concern the life, or inheritance, or goods, or fortunes of his subjects, are not to be decided by natural reason but by the artificial reason and judgment of law, which law is an act which requires long study and experience, before that a man can attain cognizance of it.⁶⁴

If Coke's concept of the law's "artificial reason" seemed in part the wilful cultivation of a mystique, his questioning of "natural reason" as the basis for judging legal causes looks now as forthright as then possible a move towards legal positivism. Serious ideas about law in *The Phoenix* are delivered mainly by the prince, whose tone when expressing ideas of legal orthodoxy has been characterized as "rather pompous."⁶⁵

Elsewhere, the Puritan ex-lawyer Quieto has a kind of proselytizing "born-again" self-

⁶³ *On Law and Justice* (London: Stevens and Sons, 1958), 274-5.

⁶⁴ *Prohibitions del Roy* (1607) 12 Co Rep 63; M. Allen, B. Thompson, and B. Walsh, *Cases and Materials on Constitutional and Administrative Law*, 2nd ed. (London: Blackstone, 1992), 133. Coke was capable of some inconsistency when speaking on the matter of the sovereign and the "law of nature": Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642* (London: Macmillan, 1992), 128-9.

⁶⁵ Parker, "Middleton's Experiments with Comedy and Judgement," 179.

righteousness which is unlikely ever to have earned an audience's fondness. The point in this connection is that, while *The Phoenix* has been dismissed for being an over-moralizing example of a Middleton yet to mature into the writer he would become,⁶⁶ the characters doing the moralizing seem often deliberately less-than-credible instructors. An audience may have felt persuaded to feel as distanced from the ostensibly good Phoenix and Quietio as from the obviously bad Tangle and Falso. Perhaps the most serious line about the law – the one about the prince's hand being fixed at the law's throat – has to be made (as if in disguise, as the prince has been) by the play's unambiguous villain, wife-buyer and would-be regicide Proditor. Even if the fixed-hand line is thought to be given to a real villain in order to discredit the view, the point is still made. It may be more likely that the line is given to Proditor in order to protect the writer, who makes a point, however obliquely, about separating law and monarchy, or more specifically separating law and justice (the latter being inseparable from God and monarchy).

To conclude, I have argued that *The Phoenix* reflects a change in legal thinking, and Coke's and other lawyers' problem was not with monarchy itself, but with the conflation of law and justice. For this reason, the play contributes to an idea of Inns of Court lawyers being expert in a distinct discipline (involving something more than natural reason), and this amounts to a positive representation for those present in the audience.

⁶⁶ Ibid.

Chapter four

Law Tricks for Inns of Court lawyers

In this chapter I say, contrary to authoritative opinion, that John Day's comedy Law Tricks contains legal matter. I argue that there are at least three ways in which this is the case. Firstly, the play's main action turns on a bought-divorce, and the law on marriage dissolution was a hotly debated topic in early modern England. Secondly, while authoritative opinion describes the play's legal usages as meaningless, gratuitous, and incorrect, I contend that they have a purpose; several are allusions to the positive concept of legal fictions (a term capable of translation into the more commercially appealing Law Tricks). Thirdly, I propose that the play's incorporation of a negative attitude to the study of law has the purpose of showing that this kind of sentiment had become redundant as the universities superseded the Inns of Chancery as places of preparatory education for the Inns of Court. It is hoped that the chapter goes towards accomplishing two things. One, through examination of the supposedly meaningless legal usages, that it shows the play to involve an ironic turnaround of anti-lawyer sentiment on client-litigants themselves. Two, by recognizing the play's deceptive approach to its legal matter, that Day should be seen as more than a conventional playwright cashing in on the development of city comedy.

John Day's comedy *Law Tricks* has more to live up to today than it did in its own time. Day wrote for the same boy company in the same playhouse at the same time as Jonson and Marston.¹ But in spite of – or because of – the illustrious company he was in, Day is regarded as an inferior writer of conventional plays cashing in on a still developing trend.² A critic struggling to be kind about Day called him “a talent somewhat out of sympathy with the main poetic current of his day.”³ The opinion is reproduced in the nineteenth century *Works* (the only reprint to date), and it seems at odds with the twentieth century classification of Day as mere cash-in playwright. *Law Tricks* shows that the nineteenth century critic was right – Day was out of sympathy

¹ The play was performed in 1604 by the Children of the Queen's Revels at the Blackfriars. M. E. Borish's suggestion that the play was first produced in 1608 has not found acceptance: “John Day's *Law Tricks* and George Wilkins,” *Modern Philology*, vol. 34, no. 3 (Feb., 1937), 256.

² Gibbons, *Jacobean City Comedy*, 112-16.

³ E. W. Gosse, cited in *The Works of John Day*, ed. Bullen, 16.

with contemporary writing. But this makes him something other than a cash-in playwright. If failing properly to follow convention of one sort or another worked against Day in the past, it is what should make him more interesting now.⁴

Since *Law Tricks* is a less well-known (and in some ways an unusual) example of city comedy, I now provide a summary of the plot as an aid to reading the chapter. The play is set in the court of the Duke of Genoa. As it begins, selfish young aristocrat Horatio congratulates himself on the success so far of his plan to win the Countess, with whom he has an over-reaching infatuation. Horatio's rumours about the blameless Countess have given her husband, cynical old Count Lurdo, the excuse he was looking for to divorce her. The Countess is the sister of the good Duke of Genoa, Ferneze. The Duke is distressed by news of his sister's apparent disgrace, and his distress is compounded when he learns from his son, the scholarly Polymetes, that his daughter Emilia has been abducted while overseas by Turkish raiders. No sooner does the Duke leave Genoa to go in search of his daughter, than she returns, having made good her own escape. Emilia has developed a taste for adventure, and she enters in her father's absence into a series of frivolous episodes under the assumed name Tristella. Horatio presumes the Countess will be glad of his advances following the fall from public grace he orchestrated; he takes it as humiliation when instead she asserts her integrity and rejects him. When Lurdo learns that his ex-wife is managing to convince friends in high places that the divorce was groundless, he does not have to try very hard to persuade the stung Horatio to kill the Countess. The Duke returns

⁴ *Law Tricks* has received little attention in the last few decades. See Elmer Milton McDonald, *John Day's coterie comedy* (Ph.D. dissertation, University of Virginia, 1970); Gary Paul Lehmann, *A critical analysis of the works of John Day* (Ph.D. dissertation, Duke University, Durham, North Carolina, 1980); Eric Collum, "'Sinister shifts' and 'secret exceptions': early modern legal hermeneutics and John Day's *Law Tricks*," *Explorations in Renaissance Culture*, vol. 28, no. 2 (2002), 285-311.

disguised to Genoa to find his son Polymetes transformed unaccountably from scholar into Gallant. A funeral for the apparently murdered Countess triggers the play's dénouement. The unexpected hero of the play is Horatio's page, who has privately sided with the Countess against his master. The page's father is an apothecary, which goes to explain how, when Horatio believes he has poisoned the Countess, she turns out to have been given instead a potion, substituted by the page, that removes signs of life only temporarily (apparently a similar concoction to the one dispensed in IV.i of *Romeo and Juliet*). Horatio is driven to confess to murder when the Countess plays her own ghost, and Lurdo's incitement is revealed. Believing his sister dead, the Duke sentences Horatio and Lurdo to be sealed (alive) in the tomb with her corpse. The revelation that the Countess is alive brings, by contrast, mild treatment for the villains of the piece. Lurdo is to remain married to the Countess (whose honour is restored, but who is obviously too virtuous a partner for Lurdo); Horatio is banished from the Duke's court, but not from the country. Finally, the Duke commends Horatio's page, whose "merrit is not triuiall, / That turnd to mirth a Sceane so tragicall" (V.552-3).

As with other examples of city comedy, certain allusions in *Law Tricks* imply that the Genoa setting is a thinly disguised version of London. Points concerning law and legal history relate, therefore, to English law only, and not to Genoese law. Examples of the play's allusions to areas of London are most prominent in Act IV. We find there, for example, a report from Emilia's page that: "there fell such an Inundation of waters in the moneth of Iuly, about the third of dog-dayes, that the Owers and Scullers that vse to worke in the Thames, rowd ouer houses & landed their faires in the middle Ile of Paules" (IV.250-3). Shortly after, the gallant Julio elaborates a London-based conceit: "had not Charing-crosse a tall bow legd Gent: taken vp the matter, tis thought Westminster stones would haue bin too hot for some

of them: and in parting the fray, Charing-crosse got such a box o'the eare, that hee will carry it to his deathday" (IV.280-3). Setting in the context of English law is shown with Julio's allusion to Charing Cross "looking westward for Termers" (IV.285).

4.1 Legal matter in *Law Tricks*

The plot of *Law Tricks* is authoritatively considered to contain no legal matter whatsoever.⁵ Certainly, the word "law" is used numerous times with little gain in meaning, and legal terms are used (sometimes) gratuitously or incorrectly.⁶ But I contend that there is legal matter in *Law Tricks*, and that certain parts of it favour Inns of Court lawyers.

At a straightforward level, the main action turns from beginning to end on legal matter in that everything that happens in the play is driven by Count Lurdo's bought-divorce from the Countess. The divorce is an illegal contrivance. Lurdo confides in his wife's admirer, Horatio, the news that he obtained a divorce by paying off witnesses and judges:

You know the cause on't, two sufficient men
Swore her a harlot, and the partiall Bench
Inspirde by my good Angels (Angels wings⁷
Sweepe a cleare passage to the seat of Kings)
Seald our diuorce (I.41-5).

⁵ Gibbons, *Jacobean City Comedy*, 112.

⁶ Ibid.

⁷ *Oxford English Dictionary*, 2nd ed., s.v. "angel", no. 6; an angel was an English gold coin, called more fully at first the Angel-Noble, being originally a new issue of the Noble, having as its device the archangel Michael standing upon, and piercing the dragon. The same pun is made in *The Phoenix* (I.vi.29-30), *The Merry Wives of Windsor* (I.iii.60), *Eastward Ho!* (II.iii.52), and *Volpone* (II.iv.21).

The indissolubility of marriage had been a topic of widespread legal debate since the clash between Henry VIII and Pope Clement VII over the King's first marriage to Katharine of Aragon.⁸ Lurdo's nod of approval to an unnamed serial husband – "I know one man hath coffind vp sixe wiues" (I.232) – must have made members of the audience think of Henry.⁹ Marriage was the most important contract into which two people could enter; yet, unlike any other contract, there was, for the majority of ordinary people, no way out of it if it proved unsatisfactory. The suggestion as *Law Tricks* opens that the divorce court was open to bribery and corruption as a means to removing impediments to divorce was not a negative one for Inns of Court lawyers. The church courts had jurisdiction over matters of divorce, and this was the province of the civilians. If Genoa is to be taken anatopically for London, though, the witnesses to Lurdo's wife's alleged adultery could have been punished for more than perjury in the church courts. A law manual suggests that a defamation action may have been available at common law – peculiarly, in the city alone: "To call a married Wife, Whore, will not hold Action at Common Law; but in London, by custom it hath."¹⁰

In the play, the validity of Lurdo's marriage is reasserted by his brother-in-law, the Duke Ferneze, at the last moment (V.544-5). There is nothing to celebrate in the play's marital reunion. Lurdo acquiesces simply in order to avoid a death sentence

⁸ Baker, *An Introduction to Legal History*, 493.

⁹ Even if Anne of Cleves (1515-57) and Catherine Parr (1512-48) outlived Henry. A less than flattering opinion of Henry VIII by an Inns of Court man may be found in *Historie, and Lives of the Kings of England*, published in 1615 by Middle Templar and Recorder of Exeter William Martin (*Poetaster* dedicatee Richard's brother). Martin criticizes Henry for cruelty and avarice. Reprints in 1628 and 1638 show the view was no longer an unutterable one.

¹⁰ *The Practick Part of the Law Shewing the Office of an Attorney And a Guide for Solicitors* (London, 1681), 109.

from the Duke, and the virtuous Countess is reunited with the vicious husband who has once already incited her (failed) murder. This is an unhappy ending masquerading as a happy one. The final line finds Ferneze praising Horatio's page for having "turn'd to mirth a Sceane so tragicall" (V.553), but a lingering dissonance seems clear and deliberate. It is possible to interpret this as a representation of the superiority of the common law as practised by Inns of Court lawyers, over the canon law which was used in the church courts. When England broke with Rome in 1534, some common lawyers had advocated abolition of the church courts; some kind of fusion of canon law and common law was seriously contemplated, but a satisfactory arrangement never arrived, and the church courts continued to operate, managing to distance themselves sufficiently from theological debates surrounding the Reformation.¹¹ If the marital reunion at the end of *Law Tricks* is seen as dissonantly unhappy, therefore, canon law could be inferred to be represented as inferior to the common law, in the sense that the former was unable (more than unwilling) to evolve as the latter could and did, by means of socially harmonizing developments introduced by way of legal fiction.

It is easy to see how a play called *Law Tricks* could be expected to be negative about lawyers. The title implies a stereotypical anti-lawyer sentiment – the law is open to tricks, and lawyers are conniving tricksters. Literary critics are inclined to cling to the greedy, conniving stereotype, being content with generalizations of this type: "many [early seventeenth century] lawyers must have used . . . tricks to defraud

¹¹ See H. B. Vaisey, *The Canon Law of the Church of England* (London: The Society for Promoting Christian Knowledge, 1947), 45-6; Geoffrey R. Elton, *Reform and Renewal: Thomas Cromwell and the Common Weal* (Cambridge: Cambridge University Press, 1973), 129-39; Baker, *An Introduction to Legal History*, 130-1. On canon law generally, see Richard H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge: Cambridge University Press, 1990).

or intimidate clients into unnecessary litigation.”¹² More than a century after the production of *Law Tricks*, an anonymous writer gave his supposedly non-fiction text a title similar in character to that of the play: *Law Quibbles. Or, A Treatise of the Evasions, Tricks, Turns and Quibbles, commonly used in the Profession of the Law, to the Prejudice of Clients, and others*. The writer claims novelty for the phenomenon of the law trick in the book’s short Preface, which is worth reading for two reasons. Firstly, for its earnest-seeming expression of a stereotypical attitude to both trick and profession – an attitude surviving from Day’s time, but distinguishable here by the lack of comic irony; secondly, for a standard disclaimer made towards the end:

The many Quibbles and Evasions, of late introduc’d in the Practice of the Law, are sufficient to Influence any one of the Profession (especially a Person who has suffer’d by them) to undertake a Treatise that may expose such Artifices, and give the world a necessary Caution against them: And this being a Topick which is wholly New, and of great Importance, all sorts of Persons are in some Degree interested therein.

For these Reasons, I have ventured upon the Subject; and if I have laid open some Things in the Profession, more than they may Approve whose Interest it is to oppose the Discovery, this will be an Advantage to the Publick; and the Publick Good ought in all Cases to be principally regarded. But tho’ I have inserted many of the Tricks and Quirks in the Law, I have not endeavour’d at, neither do I pretend to mention them All: The following work is not compos’d of Quibbles alone; for it contains the various Turns and Subtilties to be met with in the Practice and Abuse of our Laws; what People may do, and what they may not do; what will be Binding, and what will not be so; with many extraordinary and curious Cases, proper to be known as a Guard against Impositions.

I have no where thrown any Reflections on the Profession of the Law, which is in it self both Laudable and Honourable: If any Persons are expos’d, they are the foul Practisers only, who are a Scandal to it. That this is True, is Manifest throughout.¹³

This notion of legal tricks and turns was not wholly or even partly new, of course. If there is any surprise here, it is that the text was not published a hundred or more years earlier. The author is himself a trickster for more reasons than this. The text’s title

¹² Example from E. F. J. Tucker, “Ruggle’s *Ignoramus* and Humanistic Criticism of the Common Law,” *Renaissance Quarterly*, vol. 30, no. 3 (Autumn, 1977), 350.

¹³ *Law Quibbles. Or, A Treatise of the Evasions, Tricks, Turns and Quibbles, commonly used in the Profession of the Law, to the Prejudice of Clients, and others* (London, 1724), Preface.

promises prejudicial tricks *commonly* used, before the Preface limits the inferred slur on a laudable and honourable profession to its “foul Practisers only.” And these foul practitioners are apparently rare enough for the individual case still to occasion a scandal. In terms of the book’s substance, what is held out as an exposé of corrupt practices turns out to be instead a fairly routine, alphabetically-arranged law primer. It is too slight and uninformed a volume to be of interest to students or practitioners of the law, so a note of skulduggery is injected to excite the interest (and tempt open the purses) of potential lay readers. It is effectively an old-fashioned instruction manual under cover of old-fashioned coney-catching pamphlet-style sensation.

It is possible to find inbuilt ambiguity in the title *Law Tricks*. The phrase sounds like a pejorative one. Tricks and truth seem mutually exclusive, and the ordinary view of the law is that it should be seen to be concerned with the truth, the whole truth and nothing but. But several legal terms used in the play connect in various ways with the jurisprudentially positive concept of legal fictions (I shall shortly examine three examples). The presence of these terms may be taken to support an interpretation of “law tricks” as a satirically flavoured, more ambiguous version of the term legal fictions. Again, the idea of a legal *fiction* may seem at odds with conventional lay conceptions of law – fiction connotes falsehood; falsehood infers dishonesty. But in the history of English law fictions were a significant aid to the legal system. They were not intended to mislead; they were allowed in the courts only where their operation was manifestly fair, and they would produce a result that was just in the view of the court – as one legal scholar felt the need to point out: “the aim of fictions is not deception; it is to keep records straight.”¹⁴

¹⁴ S. F. C. Milsom, “Trespass from Henry III to Edward III,” *Law Quarterly Review*, 74 (1958), 223; cf. Baker, *An Introduction to Legal History*, 202. Legal fictions of the kind allowed by the courts were

Since I suggest that the title *Law Tricks* has an association with the concept of legal fictions, I now explain exactly what it is that gives the fiction a legally positive connotation. In the historical sense proposed, the fiction is usefully described as a thing by which the law could be brought into harmony with the present needs of a changing society; in effect, it functioned to make change while pretending not to.¹⁵ A notable positive example is the one that benefited Ben Jonson in 1599, after he killed the actor Gabriel Spencer – the extension of clerical immunity, of so-called benefit of clergy, that enabled the courts to avoid imposing the death penalty. Records go some way, incidentally, to diminishing (if not breaking) another legal stereotype: that of the inclement, death-dispensing judge. By the end of the sixteenth century, the royal judges had shown mercy by way of applying this fiction, allowing benefit of clergy to as many as half of all men convicted of felony.¹⁶ The subtitle of *Law Tricks – or, Who Would Have Thought It?* – indicates that an audience should expect something of the unexpected, and playing on a difference between legal (positive) and lay (conventionally negative) understanding of fictions and tricks may well have been the surprise that attached (and was meant to attach) to the main title for Inns of Court men in the audience. I suggest this interpretation of the subtitle is a little more plausible

abolished in the 1850s, though in a wide sense we still find fictions applied in the law with the implying of terms and presumptions.

¹⁵ Paraphrased from Sir Henry Maine, *Ancient Law* (1861); see Baker, *An Introduction to Legal History*, 196 n. 6.

¹⁶ J. S. Cockburn, *Calendar of Assize Records: Home Circuit Indictments, Introduction* (London: H.M.S.O., 1985), 117-121: 47% of all convicts for felony between 1559 and 1624 were allowed benefit of clergy. The courts applied a legal fiction by treating as a “clerk” anyone who could read. They extended the privilege to people who could not read, or who were disqualified from joining the clergy (so women could be spared the death penalty): Baker, *An Introduction to Legal History*, 201, 514 n. 72.

than that inferred by Gibbons' response to the play, by which the implied surprise would seem to be that its allusions to law are all knowingly empty of meaning.

Old Count Lurdo is the main legal-figure in *Law Tricks*. Lurdo bears some similarity to Tangle in *The Phoenix*. He is not a lawyer; he is an old courtier with pretensions to being learned in the law. Three times Lurdo is given the phrase "I know the law,"¹⁷ and of sixteen other direct allusions to the law, all but two are given to him. The character's name derives presumably from the first-person conjugation of the Latin verb "*ludere*," giving a meaning of I play, I sport – I trick. There are apt similarities, as well, to "*luror*" (ghastliness), "*ludio*" (actor), and "*lurco*" (glutton). One way in which Day may be seen to make an allusion to legal fictions in the play is in giving Lurdo the title Count. The title can be taken as a pun – one capable of influencing lawyers' perceptions of the character. In legal history, the development of the count saw the beginning of pleading in the English courts. The count could not itself be called a legal fiction, but it was the blank page on which any number of legal fictions and other developments would come to be written.

In the royal courts in the thirteenth and fourteenth centuries, a count was the plaintiff's opening pleading. The purpose of the count (the name derives from the French word for a tale or story) was to give particulars of a demand or complaint summarized in an originating writ.¹⁸ The count saw the beginning of increased sophistication in legal thought, in that it came to generate hypothetical and flexible issues in law which only a court could decide. These were points deemed beyond the remit (and generally the understanding) of jurors, who would remain responsible for

¹⁷ Day, *Law Tricks*, I.71; V.147; V.150.

¹⁸ Information concerning the history of the count in court-pleading is informed by Baker, ch. 5 of *An Introduction to Legal History*, 71-96.

decisions on matters only of fact, not of law. Following a tortuous history, the count went out of use by the fifteenth century. But the numerous manuscript collections of counts and defences compiled since its inception remained in educational use in the Inns of Court into the sixteenth and early seventeenth centuries.¹⁹ Thus, there may have been some resonance for young Inns of Court lawyers and students in the audience in hearing Lurdo, the old Count, spew out the language of the jargon-heavy old counts they were required to study in the Inns. The audience is reminded of Lurdo's rank on eight occasions over the course of the play,²⁰ and the pun is made explicit in an exchange between Horatio and Lurdo in act IV – even with apparently appropriate typography in the original 1608 printing, where upper-case title Count is punned against lower-case pleading count (a simultaneous punning allusion to legal fictions may be seen to be implied by the association of “trickes” with lower-case pleading count):

Horatio

To all these bad mis-fortunes should the Count vse any trickes?

Lurdo

Ha? a talkes of trickes,

Of count and tricks, for trickes and count are twins (IV.453-5).

¹⁹ These were called the *Narrationes* and *Novae Narrationes* (derived from the Latin for counts – tales or stories – and new counts): *ibid.*, 76, 177.

²⁰ Horatio addresses Lurdo as Count soon after he enters, at I.35; Polymetes' servant addresses Lurdo as Count as Act II opens; Emilia refers to Lurdo as Count at II.97; Emilia pretends not to know Lurdo is present when referring to him as the Count at III.44; Polymetes alludes to Count Lurdo at III.203; Horatio sets up Lurdo's pun at IV.453; Emilia refers to the Count at V.427; finally, the Duke Ferneze remarks on the pallor of the Count at V.476.

So, Lurdo may be taken to embody, by way of his title, an element from the history of court pleading which was by the date of the play already obsolete (inferring that the old Count represents an outdated figure). And probably only those educated in the Inns of Court could have been expected to get the court pleading pun made explicit in the exchange reproduced above.

If any one thing could be said to signify the notion of the law trick as frivolous objection, it is the demurrer. The word “demurrer” is mentioned five times in *Law Tricks*.²¹ In law French, the term meant to abide or dwell, and, though the concept changed over time, by the late sixteenth century and early seventeenth century a party to a legal action could demur (be it with just cause, or by way of vexatious law trick); that is, they could admit all the facts a complainant alleged, and claim that they were not obliged by law to respond since the facts amounted to nothing. Lurdo is ever ready to demur when trouble is afoot; when, for example, he hears that his would-be ex-wife is spreading news of his having obtained a divorce without good reason, his immediate response is “We must demurre of this, ile haue a trick” (III.299). Yet demurrer is among Lurdo’s pejorative terms of rebuttal when he finds it necessary to shout down the inconvenient claims of others; for instance, he attempts to dismiss the Duke’s daughter Emilia’s allegations against him: “Ha, . . . Law-trickes, words of Art [,] Demurrs and quillets” (V.307). Lurdo abuses the concept to comic effect, though it was common lawyers themselves that had attempted to limit the abuse of a useful tool in the increasingly sophisticated set of “tricks” at their disposal – “attempted” being

²¹ At III.299, Lurdo says a demurrer will silence the Countess; at V.160, Lurdo claims a demurrer when the Duke accuses him of leading his son astray; at V.308, Lurdo dismisses Emilia’s complaint as a groundless demurrer; at V.494, Lurdo seeks a demurrer in disclaiming involvement in the supposed poisoning of his (supposed) ex-wife; at V.514, the Duke advises Lurdo to leave behind the idea of demurrer.

the operative word. The *Statute of Jeofails* of 1540 was passed with the aim of preventing objections on trivial errors of form in court pleading – minor technicalities.²² This would be achieved by requiring that any formal exception could be taken only by way of demurrer; that is, a party making a challenge on what seemed a minor point of legal form needed to admit all of the facts and let the whole case rest on the technicality. Those involved in the legislative process assumed this would seem so great a risk to litigants that there would surely be few takers. They were wrong. The idea backfired – instead of reducing the number of challenges on technicality, the number only increased. Litigants were becoming more militant, more venturesome. Being forced to risk all on one kind of law trick – having been expected by efficiency-minded legislators not to – served only to make litigants embrace the gamble. By the end of Day’s play, the duke Ferneze calls for the end of Lurdo’s demurs. Lurdo seems about to be closed in the tomb of the wife he apparently played a part in killing as Ferneze directs him to: “Leaue demurrs, / Close them into that graue, that dead mans Inne, / Pitie true vertue should be lodg’d with sinne” (V.511-516). After mention of demurs, the notion of a “dead man’s Inne” can seem to play on Lurdo’s quasi-lawyer status, and allusion attaches more easily to the in-decline Inns of Chancery. Inns of Court men in the audience could consequently feel distanced from, and pleased by, the negative representation of old Lurdo, first simply by being qualified, and second by being members of the emphatically superior Inns.

Gibbons condemned *Law Tricks* for gratuitous or incorrect use of legal terms. But to content oneself that they are there without reason would seem to be to accept that Day was remarkably careless. The incorrect usages, often Latin terms, come

²² Statute 32 Henry VIII, c. 30. Information concerning the *Statute of Jeofails* informed by Baker, *An Introduction to Legal History*, 82-6.

characteristically from Lurdo, sometimes with bewildering results. When, for example, the Duke of Genoa accuses Lurdo of having led his son into prodigal ways the Count expresses righteous indignation in a burst of verbiage:

Non tenet in bocardo I demurre,
Do but send out your *Iterum summeas*,
Or *capias vt legatum* to attach,
And bring him *viua voce* tongue to tongue,
And *vi & armis* Ile reuenge this wrong (V.160-164).

These usages can be seen as gratuitous or incorrect, but there is purpose and meaning – even legal meaning of an allusive kind. Lurdo is being covertly insolent by suggesting the *capias* as an alternative to the summons in calling for the prince Polymetes to be present. The *capias (ad respondendum)* was one of a number of methods in the so-called “mesne” process (intermediate – between writ and judgment) for securing the presence of a defendant outlawed for his failure to appear before a court:²³ the suggestion that a prince could be outlawed is what makes it insolent. Lurdo seems to use the phrase *vi et armis* (“with force and arms”) simply as a way of emphasizing his indignation. *Vi et armis* was a form of writ, though. Lay members of the contemporary audience would have known this, for it was commonly used, and there is no denying that writs of *vi et armis* were used fictitiously.²⁴ This is an example of a legal fiction widely (and with just purpose) allowed by the courts. In the case of *vi et armis*, the legal fiction was a way of circumventing undue limitation on complainants hopeful of making claims in good faith. *Vi et armis* was a writ attached to actions of trespass – historically a far broader category than it is today, the word deriving from the law-French for the Latin *transgressio*, or wrongdoing. By the

²³ Baker, *An Introduction to Legal History*, 64.

²⁴ *Ibid.*, 61.

fourteenth century, a situation arose whereby non-violent claims of trespass for amounts in excess of forty shillings could not, strictly, be heard in any jurisdiction. It would have been unjust for apparently legitimate claims to be denied even the possibility of remedy, so a lawyer needed to facilitate a claim by being creative with the notion of force – not to do so would have been an impediment to fairness. So, in the case of *vi et armis*, where a remedy for a justified claim was not directly available at law, actions came to be taken under the pretence that force was involved. Claims had to be made, for example, that horses had been injured “with force and arms” where blacksmith defendants had accidentally injured horses when attempting to shoe them.²⁵ A remedy was not available for a claim not involving the element of force.

Lurdo misuses the term *Habeas Corpus* when conspiring with Horatio to do away with the Countess, who has too much to say about the bought-divorce for Lurdo’s liking. There is purpose and meaning to this again, with the possibility of an esoteric piece of plot-driven irony for law students:

We must demurre of this, ile haue a tricke
By way of Habeas Corpus to remoue
This talking Gossip (III.299-301).

Since Lurdo is deliberately represented as a quasi-lawyer, one with mere pretensions to knowing the law, it would be out of character if the old trickster was consistently correct in his application of legal terms. In any event, because the term *Habeas Corpus* is much more familiar in a legal context, it is possible to look too hard for legal meaning where it appears, and to forget that the phrase may have meaning in a

²⁵ Robert C. Palmer, *English Law in the Age of the Black Death 1348-1381: a transformation of governance and law* (Chapel Hill, North Carolina: University of North Carolina Press, 1993), 364-5; Milsom, “Trespass from Henry III to Edward III,” 220-1; Baker, *An Introduction to Legal History*, 61 n. 37.

non-legal sense. In this case, a Latin joke has been missed. Lurdo is at this point the flustered and blustering inciter of, and conspirator to, murder. The Latin *Habeas Corpus* translates in English to “have the body,” so Lurdo’s apparent misapplication of the term in the legal sense in which it has long been most familiar becomes an apt euphemism in the context of a murder plot, made more amusing for its incongruous legal pretension. Having the Countess’s (dead) body will rid Lurdo and Horatio of her inconvenient protestations of innocence. Day’s interest in etymology and semantic ambiguity can be recognized here by the fact that “gossip” is used both in the common early modern sense of a familiar acquaintance, and in the sense still really quite new in 1604,²⁶ yet more familiar today, of an idle talker, or newsmonger. Lurdo uses the term *Habeas Corpus* again near the play’s end, now in hope of making a quick getaway:

. . . ide giue my goods,
For a good habeas Corpus, to remoue me
Into another Countrie (V.511-13).

Perhaps another reason that Day twice invokes *Habeas Corpus* is because it is an example of a legal concept with its own inbuilt paradox, a fact of which at least some contemporary law students could be expected to have been aware.²⁷ The term *Habeas Corpus* was at first used in court documents for the purpose not of releasing people

²⁶ *Oxford English Dictionary*, 2nd ed., s.v. “gossip”; the examples for the idle talker definition date back to the second half of the sixteenth century: references are made to Lyly’s *Euphues* (1579) and to Dekker’s *Old Fortunatus* (1600). The *O.E.D.* notes that both the familiar acquaintance definition and the idle talker definition came to be attached mostly to women.

²⁷ *Habeas Corpus* and its associations were discussed in a contemporary legal text: Lincoln’s Inn lawyer and jurist William Lambarde’s *Eirenarcha* (London, 1581), 436. Richardson notes the text’s importance: *A History of the Inns of Court*, 198; cf. Baker, *An Introduction to Legal History*, 472.

from prison but of securing their presence in custody.²⁸ In terms of legal etymology, then, there seems a mild joke that Lurdo should be careful what he wishes for. He seeks release, but the court has “a good habeas Corpus” in the historical sense that it has him in custody.

The suggestion in Lurdo’s case is that he has had no formal education in the law at all, making him an object of disdain for Inns of Court lawyers. He has acted as a scrivener, but he has never been a lawyer. The oath of the Scriveners’ Company of London tells us that the drafting of contracts and conveyances was the main work of the scrivener, but the drafting of documents was not peculiarly a legal role, so scriveners that were not also attorneys ought not to be classed as lawyers.²⁹ Lurdo had a crooked beginning, but there seems from Day an implicit note of sympathy for a class of man born at the low end of the so-called “middling sort,”³⁰ one “Borne to no hopes,” who manages still to make his own luck by various means, only one of which is amateur legal practice:

The fitter for my turne, I was a man
Borne to no hopes, but a few shreds of witt
A Grammer Scholler, then a Scriuenor.
Dealing for priuate vse twixt man and man,
and by close brookeage set them at debate:
Incenst them vnto Law, which to maintaine,

²⁸ The term appeared in the judicial writs of *capias* and *latitat*, in Chancery subpoenas, and in the *habeas corpora juratorum* to compel jurors; Baker, *An Introduction to Legal History*, 146.

²⁹ At least ten of the scriveners admitted to the Scrivener’s Company of London between 1550 and 1640 practised as attorneys. See Brooks, “The Common Lawyers in England,” 49-50; cf. J. H. Baker, “The English Legal Profession, 1450-1550,” in *Lawyers in Early Modern Europe and America*, ed. Wilfrid Prest (London: Croom Helm, 1981), 27, 38 n. 46.

³⁰ See Christopher Brooks, “Professions, Ideology and the Middling Sort in the Late Sixteenth and Early Seventeenth Centuries,” in *The Middling Sort of People: Culture, Society and Politics in England, 1550-1800*, ed. J. Barry and C. Brooks (London: Macmillan, 1994), 113-140.

I lent them money vpon Lands and Plate,
 After the rate of seauen-score in the hundred.
 Then did I learne to countefeit mens hands,
 Noble-mens armes, interline Euidences,
 Make false conueyances, yet with a trick,
 Close and cock-sure, I cony-catch'd the world.
 Hauing scrap'd prettie wealth, I fell in League
 With my first wife, and (though I say't my selfe)
 She had good dooings, her backe commings in
 And priuate goings out, rais'd me aloft:
 I followed cases of the law abroad,
 and she wae merrie with her friends at home (III.90-105).

There is another possibility of sympathy for Lurdo when he is made the butt of an unsympathetic character's cold wit. The duke's daughter Emilia enters into a series of frivolous episodes under the assumed name Tristella when her father goes overseas in order to rescue her from Turkish marauders. Emilia's quest for adventure, while her father risks his life to find her, establishes her as an insensitive character. Her disdain for Lurdo emphasizes his mere quasi-lawyer status, and corresponds effectively with the sentiments of the Inns of Court men who, by the first decade of the seventeenth century, had expelled non-barrister members to the Inns of Chancery. At the same time, Emilia's self-important manner can seem to steer an audience in the direction of sympathizing with Lurdo, who could only have done so well for himself by resorting to illegitimate means – as Emilia puts it, to “bastard actions”:

Lord what a broaking Aduocate is this?
 He was some Squiers Scriuenor, and hath scrapt
 Gentilitie out of Attorneys fees:
 His bastard actions proue him such a one,
 For true worth scornes to turne Camelion (II.199-203).

Though Lurdo is not a qualified lawyer, his servant Winifride praises her master as still: “a skilfull Lawyer that can stand out in [a] case at a dead lift, and one that if need were, could make a crazy action sound” (III.6-8). The young gentlemen of the Inns of Court would have scorned Lurdo's imposture, but quasi-lawyer impostors could

become talented through experience, and in demand for their ability to vex opponents.³¹ This much may be obvious, yet the possibility seems to be forgotten when lawyers are caricatured as exploiting clients into unnecessarily extended litigation. It was, rather, clients that demanded law tricks by the late sixteenth and early seventeenth centuries – new, more venturesome clients ready to gamble all on a demur, or look for a legal fiction to make an ostensibly crazy action sound.³²

4.2 Polymetes' attitude to studying law

Polymetes is characterized at the beginning of *Law Tricks* as a lofty student-scholar. He enters in act I carrying a book, and complaining about a decline in standards and respect for learning (I.118-136). Students of any discipline may have felt invited to consider their own view on the matter. But before Polymetes' arrival, his father the Duke has been talking with Lurdo about how the young scholar might put all his learning to good use. For Lurdo, there is only one vocation worth pursuing for a young man: "A parlous youth, sharpe and sattyricall, / Would a but spend some study in the law, / A would proue a passing subtle Barrister" (I.108-110). Paternal encouragement in this direction would have met with recognition from some of the Inns of Court men in the play's audience. Some lawyers actually set out a wish in their wills that their sons study law. Middle Templar William Booth included his plans for his son straightforwardly among his final wishes: "I desire that my eldest

³¹ Regarding manorial stewards, town country attorneys, and those who took up legal practice on their own initiative, see Brooks, "The Common Lawyers in England," 48-51.

³² For examples, see Baker, *An Introduction to Legal History*, 82, 86.

son William may study the common law.”³³ Gray’s Inn man Edward Rolt left it to his executors to make a decision about sending “such of [his four sons] as shall be thought most fit” to study at the Inns of Court.³⁴ John Marston’s father, himself a successful barrister of the Middle Temple, appears to have suspected before his death in 1599 that his son’s interest in writing might take him away from a full-time legal career: “I have taken great pains with delight and hope that my son would have profited in the study of the law, but man purposeth and God disposeth, His will be done.”³⁵

In *Law Tricks*, Polymetes’ attitude to his father’s wish resembles that of Italian Renaissance scholars who had to be persuaded into studying the law, disdaining it as an intellectual discipline. Petrarch, for example, claimed that his seven years studying law had been time wasted, after his father burnt his copies of literary works “as impediments to that study which was supposed to be the source of fat earnings.”³⁶ Later, Florentine chancellor Leonardo Bruni, recalling his own experience, approved a description of legal studies as the “yawning science.”³⁷ The Italian humanists’ disdain was directed against study of the civil law, but in Elizabethan and Jacobean England

³³ National Archives, PROB11, 6 Lee. Prest discusses these provisions in *The Rise of the Barristers*, 130-1.

³⁴ National Archives, PROB11, 105 Cope.

³⁵ National Archives, PROB11, 82 Kidd.

³⁶ Morris G. Bishop, *Petrarch and his World* (London: Chatto & Windus, 1964), 26-7; see Prest, *The Rise of the Barristers*, 186.

³⁷ Geoffrey R. Elton, *Renaissance and Reformation 1300-1648*, 2nd ed. (London: Macmillan, 1968), 47; cf. P. P. Vergerius, noted in William H. Woodward, *Vittorino Da Feltre and other Humanist Educators* (Cambridge: Cambridge University Press, 1912), 108; Prest, *The Rise of the Barristers*, 186 n. 4.

the sentiment came to be directed typically against study of the common law.³⁸ For Erasmus, no discipline could be further removed from true learning.³⁹ His friend Thomas More expressed agreement on at least one occasion,⁴⁰ but the author of *Utopia* could be prone to surprising ambiguity, of course. Abraham Fraunce refuted the claim that the study of law was barbarous and difficult, insisting in *The Lawiers Logike* (1588) that with proper methodology, good teaching, and able students, it was as interesting, and as easily mastered, as other disciplines.⁴¹ Legal historians tend to agree that Fraunce's book seems to have had no impact on lawyers, though, owing perhaps to the abstract and impractical character of his attempt to apply philosophical methods to legal analysis.⁴² One account of the common law's prevalence over its competitors saw this kind of criticism as spurring on Inns of Court lawyers in Elizabeth's and James's reigns to fashion the tougher, fiercely independent identity that would overcome attempts to incorporate the common law within rival jurisdictions.⁴³

Day includes an example of the bad-lawyer / good-law topos in *Law Tricks*. When Lurdo and Ferneze urge Polymetes to study law and become a lawyer, the young scholar's reply looks like a piece of standard anti-lawyer sentiment:

³⁸ For example, see Harrison: *supra*, 9.

³⁹ *Opus Epistolarum Des. Erasmi Roterdami*, ed. P. S. and H. M. Allen (1906), iv., 17; cited in Chambers, *Thomas More*, 85.

⁴⁰ J. H. Hexter, *More's "Utopia": The biography of an idea* (Westport, Connecticut: Greenwood Press, 1976), 109.

⁴¹ Abraham Fraunce, *The Lawiers Logike* (London, 1588), Preface.

⁴² According to Prest, *The Inns of Court*, 146; cf. Richardson, *A History of the Inns of Court*, 151-2.

⁴³ F. W. Maitland, *English Law and the Renaissance* (Cambridge: University Press, 1901), *passim*; see also Prest, *The Inns of Court*, 187-8.

Of all Land monsters, some that beare that name,
 Might well be sparde, whose vultur Avarice
 Devours men living: they of all the rest,
 Deale most with Angells, & yet prove least blest (I.151-4).⁴⁴

At least one apparently puritan-inclined lawyer was ambivalent about the potential consequences of a life which could be seen to be taken up sinfully with money-making. Middle Temple barrister Simonds D'Ewes gave up his legal career in order, he claimed, "to prepare [his] way to a better life . . . avoiding those two dangerous rocks of avarice and ambition."⁴⁵ In the play, Lurdo's caution to "Wrong not the law" (I.155) makes the scholar switch quickly from anti-lawyer sentiment to encomium of the law:

I cannot, tis divine:
 And ile compare it to a golden chaine,
 That linkes the body of a common-wealth,
 Into a firme and formall Union.
 It holds the sword, with an impartiall hand,
 Curbs in the raines of an unruly land,
 Tis twin'd to Justice, and with holy zeale,
 Rightly determines the poore mans appeale.
 And those that are lawes true administrators,
 Are fathers to the wrong'd, heaven's Justicers (I.155-65).

The sudden switch from bad-lawyer to good-law sentiment can seem a little mechanical. On Gibbons' view of Day, the routine treatment may be explained as one more example of the work of a mere conventional playwright. Leinwand's view of city comedy generally is more persuasively applied in this connection.⁴⁶ Day can be interpreted to have rehearsed the bad-lawyer / good-law topos with the purpose of

⁴⁴ Day repeats the pun on *angel* used only a hundred lines before in relation to Lurdo's bought divorce; see *supra*, 142 n. 7.

⁴⁵ *The Autobiography and Correspondence of Sir Simonds D'Ewes*, ed. J. O. Halliwell (1845), i, 307; cited in Prest, *The Rise of the Barristers*, 289.

⁴⁶ See *supra*, 57.

inviting audiences to be sceptical of a paradox about lawyers and their vocation that may well by this time have come to seem stale – certainly to young Inns of Court connoisseurs of the drama such as the character Spark in the induction to *The Careless Shepherdess*.⁴⁷

Polymetes' negative attitude is not to be taken at face value, in any event. I suggest that Day's characterization is influenced by two main things. Firstly, it would not have escaped attention that the Italian humanists' disdain for studying the "yawning science" of the civil law was re-directed opportunistically by England's civilians and their supporters against study of the common law.⁴⁸ Secondly, while legal studies at the universities had traditionally been confined to the civil law, the universities were by now in the process of taking over from the Inns of Chancery in their role as preparatory schools for the Inns of Court. In *Law Tricks*, therefore, Day can be interpreted as reflecting the moderation of a former notional rivalry between Inns of Court lawyers and university student-scholars, now that the two are no longer strictly vocationally distinct.

Day's choice of name for Polymetes makes him out of place with the play's other characters. In the characterization of his self-image, as well, Polymetes is a type out of place in the play. He seems to see himself as following in the tradition of great Italian scholars, but his incongruous, classical-sounding name reflects his pretentiousness. The "mete" in Polymetes may be taken to signify a limit – there is a suggestion that, for all his high ideas, there are limits (many-limits if we read "Poly-

⁴⁷ See *supra*, 3. For an earlier example of the bad-lawyer / good-law topos, see the apostrophe to law in *The Phoenix*, *supra*, 129-30.

⁴⁸ Ruggle's *Ignoramus* is the most commonly cited example; see also Barnaby Googe, *Eglogs, Epitaphes and Sonettes*, ed. E. Arber (London, 1871), 12.

metes” in this way) on what he seems willing or able actually to do in practical terms. Then again, the “mete” could seem a suffixed form of the prefix “meta-”, giving a sense of (much) change of position or condition. Polymetes does undergo a change in the play, from scholar to gallant; the relationship between university student-scholars and Inns of Court lawyers undergoes much change at this time, as well. Allusions in the play to the value of using Latin may be connected with a one-time rivalry between university scholars and students of the common law who had formerly arrived at the Inns of Court typically from the Inns of Chancery. Lurdo is impressed by the pompous student-scholar’s mastery of the language: “And a speakes Latin too, / Truly and so few Lawyers vse to doe” (I.112-13).⁴⁹ But, as with Tangle in *The Phoenix*, Lurdo’s use of Latin looks at this time like a way of portraying his approach to the law as old-fashioned. As Fulbeck observed, Latin had ceased to be as important as it once had been in the common law: “I do not think any exquisite skill of the Latine tongue to be necessarie in a Lawyer.”⁵⁰

Day makes a deceptively casual parallel in the play between lawyers and poets. The implied condemnation of both demonstrates that any apparent criticism is ironic, and to be taken light-heartedly. The cynical Lurdo balks at the proverbial wisdom that so-called plain dealing in the law is something of great value: “he that useth it shall die a begger” (II.46). Polymetes’ servant Adam mocks Lurdo’s extension of the proverb in what seems a throwaway remark: “That addition was made”, he says, “by some Lawyer or Poet, to avoid which, they cannot indure plaine-dealing should have a hand in any of their actions” (II.47-9). Poetry was frowned

⁴⁹ Where Lurdo says “so few Lawyers vse to doe”, the tense relates to the present.

⁵⁰ *A Direction or Preparative to the study of the Lawe*, 23.

upon by the Puritans for its seductive power,⁵¹ and the ostensibly casual association of lawyer and poet unites the two as skilled persuaders. The nature of the implied criticism is capable of seeming more comic because of an ironic note of conspiracy in Day's uniting of poet and lawyer and his condemning of both – not only the vocation of the lawyer contingent of his audience, but of his own vocation of poet-writer. Even the nature of the criticism is comic, since progressive complexity in both legal thinking (for example, in the positive concept of legal fictions) and in literature made the concept of “plain dealing” seem increasingly a contingent, variable standard.

Polymetes' attitude to studying law is a paradoxical one in the first decade of the seventeenth century. Inns of Court students once typically underwent preparatory education in the Inns of Chancery; increasingly they arrived straight from the universities. Polymetes is a caricature of the type of university-scholar that had been the rival of the Inns of Court student – dedicated to abstruse learning for its own sake, disdainful of the common law as a discipline, owing possibly to resentment of the possibility of making money in the law. Day seems to suggest in the Inns of Court students' favour that learning is worthwhile only to the extent that it can be put to use, and the message to the end is that no subject is as useful to study as the law:

Polymetes

. . . what thinke you of Schollership now?

Lurdo

As of the law, good as it may be vsd (V.542-3).

⁵¹ Prompting a famous response: Sir Philip Sidney, *An Apology for Poetry, or the Defence of Poesy*, 3rd ed., ed. Geoffrey Shepherd, rev. ed. R. W. Maslen (Manchester: Manchester University Press, 2002).

Chapter five

Wife-selling in early modern comedy

In this chapter I examine the representation in Elizabethan and Jacobean literature of wife-selling.¹ I argue that the treatment of the topic may be taken to show a positive attitude to the law, going beyond the good-law half of the conventional bad-lawyer / good-law topos. Wife-selling is inevitably viewed now as a dehumanizing example of female oppression. But I contend that representations in early modern texts show a complex attitude to this unofficial practice. Such representations demonstrate a respect for legal responsibility – an aspiration among ordinary people to conduct their lives according to the organizing principles of the law. I suggest that allusions to wife-selling in literature are implicitly positive about the law in a way that could be expected to have appealed to an audience’s lawyer-contingent.

Wife-selling was not only a useful symbol of satirical fiction in early modern England. Evidence exists to show that wife-sale did happen in the period. The two main lines of investigation into the practice give only passing mention to literary representations. These are the anthropological study of Samuel Pyeatt Menefee, and the historical study of E. P. Thompson.² Because the preponderance of evidence derives from the eighteenth and nineteenth centuries, both writers devote their commentary in large part to examples subsequent to 1760. The scarcity of surviving evidence from the early modern period, and the lack of detail about the recorded cases, makes literary representations of phenomenological interest.

I begin by examining representations of wife-selling in Elizabethan and Jacobean literature. In the second part of the chapter, I argue that attitudes to the practice as they are represented in the literature of the time may be seen as positive in relation to the law. In addition, I explain how literary representations may be

¹ This chapter formed the basis of a paper presented on 11 June 2008 at Brasenose College, Oxford.

² Samuel Pyeatt Menefee, *Wives for Sale: An ethnographic study of British popular divorce* (Oxford: Basil Blackwell, 1981); E. P. Thompson, *Customs in Common* (London: Merlin Press, 1991).

interpreted to suggest that wife-sale was more common in the period than the surviving evidence suggests, and that the practice was different in character from what it would become in the eighteenth and nineteenth centuries.

5.1 Wife-selling in Elizabethan and Jacobean literature

In *The Phoenix*, a man listens as a deed of conveyance is read aloud for his approval. The deed is drafted in the kind of terms ordinarily applied to the transfer of an interest in land, but the item of prospective sale is the man's wife. The deed begins:

To all good and honest Christian people, to whom this present writing shall come: know you for a certain, that I, Captain, for and in the consideration of the sum of five hundred crowns, have clearly bargained, sold, given, granted, assigned, and set over, and by these presents do clearly bargain, sell, give, grant, assign, and set over, all the right, estate, title, interest, demand, possession, and term of years to come, which I the said Captain have, or ought to have . . . [i]n and to Madonna Castiza, my most virtuous, modest, loving, and obedient wife (II.ii.85-93, 95-6).

Middleton's play contains the most striking early modern literary representation of wife-sale. Was it the first dramatic depiction of the practice? Menefee thought so.³ But this is not the case. Two other dramatic depictions of wife-sale compete as possible firsts. An earlier attempt to engage in wife-selling occurs in Thomas Dekker's *The Shoemakers' Holiday*. Dekker's play, first performed in 1599, precedes *The Phoenix* by four or five years. In act V, scene ii of *The Shoemakers' Holiday*, the city gentleman Hammon offers to pay shoemaker Ralph Dampport twenty pounds or more for his wife Jane. Dekker's comedy might, therefore, be regarded as the first dramatic depiction of the proposition of one man selling his wife to another man. But Dekker depicts a love-struck would-be purchaser, where Middleton provides in *The*

³ *Wives for Sale*, 198.

Phoenix the distinctly unsentimental idea of an initiating vendor. Both *The Phoenix* and *The Shoemakers' Holiday* contain only attempted wife-sales: both sales fail. The young prince Phoenix prevents the sale, while in Dekker's play, Ralph Dampport refuses the city gent's offer, more out of inverse snobbery than any ordinary husbandly bond. The first dramatic depiction of wife-sale to go to completion (to extend the conveyancing analogy) appears to be in the anonymous play *The Honest Lawyer*, written by one S. S., and performed in 1615, a decade after *The Phoenix*. In this play, a villainous character called Vaster sells his wife Florence for fifty pounds in order to recover his losses (I.i.112-15) – not to another man but to the bawd Mistress Marmaid, who expects to make five hundred back on Florence in her first month as a prostitute.

Shortly before any of these dramatic depictions, wife-sale featured in non-dramatic literature – in a 1592 pamphlet by Robert Greene: *The Black Book's Messenger*. Greene makes himself the sensationalizing ghost-autobiographer of one Ned Browne, a real-life rogue about sixteenth century London town.⁴ A so-called "Pleasant Tale" finds Browne part-exchanging wives with another man, Browne promising, disingenuously, to pay the other man the sum of five pounds into the bargain. Greene implicitly disapproves the transaction on two counts: on a serious level (and with a note of deliberate titillation), for the capriciously erotic nature of the decision to exchange rather than sell; on a less serious level, for Browne's dishonesty about the five pounds made a condition of the bargain. *The Black Book's Messenger*

⁴ Robert Greene, *The Blacke Books Messenger*, in *Coney-Catching and Bawdy Baskets*, ed. Gāmini Salgādo (Harmondsworth: Penguin, 1972), 325. Cf. Keith Thomas, "The Double Standard," *Journal of the History of Ideas*, vol. 20, no. 2 (Apr., 1959), 213. See also Christopher Hill, "Sex, Marriage, and the Family in England", *The Economic History Review*, New Series, vol. 31, no. 3 (Aug., 1978), 458 n. 2.

belongs to the genre of Elizabethan rogue literature, which has been thought unreliable in its content, since it characteristically delivers sensational material on the pretext of offering sober advice on how to avoid falling prey to tricksters and cheats. But Greene took his inspiration from factual sources. This was demonstrated in recent years in relation to another pamphlet, *A Notable Discovery of Cozenage* (1591).⁵ That text included reference to the contemporary practice of crossbiting. Crossbiting involved a prostitute luring a client to her room and bed in order for male allies to burst in and demand money on threat of public exposure, and Greene's account of the practice accords with descriptions in contemporary court records.⁶ It is feasible, then, that Greene's ghost-autobiographical wife-sale in *The Black Book's Messenger* was likewise inspired by a factual source – his rogue subject, Ned Browne, whose pleasant tale of a part-exchange wife had no apparent fictional precedent.

Preoccupation with an abstract concept of commodity is central to wife-selling in early modern literature. In *The Shoemakers' Holiday*, the artisan Ralph is indignant about Hammon's implicit condescension, but he shows no surprise about the idea that a city gentleman might expect him to sell his wife "for commodity" (V.ii.85). The concept of commodity threatened at the time to become ubiquitous. In 1601, John Wheeler suggested in his *Treatise of Commerce* that more and more unlikely things

⁵ Bernard Capp, "The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England," *Past and Present*, No. 162 (Feb., 1999), 87-88. Greene's *A Notable Discovery of Cozenage* is reprinted in A. V. Judges, ed., *The Elizabethan Underworld: A Collection of Tudor and Early Stuart Tracts and Ballads* (London: George Routledge & Sons, 1930), 137-142.

⁶ Capp, "The Double Standard Revisited," 88.

began to seem capable of sale.⁷ In an expanding market, said Wheeler, “all things come into Commerce, and pass into Traffic . . . yea there are some found so subtle and cunning merchants, that they persuade and induce men to suffer themselves to be bought and sold”.⁸ And if men could be bought and sold,⁹ this is one area where early modern women achieved equal treatment at the same time. Shakespeare makes the point expressly in *Measure for Measure*, where Elbow scorns the idea of “buy[ing] and sell[ing] men and women like beasts” (III.ii.1-4). The discourse of commerce extends to allusions in early modern literature to the treatment of wives as temporarily saleable commodities. In John Fletcher’s *Wit without Money*, the servant Lance, refusing to accept the prospect that his old master’s house may fall, tells the master’s Gallant son that he will pawn his wife before he’ll see it happen (I.i.312). Other representations in the period are more in the nature of pandering than substitutes for divorce. Corvino seeks to win the favour of Volpone by loaning out his wife Celia for favours (II.ii and III.ii). In the same year (1605), Dekker and Middleton’s *The Honest Whore, Part Two* has Matheo attempting to persuade his wife Bellafront to return to prostitution so he can live off of immoral earnings. And in *The Devil is an Ass*, Jonson has Fitzdottrel loan out his wife for a quarter of an hour’s conversation in return for a cloak (I.ii).¹⁰

What of the fact that wife-sale should be represented typically in the genre of comedy in the early modern period? This contrasts with Hardy’s tragic treatment of

⁷ John Wheeler, *A Treatise of Commerce, wherein are shewed the commodities arising by a wel ordered and ruled Trade* (Middelburgh, 1601), 3; on Wheeler, see Douglas Bruster, *Drama and the Market in the Age of Shakespeare* (Cambridge: Cambridge University Press, 1992), 41.

⁸ Wheeler, *A Treatise of Commerce*, 3.

⁹ E. P. Thompson finds nineteenth century evidence of husband-sales: *Customs in Common*, 459 n. 3.

¹⁰ See Leggatt, *Citizen Comedy in the Age of Shakespeare*, 144.

the sale of Susan Henchard in his 1886 novel *The Mayor of Casterbridge*.¹¹ There was nothing unusual about tackling a serious issue in early modern comic literature.¹² Middleton figures most prominently in the list of texts containing representations of wife-selling with part-autobiographical reason. His stepfather Thomas Harvey was a seaman, like the wife-selling Captain of *The Phoenix*. Harvey did not attempt to sell Middleton's mother, but he dragged her and her issue through vexatious and protracted litigation with the purpose of gaining control of her property. The playwright's mother was, fortunately, not as meek as Castiza, her hypothetical analogue in *The Phoenix*. She managed to hold on to some of her property and Harvey was forced out of the country.¹³

Middleton has the lawyer Knavesby seek to sell his wife, if only temporarily, in exchange for money and preferment in *Anything for a Quiet Life* (1621). If barristers had a reputation for being wealthy, there were some surprising exceptions. A 1579 list of readers and chief barristers of the Inns of Court shows that, where comment *is* made on means, there are those "of good lyvyng," "of greate gayne, very welthie" and simply "riche," but four are expressly described as "pore," despite one of them being "very lerned, . . . smaly practised, [yet] worthie of greate practise."¹⁴

¹¹ A report reproduced in Hardy's *Commonplace Book* (No. 3) was taken from the *Dorset County Chronicle* of 6 December 1827: "Selling Wife: At Buckland, nr. Frome, a labring man named Charles Pearce sold his wife to shoemaker Elton for £5 and delivered her in a halter in the public street. She seemed very willing. Bells rang": *The Life and Death of the Mayor of Casterbridge: A Story of a Man of Character* (London: Macmillan, 1974), 26, 355.

¹² See *supra*, 39.

¹³ P. G. Phialas, "Middleton's Early Contact with the Law," *Studies in Philology*, lii (1955), 186-94. Point concerning the autobiographical parallel summarized in Heinemann, *Puritanism and Theatre*, 69.

¹⁴ *A Calendar of the Inner Temple Records*, i, 470-1.

There are instances of marriage-plans attached to financial gain and advancement in the law, but lawyers were not alone in this at the time, of course. Marriage preparations for some families in the seventeenth century are said to have resembled negotiations for a trade treaty rather than the preparations for the marriage of two human beings.¹⁵ Duke of Buckingham George Villiers seems to have been involved somehow or other in several marriages attached to advancement in the law. Coke is thought to have coerced his daughter Frances into marrying Villiers' brother with a view to regaining favour after his dismissal from judicial office in 1616.¹⁶ In 1621, Chief Justice Sir James Ley of Lincoln's Inn, then aged seventy-one, married Villiers' seventeen-year-old niece in order "to be of the kindred."¹⁷ And rumour had it that Sir Thomas Richardson of Lincoln's Inn was promoted to Chief Justice of Common Pleas by way of reward for marrying Villiers' relation Lady Elizabeth Ashburnham.¹⁸ But lawyers were capable as anyone at any time of being ruled by heart more than head in connection with marriage. After his wife Mary died in 1614, Henry Sherfield of Lincoln's Inn wrote to his brother insisting he would not remarry only for the purpose of paying off his debts:

I cannot term the selling of my body to be any other than a most base, vile and abominable thing and no other thing should I do by such a marriage as I am harkened to by your self and others.¹⁹

¹⁵ For example, see *The Autobiography and Correspondence of Sir Simonds D'Ewes*, 307. See also Knights, *Drama and Society in the Age of Jonson*, 126.

¹⁶ *Letters written by John Chamberlain during the reign of Queen Elizabeth*, ii, 381. Cited in Prest, *The Rise of the Barristers*, 119.

¹⁷ *Ibid.*

¹⁸ *Diary of Walter Yonge, Esq., written at Colyton and Axminster, Co. Devon, from 1604 to 1628*, ed. George Roberts (London: J. B. Nichols & Son, 1848), 40-1. See Prest, *The Rise of the Barristers*, 119.

¹⁹ Hampshire Record Office, 44M69, Box S13; cited in Prest, *The Rise of the Barristers*, 122, n. 87.

Even when Sherfield did remarry in 1617, taking on his new wife Rebecca's children from a previous marriage contributed to continued financial problems, and by the time he died in 1634 Sherfield was some £6,000 in debt.²⁰

Mistress Knavesby in *Anything for a Quiet Life* is no compliant, submissive example of early modern womanhood in her husband's plans to sell her. She prevents her own sale, and succeeds in destabilizing the patriarchal order in a sharp and articulate rebuke of her would-be purchaser and ostensible social superior, Lord Beaumont. His Lordship has, says Mistress Knavesby, "corrupt[ed] a Husband [by] stat[ing] him a Pandor / To his own wife, by vertue of a Lease" (III.ii.156-7). This kind of characterization perhaps reflects a view of lawyers' wives being potentially more independent in spirit on account of their husbands' frequent absence from home on legal business. After Lincoln's Inn man Thomas Thornton's wife Elizabeth died in 1604, he wrote that: "She only governed the house . . . and received and paid all charges, her husband meddling with no charge at home; . . . [and] in a right cause she was stout and of great carriage."²¹

I now consider the significance of literary representations of wife-sale in their wider social context.

5.2 Wife-selling in early modern England

Wife-sale did happen in early modern England, if the surviving evidence is scarce and lacking in detail. Of an arguable 387 recorded cases in the British Isles, evidence

²⁰ See Prest, *The Rise of the Barristers*, 390.

²¹ National Archives/Northamptonshire Record Office, Thornton 2251; cited in Prest, *The Rise of the Barristers*, 124, n. 93; cf. Thompson, *Customs in Common*, 460-1.

survives of only seven examples from the early modern period. The places and dates are as follows: (i) London, before 24 November 1553; (ii) Rickmansworth, Hertfordshire, before 3 November 1584; (iii) Great Warley, Essex, 1585; (iv) Fife, Scotland, 15 August 1613; (v) Stirling, Scotland, before 31 December 1638; (vi) Near Warwick, Warwickshire, c. December-January 1643; (vii) Humble, East Lothian, Scotland, before 25 October, 1646.²² Wife-sale was illegal in early modern England, as it would have been in any Christian country. When a case was discovered, the ecclesiastical courts had jurisdiction for prosecuting it as a moral offence.²³ As in *The Phoenix*, where the prince takes to task the selling Captain and the would-be purchaser Proditor, the law charged the husband and purchaser alone – not the wife – with the offence.²⁴ And the canon law of the ecclesiastical courts was not concerned, as the common law arguably was, with avoiding rigidity, and facilitating the needs of a changing society.

Why bother to sell a wife, as the Captain attempts to in *The Phoenix*? Why not simply desert, disappear, even marry someone else? This was an option. It is not

²² Menefee, *Wives for Sale*, 211-59. Cf. Thompson, *Customs in Common*, 408-9. The earliest purported record derives from Scotland or Ireland in July to November 1073. The detail derives from a complaint by Pope Gregory VII to Lanfranc: cited in A. O. Anderson, *Early Sources of Scottish History*, vol. 2 (Edinburgh, 1922), 74. See also Martin Ingram, *Church Courts, Sex and Marriage in England, 1570-1640* (Cambridge: Cambridge University Press, 1987), 207 n. 47. Thanks to Martin Ingram for his comments on the paper mentioned at n. 1.

²³ The 1836 edition of Blackstone's *Commentaries*, edited by Christian, refers expressly to wife-selling in a footnote to "Offences Against God and Religion": Menefee, *Wives for Sale*, 138, 140.

²⁴ This might be interpreted as suggesting that the woman was considered a mere chattel. Menefee suggests an alternate, but less likely, interpretation: that "husband and wife were counted as a single unit, a legal fiction that was responsible for the rule that wives could not be forced to testify against their husbands": Menefee, *Wives for Sale*, 144.

possible to quantify with any degree of real certainty how common desertion was, but the 1570 Norwich census of the poor showed that close to a tenth of the women on poor relief were deserted wives.²⁵ If divorce and re-marriage were effectively impossible for all but the very rich in early modern England, some historians say it was relatively easy for a poor man to desert his wife, move on, and re-marry.²⁶ Lawrence Stone writes of getting the strong impression that the number of bigamists in early modern England must have been quite large.²⁷ But this seems not to take account of the introduction in 1539 of registers of births, marriages and deaths, which saw a move towards increased regulation of marriage, even if problems could continue to arise in connection with marriages which were privately (not publicly) conducted. Privately conducted marriages were punishable in late-Tudor England, but it was not only the poorer members of society who engaged in them. Sir Edward Coke, attorney-general in 1598, married his second wife in a private house.²⁸ The

²⁵ John F. Pound, *The Norwich Census of the Poor, 1570* (Norfolk Record Society Publications, Vol. 40), 18. See also Lawrence Stone, *Road to Divorce: England 1530-1987* (Oxford: Oxford University Press, 2002), 142 n. 2.

²⁶ *De facto* divorce, if the church prohibited it *de jure*; Hill, "Sex, Marriage, and the Family in England," 458. See J. A. Sharp, "Crime and Delinquency in an Essex Parish, 1600-40," in *Crime in England, 1550-1800*, ed. J. S. Cockburn (London: Methuen, 1977), 99-100.

²⁷ Stone, *Road to Divorce*, 142.

²⁸ See "Clandestine Marriages," in Baker, *An Introduction to Legal History*, 4th ed., 481-3. For a discussion of early modern England's regulation of marriage, see Catherine Belsey, "Alice Arden's Crime," in *New Historicism and Renaissance Drama*, ed. R. Wilson and R. Dutton (London: Longman, 1994), 138-42.

move towards increased regulation of marriage coincided with a tendency for many people, in the context of the Reformation, to think in more liberal terms about it.²⁹

Official marriage carried legal obligations: a husband had responsibility for his wife's upkeep and for her actions, and a husband's failure to perform his obligation could result in his being classed as a vagrant.³⁰ Simple desertion showed no attempt to deal with the responsibility attached to marriage. The church authorities would, through the sixteenth and early seventeenth centuries, compel couples of middling status and below to stay together. Churchwardens were required to report married couples living separately, and an example can be found in a report by a warden in Chichester, Sussex, who reported two men in 1626: "for that they have not kept company with their wives for the space of half a year, the former leaving her without necessary maintenance, the latter left his with 3 small children upon the parish."³¹ The matter of maintenance was of significance in any such case, but there might be other eventualities, too. A husband would find himself liable to a criminal charge if his absent wife ran up debts, which remained his responsibility officially. Alternatively, wives who could manage to make a new home and earn money might be powerless to

²⁹ This produced a debate about divorce which would remain (excluding the short period of the commonwealth) unresolved at law until the implementation of the *Matrimonial Causes Act 1857*, under which provision was made for the establishment of a secular divorce court; Catherine Belsey, "Alice Arden's Crime," 139; Belsey examines the complexities at 138-142.

³⁰ Menefee, *Wives for Sale*, 8, 262. Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (London: Weidenfeld and Nicolson, 1977), 54.

³¹ *Churchwardens' Presentments*, ed. Hilda Johnstone, Sussex Record Society 49 (1947-8), 62. On the subject of churchwardens' reports, see Stone, *The Family, Sex and Marriage in England*, 5.

prevent the unscrupulous husband who decided to break in and appropriate what he could, since by law all that was hers remained officially his.³²

Wife-sale became a notional form of closure beyond mere separation and desertion. And short of murder: *The Phoenix* reminds its audience that wife-selling is a measure life-sparingly short of a last resort – at least for the would-be wife-selling ship’s Captain: “any way to be rid of her would rid my torment. If all means fail, I’ll kill or poison her and purge my fault at sea. But first I’ll make gentle try of a divorce” (I.ii.142-4). The illegality of wife-sale may go some way to explaining the scarcity of surviving evidence from the early modern period. E. P. Thompson finds historians capable of “underestim[ing] the opacity of the plebeian culture to polite inspection.”³³ This is yet more the case where an unofficial, plainly illegal act is involved. Those who act outside the law tend to put some effort into covering their tracks: they try very hard to avoid leaving evidence. Wife-sale could at least serve to prevent arguably worse immoral and illegal acts involving physical harm: continuing, extreme cruelty, and murder.

It is difficult now to speak of finding in wife-selling anything other than an extreme example of patriarchal female oppression. The practice is capable of being seen at least in part, though, as a responsible attempt to alienate matrimonial responsibility. A notion attached to wife-sale was that a husband sold not only his wife but his responsibility for her.³⁴ This point is reflected in early modern comedy: wife-sale is represented in *The Phoenix* and *The Shoemaker’s Holiday* as a substitute

³² For speculation on the problems, see Stone, *The Family, Sex and Marriage in England*, 143-4.

³³ Thompson’s comment on Stone: *Customs in Common*, 412 n. 4. Hill observed that wife-selling was at least as likely to be a survival as a novelty: “Sex, Marriage, and the Family in England,” 458.

³⁴ Jacqueline Simpson and Steve Roud, *A Dictionary of English Folklore* (Oxford: Oxford University Press, 2000), 390.

for unavailable divorce. Both plays articulate, however ambivalently in Middleton's case, the rights and responsibilities of marriage. In *The Shoemaker's Holiday*, Hammon seeks to buy right to, and responsibility for, Jane, asking her husband: "wilt thou freely cease thy claim in her [?]" (V.ii.82). And the deed in *The Phoenix* aims to assign "all the right, estate, title, interest, demand, possession, and term of years to come." This has been called the rankest scene in *The Phoenix*: "the terms ordinarily applied, in a deed or conveyance, to a piece of real estate are applied to a lady, by her son, to gratify the greed of her husband and the lust of her admirer, Proditor."³⁵ But it is important not to overlook the conscientious side of what is attempted in these negotiations of matrimonial right and responsibility. The Norwich census statistic cited at the beginning of this section shows that desertion was not uncommon in early modern England. And desertion could leave a woman of ordinary means destitute. So, notwithstanding the oppressive character of selling a human being, the practice could be taken to represent an attempt to deal responsibly with the legal responsibility attaching to marriage. Even where the parties to a wife-sale sought to defend themselves in 1646 criminal proceedings, the evidence they gave in hope of exculpating themselves had the character more of a contractual argument about a lack of notional formal propriety. The contractual character of the parties' stories may be interpreted to imply awareness that an attempt to sell a wife was simultaneously an attempt by the seller to alienate legal responsibility for her maintenance and by the buyer to assume it, thus demonstrating the proposed positive, conscientious side of early modern wife-sale. The alleged seller, James Steill, admitted that "he took his

³⁵ Brooks, notes to *The Phoenix*, 265. See Paul S. Clarkson and Clyde T. Warren, *The Law of Property in Shakespeare and the Elizabethan Drama* (Baltimore: Johns Hopkins Press, 1942), 124-5.

wife be [*sic*] the hand to give her to the other, but the other denys that he received her; the woman also denys that her husband took her by the hand to deliver her.”³⁶

The case punished in London in 1553, some fifty years before Middleton wrote *The Phoenix*, is documented in the diary of merchant taylor Henry Machyn: “The xxiiii of November, dyd ryde in a cart Cheken, parsun of sant Nicolas Coldabby, round about London, for he sold ys wyff to a bowcher.”³⁷ The catholic Queen Mary succeeded the protestant Edward VI on 6 July 1553. Since catholic priests were not allowed to marry, Cheken may well have sold his wife out of necessity, and been singled out for punishment a few months into Mary’s reign for being, or having been, a protestant. Even so, the fact that the first early modern wife-seller of which evidence survives was a member of the clergy shows that satire sometimes simply writes itself.

The ecclesiastical courts of the sixteenth century were, in any event, much opposed to wife-sale, and, the courts prosecuted offenders on the very rare occasions,

³⁶ MS. register of the Kirk Session of Humber, 25 October 1646, ch 2/389/1, 33a/b (Scottish Record Office); MS. register of the Kirk Session of Humber, 22 November 1646, ch 2/389/1, 34a (Scottish Record Office); cited in Menefee, *Wives for Sale*, 71.

³⁷ *The Diary of Henry Machyn, Citizen and Merchant Taylor of London, From A. D. 1550 to A. D. 1563*, ed. John Gough Nichols, Camden Society, vol. 42 (London: J. B. Nichols and Son, 1848), 48. See also *Notes & Queries*, 4th Series, Vol. 10, July-December 1872, 311 (author: C.C.), citing W. C. Hazlitt’s edition of John Brand’s *Popular Antiquities of Great Britain* (ii, 63). The public humiliation of the parson recorded by Henry Machyn resembles punishments dispensed in the ecclesiastical courts for persons found guilty of adultery and fornication; offenders might be made to confess their sin publicly before a market-place crowd, or before a Sunday congregation: Stone, *Road to Divorce*, 232. Stone summarizes the penalty imposed by the ecclesiastical courts as the doing of public penance: *ibid.*, 144. Menefee says that some penances were commuted to monetary fines: *Wives for Sale*, 144-5, 299 n. 22.

it is said,³⁸ on which they found them. Yet it seems more plausible to think of the ecclesiastical courts being informed of cases: not necessarily of their finding them. Had the practice not been seen to facilitate an increasing desire for a legitimate way to end a broken-down marriage, it may seem probable that a greater number of cases than seven would have been reported to, and brought before, the church courts. The fact that there are several allusions to wife-selling in Elizabethan and Jacobean literature may likewise be taken as an indication that the practice was not so rare as the surviving evidence of seven cases in the sixteenth and seventeenth centuries has been thought to suggest. True, in *The Phoenix*, the young prince is apparently horrified to find that wife-selling goes on at all. There is a stagy apostrophe to marriage in the play, in which he declares that: “To make sale of a wife [. . . is something] monstrous and foul, / An act abhorr’d in nature, cold in soul” (II.ii.190-1). But the prince has a tendency to declamatory outbursts that paints him as sometimes a bit too worthy. The lawyer-figure in the play, Tangle, is surprised that the young man who engages him in conversation – the disguised prince – should not have heard before of wife-sale. Tangle says directly of wife-sale: “why, . . . ’tis common” (I.iv.254), and he enumerates three recent cases. “Pistor, a baker, sold his wife t’other day to a cheese-monger, that made cake and cheese, another to a cofferer; a third to a common player” (I.iv.252-4). Though there is no evidence to connect these details to actual cases, the express indication that wife-sale is common among ordinary, working people provides at least reasonable doubt that wife-selling was as scarce as the surviving evidence suggests.

When the city gentleman Hammon offers to buy Ralph’s wife in *The Shoemaker’s Holiday*, Ralph is stirred to righteous indignation by what he perceives

³⁸ Stone, *Road to Divorce*, 144.

as a condescending presumption about his morals as an artisan. But no surprise at all attaches to the substance of Hammon's proposal: that a man might be persuaded to sell his wife (V.ii.85). The fact that Ralph is moved by class-based pride, and not at all by surprise about the nature of the offer, is capable of being interpreted to suggest that wife-sale was not a freak occurrence in 1599.

A structural decision Middleton makes about *The Phoenix* supports the idea that wife-selling was not uncommon. In the play, the Captain's prospective wife-sale is first in a sequence of otherwise enduringly familiar practices (such as theft, sexual deviance, and sedition) that the young prince discovers on a mission to search out and rectify vice. It might seem pointless for a satirist to give prime position to a practice that was too rare strictly to qualify as an indictable vice. The exchange between the lawyer-figure and the self-righteous, inexperienced prince may be taken to suggest that wife-selling could be a familiar, efficacious custom to those at, or acquainted through business with, members of the lower end of the social scale. At the same time, more privileged members of society may have wished to be seen to take news of the practice as an assault on their credulity.³⁹

³⁹ Phoenix's incredulity may represent artificial propriety. The apparently high-minded prince demonstrates a moral ambiguity. Having rescued Castiza from being sold, Phoenix's ethical bearing resolves on a discordant note of prurient suspicion; he announces that, "Thus happily prevented, [she's] set free, / Or else made over to adultery" (II.ii.312-13). Phoenix rescues a woman who epitomizes the contemporary ideal of female virtue, yet his closing remark to her demonstrates that even an entirely virtuous woman cannot escape the obsession in early modern drama, and by extension in contemporary society, with cuckoldry. Phoenix's moral ambiguity is again apparent when the would-be wife-selling Captain is reduced to begging for spare change. Phoenix advises his companion Fidelio, after tossing the Captain a few crowns, to "Use slaves like slaves" (II.ii.335).

Representations of wife-sale in early modern comedy suggest that the practice was in several ways different at this time from what it would become in the eighteenth and nineteenth centuries. A great deal more evidence survives from the eighteenth and nineteenth centuries, which are regarded as, in Stone's phrase, the "boom period" of wife-sale.⁴⁰ Hardy's *The Mayor of Casterbridge* reflects something like the public, ritualistic practice wife-selling would become: a practice usually involving, historians say, a procedure based on the sale of cattle.⁴¹ Four things characterize these later cases. One, the event generally took place in a public space, such as a marketplace or an inn. Two, the woman commonly wore a halter around her neck,⁴² possibly a symbolic one, made of ribbon or straw.⁴³ Three, the woman was supposedly willing – it has been suggested that, in most cases from this time, the wife knew and had a

⁴⁰ Stone, *Road to Divorce*, 147.

⁴¹ Stone, *The Family, Sex and Marriage in England*, 40-1. Stone, *The Family, Sex and Marriage in England*, abridged ed., 35-6. Stone, *Road to Divorce*, 144-5, 147. Stone draws the cattle-market parallel closer with his assertion that some early sales even involved the nominal selling of the wife by her weight (*Road to Divorce*, 145). If the word "early" infers or includes "early modern," I am not aware of any examples of this. Perhaps those Victorians who sought to erase wife-sale from British historical memory decided that the best method was to render the practice yet more incredible.

⁴² *Oxford English Dictionary*, 2nd ed., s.v. "halter" (1.a): "A rope, cord, or strap with a noose or head-stall by which horses or cattle are led or fastened up." Examples go back to the year 1000, with literary usages from Gower in 1390 and Heywood in 1546. Cf. 2.a.: "A rope with a noose for hanging malefactors."

⁴³ "It [wife-selling] would appear to have been mainly an 18th-century practice, both rural and urban. There was a common procedure for selling a wife. She would be led to a market place or inn with a symbolic halter around her neck, sometimes made out of ribbon or straw": Alun Howkins, University of Sussex, BBC Radio 4 *Making History* web-page: http://www.bbc.co.uk/education/beyond/factsheets/makhist/makhist7_prog1d.shtml (accessed: 13 August, 2006).

relationship with the man to whom, by mutual agreement, she was going.⁴⁴ And four, the procedure is considered to have been confined for the most part to the poor.⁴⁵

With the exception of the point about a wife knowing the prospective buyer, early modern comedy depicts wife-sale in a different way. It is nowhere a ritualized public spectacle. There is no evidence, in literature or otherwise, of an early modern wife-sale amounting to an open, public invitation to treat.⁴⁶ There is no allusion to women being made to wear halters, like cattle. If this had been the case, satirists would surely have been too pleased to include it in their depictions. Rather there is – in particular in *The Phoenix* and *The Shoemakers' Holiday* – an emphasis on the quasi-legal formality being proposed. The reading of the deed of conveyance in *The Phoenix* is a private affair, and in Dekker's play Hammon's offer is aimed at the surrender of a claim. What of the idea that wife-selling was confined for the most part to the poor? The status of the would-be wife-seller in *The Phoenix* is ambiguous. Stung by a description of his livelihood as mere "occupation," the Captain claims superior status: "a captain is of no occupation, man" (II.ii.124).

⁴⁴ By Howkins, *ibid.*

⁴⁵ Stone, *The Family, Sex and Marriage in England*, 40-1. Stone, *The Family, Sex and Marriage in England*, abridged ed., 35-6. Thompson and John Gillis believe that wife-sale was most strongly supported in plebeian or proto-industrial communities; Thompson, *Customs in Common*, 446; John R. Gillis, *For Better, For Worse: British Marriages, 1600 to the Present* (Oxford: Oxford University Press, 1985), 218.

⁴⁶ Distinguishing an "invitation to treat" from an "offer" is step one in a modern contract law education; an invitation to treat is an attempt to induce offers, not an offer itself. See M. P. Furmston, *Cheshire, Fifoot and Furmston's Law of Contract*, 12th ed. (London: Butterworths, 1991), 30-36.

Wife-sale has been classified as an “unofficial folk custom.”⁴⁷ The description suits the public, ritualistic practice that the practice became in the eighteenth and nineteenth centuries, but it is not so appropriate for the early modern period. For one thing, if historians and anthropologists are satisfied that the practice was as scarce as the evidence suggests, unofficial it was, but seven cases seem not enough to make it a custom. Early modern literary representations are the best available evidence of the nature of the practice and attitudes to it, and the phrase “unofficial folk custom” discounts an element that is apparent in literature: the participants’ pragmatic attempts to deal formally with the responsibility of marriages irretrievably broken down. Day’s *Law Tricks* does not contain a representation of wife-selling, but it is of interest in connection with the practice because Day’s plot rests on a bought-divorce, and the marriage in question is officially recognized as continuing at the end of the play. The bought-divorce in *Law Tricks* is analogous to wife-sale for being an attempt improperly to dissolve a marriage, yet the bought-divorce is in a sense implicitly more of a negative prospect, because it is a knowing corruption of a legitimate process, in contrast to wife-sale’s potential for satisfying an aspiration to legitimacy.

It cannot help but seem strange to say that wife-sale in early modern literature and society demonstrates a positive response to law – for at least four reasons. Firstly, the practice now in the interdisciplinary study of law and literature – in particular relation to law *in* literature – tends to be to deploy literature in rebuke to law, or to endorse literature’s own rebukes of law.⁴⁸ Secondly, the practice was illegal, so to say that the cultivation of an illegal practice affirms law looks paradoxical. Thirdly, it is

⁴⁷ Stone, *The Family, Sex and Marriage in England*, 40; Stone, *The Family, Sex and Marriage in England*, abridged ed., 35.

⁴⁸ See *supra*, 69.

unusual, to say that literary representations of wife-sale are positive in relation to the law, because Elizabethan and Jacobean literature – in particular city comedy – is commonly interpreted as being hostile to the law. And lastly, it goes against the idea that the legal system was unpopular not only in literary convention but in the everyday life of early modern England⁴⁹ to say that wife-selling in practice, regardless of its illegality, was a positive response to law. In spite of all this, however, the practice and representation of wife-sale in the period may be seen as an example of an increasing desire for organization according to what a certain part of the law does. Not the part of the law that imposes obligations, but that which confers powers. In lieu of any legitimate means of dealing with the continuing responsibility attached to a broken-down marriage, wife-sale was capable of satisfying at least notionally one or more of the parties' respect and desire for the legitimizing facilities law can provide for the realization of people's wishes.⁵⁰ It is the potential for satisfying a party's respect and desire for legitimacy which makes wife-sale a positive response to law.

⁴⁹ Prest, *The Rise of the Barristers*, 287.

⁵⁰ Paraphrasing H. L. A. Hart's description of the law's "secondary rules," which confer powers; primary rules impose obligations: *The Concept of Law* (Oxford: Clarendon Press, 1993), 30-2.

Chapter six

Ram Alley and the Inns of Chancery

In this chapter I examine the unusual targeting of the Inns of Chancery in Lording Barry's Ram Alley. Up to near the end of the sixteenth century, satisfactory completion of a year or more at an Inn of Chancery was viewed, and had been for something like two hundred years, as a prerequisite of joining an Inn of Court. Ram Alley articulates a newly unambiguous diminution of the professional and educational role of the Inns of Chancery, as contradistinguished from the Inns of Court. I argue that the complexity of the social and cultural attitudes underpinning this change make two narratives possible. If the organizational aim of the barristers is to be admired as necessary, this remains inseparable from the arbitrary, class-based ideal underpinning it, which can be interpreted as enforced social segregation – social-cleansing by King's Writ. It is hoped that the chapter shows the importance of distinguishing the Inns of Court and the Inns of Chancery in literature in the late sixteenth and seventeenth centuries. Barry was providing Inns of Court men with what they could be expected to want at this time – hostility to practitioners not belonging to the Inns of Court. Negative representation of the Inns of Chancery operates so as to infer positive representation of the Inns of Court.

The phrase “Inns of Court” is common in city comedy. The phrase “Inns of Chancery” is not. It appears four times in *Ram Alley*¹ – more than in any other surviving play in the genre. It is fitting in a way that *Ram Alley* should be the play with more to say about the Inns of Chancery than any other surviving Jacobean city comedy. As the Inns of Chancery were long known as the lesser houses to the Inns of Court, so is Barry commonly recognized as the lesser writer to those celebrated as the masters of the genre – Jonson, Middleton, and Marston. Not that shared experience of inferior status gives Barry any sense of solidarity with the Inns of Chancery. I want to

¹ The first is Adriana's exposure of Throte's incompetence in act II. In act III, Throte recalls: “Shreds a Taylor / Comming once late by an Inne of Chancerie” (III.i.106-7); in act IV, Taffata's characterization of a Gallant includes the image of his shirt being: “more foule, / Then an in of chancery table cloth” (IV.i.144-5); again in act IV, Frances tells a Sergeant of: “Foure pound and fourteene pence giuen by a Clarke / Of an Inne of Chancerie” (IV.i.264-5). The phrase “Inns of Court” is mentioned five times in the play: I.i.96; II.i.297; III.i.104; III.i.414; V.i.274.

examine Barry's unusual explicit targeting of the Inns of Chancery to the end of showing that he was providing the young lawyers and students of the Inns of Court in the audience at the Whitefriars with something which they wanted at this time – hostility to legal practitioners not educated and qualified at the Inns of Court.

Since *Ram Alley* is another of the less well-known examples of city comedy, I now provide a summary of the plot as an aid to reading the chapter. William Smalshankes is the young prodigal-gallant figure at the centre of the play. Having lost his money and land to the lawyer-usurer figure Throte, Smalshankes formulates a plan to recoup. He will pretend that he is to marry the rich heiress Constantia Somerfield, and he enlists the help of his punk Frances (the meretrix to which the play's punning subtitle *Merrie-Trickes* half refers) to impersonate Constantia. Throte gets to hear both of Smalshankes' (pretended) arrest for debt, and of his (pretended) engagement. Throte, as expected, decides that he would like to marry the heiress himself, and Smalshankes, feigning reluctance, accepts Throte's assistance and the return of his mortgage in exchange for his marital claim on (the pretend) Constantia. Throte, delighted at the end of Act III about the prospect of quick and easy upward social mobility – “My fate lookes big” (III.i.578) – becomes an obvious candidate for double punishment by the end of the play: he both loses the land and undergoes the conventional humiliation of marriage to the play's whore-figure, Frances. Pretence is central to *Ram Alley*. Smalshankes pretends to be in debt in order to win back lost land; his punk Frances pretends to be more interested in helping herself than William when, as part of his plan, she pretends to be rich heiress Constantia Somerfield; the expedience of desirable young widow Taffata's planned marriage to William's father, old stinkard Sir Oliver Smalshankes, will involve, if carried through, a pretence of willingness on the widow's part; the real Constantia Somerfield pretends to be a male

page in the presence of the man she loves, Boucher, who botches an attempt to hang himself – perhaps he was only pretending to want to die? If all of this were not pretence enough, the play’s lawyer-figure, Throte, is actually a pretend-lawyer.

6.1 Throte and the decline of the Inns of Chancery

Ram Alley is normally regarded as containing conventional anti-lawyer sentiment.²

But Barry’s representation of Throte is polemical in favour of Inns of Court lawyers.

Throte is depicted as a pretend-lawyer owing to the fact that he is not an Inns of Court

man – he only *seems* a lawyer, being (merely) an Inns of Chancery man. Throte

admits his imposture to the audience in the play’s first Act: “Thus must I seeme a

Lawyer which am indeed, / But merely dregs and off scumme of the Law” (I.i.481-2).

Barry leaves it to a chambermaid – the widow Taffata’s maid, Adriana – to reveal in

Act Two the details of Throte’s pretence. Asked by her mistress whether Throte might

make a good husband, Adriana sniffs:

Were the Rogue a Lawyer, but he is none,
He never was of any Inne of court;
But Inne of Chancery, where a was knowne,
But onely for a swaggering whyfler” (II.i.296-9).

² “The principal objects of satire are . . . the court and the law”: Claude E. Jones, ed., *Ram-Alley or Merrie-Trickes*, by Lording Barry (Uystrvyst: Louvain Librairie Universitaire, 1952), xix; Leggatt concludes that Throte’s “definition of the law . . . is clearly a general comment, not just a description of his own shady practice” without taking into account Barry’s emphasis of Throte’s lack of qualification in the Inns of Court: *Citizen Comedy in the Age of Shakespeare*, 61; Leinwand rightly identifies Throte as “a counterfeit lawyer,” and says that Barry “introduces us to a cast of discredited types, [. . . but,] whatever his intention, never permits us to see them as anything else”: *The City Staged*, 69. Throte is a counterfeit lawyer, and the depiction is expressly contrasted with the Inns of Court-qualified lawyer.

The phrase “swaggering whyfler” probably imparted then as now a cheerful sense of roguish bravado on Throte’s part, made the more amusing for its delivery in the unbroken voice of a boy actor. But these are a sharp few lines, made sharper in the mouth of a servant. Hostility to amateur, quasi-lawyers was one thing, but specifically targeted denigration of the Inns of Chancery was something unusual in the drama. The lines given to Adriana articulate a newly unambiguous diminution of the professional and educational role of the Inns of Chancery. Not much more than a century earlier, a member of an Inn of Chancery could still assert capacity as one “learned in the law” of the land.³ No longer. The right to make the claim had been chipped away in the interim, as part of a process of gradual and uncertain change. Decisive action came in the decade in which city comedy was in its ascent. The Inns of Chancery were on the wane. Everyone – even the chambermaid – knew it.

Where the Inns of Chancery are mentioned in literary commentaries, it tends to be in generalized association with the Inns of Court, without recognition of the important division that took place between the two in the context of legal education and the profession in the late sixteenth century and early seventeenth century.⁴ I now provide background information on the Inns of Chancery and their changing relation to the Inns of Court for the purpose of contextualizing Barry’s targeting of the Inns of Chancery in *Ram Alley*. The history of the Inns of Court was already unclear by the close of the sixteenth century. Francis Thynne wrote in 1600: “it is hard to know . . . the original of these inns of lawyers which we now have.”⁵ Unlike the Inns of Court,

³ Baker, “The English Legal Profession, 1450-1550,” 17, 36 n. 8.

⁴ For example, Cook, *The Privileged Playgoers of Shakespeare’s London*, 18, 68; Finkelppearl, *John Marston of the Middle Temple*, 5; Gurr, *Playgoing in Shakespeare’s London*, 3rd ed., 79.

⁵ Quoted in Thomas Hearne, *A Collection of Curious Discourses* (Oxford, 1720), 110.

the Inns of Chancery have not survived, and their history is still more obscure. What of the difference in name between the Inns of Court and Inns of Chancery? Broadly speaking, the Inns of Court became, simply, establishments for men of the courts. There may be a connotation, too, of “some flavour of the court,” in the sense of the sovereign’s court, but one eminent commentator on the history of the Inns acknowledges that this notion may be in part simply a poetic rationalization.⁶

Sir John Fortescue was the first to provide a literary account of the Inns of Court and Inns of Chancery, in or around 1468. Fortescue identified the function of the Inns of Chancery as preparatory schools or junior colleges to the Inns of Court.⁷ There is no definitive explanation of the name “Inns of Chancery.” Historically, we are most familiar with the word “Chancery” in connection with the law of Equity, and the Court of Chancery, where Equity law is administered. But the Inns of Chancery are not connected with the Court of Chancery – several of the Inns of Chancery were established before the emergence of the law of Equity.⁸ The Inns of Chancery are suspected to have been named after the medieval Lord Chancellor responsible for reorganizing the Chancery, John de Stratford (Bishop of Winchester, and later Archbishop of Canterbury). De Stratford is thought to have established the earliest Inns of Chancery for the purpose of training law clerks in the drafting of common law

⁶ Robert Megarry, *Inns Ancient and Modern: A Topographical and Historical Introduction to the Inns of Court, Inns of Chancery, and Serjeants’ Inns* (London: Selden Society, 1972), 32. Where not otherwise indicated, material concerning the Inns of Chancery is informed by Megarry’s text, 27-48.

⁷ *De Laudibus Legum Angliae*, tr. S. B. Chrimes (Cambridge: Cambridge University Press, 1949), 117-21; see Prest, *The Rise of the Barristers*, 110.

⁸ Before the sixteenth century, the Court of Chancery and the common law courts had enjoyed a harmonious relationship, but the sixteenth and seventeenth centuries brought increasing discord: Baker, *An Introduction to Legal History*, 108-9.

writs.⁹ Fortescue wrote of ten Inns of Chancery, but he did not identify them by name. One of the Inns may be presumed to have closed within the seventy years after Fortescue published his book (perhaps Symond's Inn), as a report on legal studies written in or around 1540 for Henry VIII declares there to be nine Inns of Chancery at that time.¹⁰ Another of the Inns of Chancery was gone within the next sixty years. In or around 1600, Coke wrote that there were by then eight Inns of Chancery.¹¹ This involves a known closure: in 1549, the Lord Protector Somerset ordered the demolition of Strand Inn (also known as Chester Inn) for the purpose of building the first Somerset House on the site.¹²

The Inns of Court could assert full control over the Inns of Chancery by the middle of the sixteenth century, when the Lord Chancellor delegated responsibility for each of the Inns of Chancery to one of the four Inns of Court, so that each of the Inns of Chancery now "belonged" to one of the Inns of Court. Up to this time, an applicant to one of the Inns of Court could normally expect to receive preferential treatment if he was a member of a correspondingly affiliated Inn of Chancery. Not that it was necessary to proceed to the Inn of Court to which a student's Inn of Chancery was affiliated. Thomas More was a student at New Inn (the Inn of Chancery connected to the Middle Temple), but he went on instead to Lincoln's Inn. The Inns of Court thus had their superiority confirmed. Each of the Inns of Chancery was affiliated to one of

⁹ Richardson's assertion that the ten Inns of Chancery were named after their location offers an elegantly simple explanation: they were situated in two groups, one at either end of Chancery Lane: *A History of the Inns of Court*, 4.

¹⁰ The report was written by Thomas Denton, Nicholas Bacon, and Robert Cary; see Megarry, *Inns Ancient and Modern*, 27.

¹¹ *The Reports of Sir Edward Coke*, iii, Preface.

¹² The present-day Somerset House was built in the late eighteenth century.

the Inns of Court, generally corresponding to geographical location, each Inn of Chancery being within half a mile of the Inn of Court to which it was affiliated, and most within a quarter of a mile. The playhouses were similarly convenient. Of the eight Inns of Chancery that Coke mentioned, four were more to the north, in Holborn; eight were more to the south, around the Strand and Fleet Street. The two more northerly Inns of Court are Lincoln's Inn and Gray's Inn. Two of the more northerly Inns of Chancery, Furnival's Inn and Thavies Inn, were affiliated to Lincoln's Inn. The other two northerly Inns of Chancery, Staple Inn and Barnard's Inn, were affiliated to Gray's Inn. The four more southerly Inns of Chancery were not divided evenly between the more southerly Inns of Court. Clement's Inn, Clifford's Inn, and Lyon's Inn were affiliated to the Inner Temple; the Middle Temple had only New Inn.¹³

Up to the last decade of the sixteenth century, satisfactory completion of a year or more at an Inn of Chancery was viewed, and had been for something in the region of two hundred years, as a prerequisite of joining an Inn of Court. The most respected, most powerful senior common lawyers of the Jacobean period had passed through the halls of the Inns of Chancery. Egerton entered Furnivall's Inn in 1560 before proceeding in 1561 to Lincoln's Inn; Coke, having first attended Cambridge's Trinity College, spent a year at Clifford's Inn before proceeding in 1572 to the Inner Temple. The expectation that attendance at an Inn of Chancery was a prerequisite of joining an Inn of Court changed notably, though, in the first decade of the seventeenth century. The number of students admitted from the Inns of Chancery had already begun to diminish in the last decade of the sixteenth century. For example, Gray's Inn

¹³ For the locations of the Inns of Chancery, see Megarry, *Inns Ancient and Modern*, 28, 35-45.

admitted one hundred and twenty-four students from the Inns of Chancery between 1586 and 1591, and between 1596 and 1600 the figure was down to forty-seven.¹⁴ Prest shows that admissions from the Inns of Chancery fell precipitously in the early seventeenth century, by which time the association was no longer regarded as a mark of distinction for a young barrister.¹⁵ Thus, by 1608, the year in which *Ram Alley* was produced, it would have been quite unusual for a student of the Inns of Court to have been at an Inn of Chancery as Egerton and Coke had a few decades before.

A combination of factors accounts for the decline in status of the Inns of Chancery. A key practical one, explaining why the decline became marked by the first decade of the seventeenth century, was the 1589 ruling of *Broughton vs. Prince*. This made call to the bar of an Inn of Court the definitive qualification for rights of audience before the superior common law courts.¹⁶ Post-1589, *Ram Alley's* Throte lacks the qualification for rights of audience. His education is limited to the Inns of Chancery, so he ought not to perform the role of court pleader, and the negative representation of this unqualified lawyer is one which the young lawyers and students of the Inns of Court could be expected to have appreciated. Throte has at least an affiliation with an Inn of Chancery – there would have been those who held themselves out as lawyers having perhaps some talent for speaking but no official legal connection.¹⁷ In the late sixteenth century, unofficial practitioners took

¹⁴ *Register of Admissions to Gray's Inn*, ed. J. Foster (London, 1889); see also Brooks, *Pettyfoggers and Vipers of the Commonwealth*, 163.

¹⁵ See Table 15 in *The Inns of Court*, 129.

¹⁶ Baker, *The Legal Profession and the Common Law* (London: Hambledon, 1986), 129-134.

¹⁷ See Brooks, "The Common Lawyers in England," 43, 50-1, 62 n. 37, citing Yorkshireman Edmund Cundy, whose diary is preserved in National Archives/Sheffield City Library, Wharncliffe MSS Wh.M.D. 01.

advantage of the lack of clear regulation in the law by supplying legal services in response to greatly increasing demand, and this generated concern about standards of qualification and professional integrity. Gray's Inn man William Hudson, for example, followed Egerton's caterpillar metaphor in singling out unofficial, unqualified legal practitioners for giving the profession a bad name, calling them "grasshoppers . . . [who] devour the whole land."¹⁸ Throte's positive-sounding declaration of liberty – "How happy are we that we joy the law, / So freely as we do" (I.i.428-9) – begins an ironic articulation of this grievance of the Inns of Court men. The unqualified court-pleader celebrates the ease with which he has managed to inveigle his way into their respectable vocation: "to this renown'd estate, / Have I by indirect and cunning means, / In-woven myself" (I.i.432-4).

Leinwand suggests that "the clear sense of a playwright self-consciously composing types" is missing in *Ram Alley*,¹⁹ but amateur, unofficial providers of legal services could not be easily stereotyped. On the generally acceptable side, clergymen might help parishioners with disputes;²⁰ not so acceptably, unqualified con-men could engineer their way into matters connected with legal processes which should have been performed by men with legal training.²¹ So, the fact that quasi-lawyers eluded easy stereotyping could explain Leinwand's observation about a lack of self-consciously composed types, at least in the case of Throte as a lawyer-figure. The

¹⁸ "A Treatise of the Court of Star Chamber," in *Collectanea Juridica. Consisting of Tracts relative to the Law and Constitution of England*, ed. F. Hargrave (London, 1791), 95. On Egerton's dictum, see *supra*, 16.

¹⁹ *The City Staged*, 69.

²⁰ Edmund Cundy appears to have been a curate; see *supra*, 191 n. 17.

²¹ See M. J. Ingram, "Communities and Courts; Law and Disorder in Early Seventeenth-Century Wiltshire," in *Crime in England 1550-1800*, ed. J. S. Cockburn (London: Methuen, 1977), 122-5.

difficulty of stereotyping quasi-lawyers is also a reason for more general misinterpretation of representations of lawyers in city comedy – a genre steeped in stereotypes.

The decisive cause of the decline of the Inns of Chancery came as the seventeenth century began, when the Inns of Court enforced new rules which would lead to definitive segregation between different types of common lawyer – on one hand, barristers; on the other, attorneys and various other practitioners. This was the beginning of the modern legal profession's division between barristers and solicitors. It would be wrong to treat this segregation as being too strictly in line with the modern divided legal profession, though. In 1600, for example, judges ruled that only sworn attorneys, barristers, and personal servants could act in the capacity of solicitors.²² This is an idea far removed from the modern legal system, and from the modern understanding of the word “solicitor.” Historically, though the word was long in use in the English legal system, it is the attorneys in medieval and early modern times that are more, and still very broadly, the forerunners of the solicitors of today.

There are two ways of looking at the change which led to the decline of the Inns of Chancery – two narratives that might be applied to the turn of events. From the side of the barristers of the Inns of Court, if the law was to become more organized by means of a suitable level of regulation, it must be right to take moves which would both oust amateur, quasi-lawyers, and enforce the maintenance of distinct functions for different types of lawyer. The ruling in *Broughton vs. Prince*, would survive four centuries of the ongoing evolution of the English legal system, until Lord Woolf's reforms of 1990, when solicitors were given rights of audience in

²² George Cooke, *Rules, Orders and Notices in the Court of King's Bench and Common Pleas* (1747), ii, Michaelmas Term 1573, 142; cited in Brooks, *Pettyfoggers and Vipers of the Commonwealth*, 117.

the courts broadly equal to those of barristers. The 1589 ruling brought, anyway, an increasing sense of vocational pride among Inns of Court lawyers, which would see increased hostility towards the men that had been performing legal services in provincial jurisdictions, who came to be characterized as unlearned and amateur. For example, Churms is an amateur, provincial lawyer-figure in the anonymous play *Wily Beguiled* (a country-set city comedy, performed at Paul's in or around 1606²³). Reflecting on London's increasing dominance in the law, he looks to move on to a new vocation, one worthy of his cunning but reflecting his lack of qualification and virtue: "I have beene . . . in the Country a Lawyer, and the next degree shal be a Connicatcher" (I.i.68-70). Inns of Court men worked, meanwhile, at supporting the position they had and the reputation they inferred for themselves for providing more expert, more reliable, generally more "professional" service than those that had practised untroubled up to now without connection to London.²⁴

The beginning of the exclusion from the Inns of Court of attorneys and the early modern version of solicitors could, at the same time, be viewed as enforced social segregation – social-cleansing by King's Writ. It may be difficult to see it in a social context as anything else. In *Ram Alley*, Throte's description early in the play of himself as "dregs and off scumme of the Law" (I.i.482) might have been well delivered with some subtle ambivalence: not only in approval of the organizational intentions of the practising and student counsellors of the Inns of Court, but with a note of resentfully ironic self-deprecation for the numerous conscientious lawyers

²³ Date proposed in The Malone Society reprint (Oxford: Oxford University Press, 1912).

²⁴ See Brooks, "The Common Lawyers in England," 52, 63 n. 43.

there no doubt were in the Inns of Chancery.²⁵ Taking the view that this was enforced social segregation, a twentieth century historical account from a senior member of the bar can sound something like a revised colonial spin. Megarry summarizes the time of transition in this way: “as the years went by it was the attorneys and the solicitors who *virtually took over* the Inns of Chancery” (my italics).²⁶ This makes the attorneys and solicitors sound like proactive, colonizing settlers. This was not the case. Megarry’s account glosses the fact that attorneys and solicitors were forcibly ejected from the Inns of Court to the Inns of Chancery, while any barrister members left at the Inns of Chancery made the reverse move, to the Inns of Court.²⁷

There are these two ways, then, of viewing the segregation of the Inns of Court and Chancery. If the organizational aim is to be admired as necessary, this remains inseparable from the arbitrary, class-based ideal underpinning it. The civilian Cowell wrote in 1607, disinterestedly or not, of the situation in the common law. Cowell’s words reflect a newly defined, imperative view of the barrister as automatically superior, and an analogy Cowell makes demonstrates the extent to which the professional distinction was a class-based issue:

It is true, that I have knowne some Attorneyes and Sollicitors put on a Counsailors gowne, without treading the same usuall path to the barre... But indeed, I never looke upon them, but I thinke of the Taylor, who in one of his customers cast suits had thrust himselfe in amongst the Nobility at a Court Maske, where pulling out his Handkercher, he let fall his Thimble, and was so discovered, and handled, and dandled from hand to foot, till the Guard delivered him at the great chamber doore, and cryed, farewell good feeble.²⁸

²⁵ But the attorneys lacked two qualities usually associated with professions as we might define them today: self-regulation, and control over the admission of new practitioners; see Brooks, “The Common Lawyers in England,” 53.

²⁶ Megarry, *Inns Ancient and Modern*, 30.

²⁷ In this connection, see Richardson, *A History of the Inns of Court*, 4-5.

²⁸ Powell, *The Art of Thriving. Or, The Plaine Pathway to Preferment*, 58-9.

A first tentative move towards excluding attorneys and solicitors from the Inns of Court had been made in a series of judicial orders beginning in 1556.²⁹ Slow to change as the law tends to be, and contingent in its constructions, the orders admitted various exceptions which meant that attorneys and solicitors did not leave all at once. The method of expelling them was aided by the mounting of a cumulative denigration of their social status. It would be a thick-skinned attorney that wished to stay put at the Inns of Court following the 1614 Order designed to exclude them once and for all:

There ought always to be observed a difference betwene a Councelar at Law which is the principal person next to Sergeants and Judges in the administration of Justice and attorneys and solicitors w[hi]ch are but ministeriall persons and of an inferior nature.³⁰

When Barry has the chambermaid of *Ram Alley* look down on the Inn of Chancery man, the jibe could be expected to please the Inns of Court man in the audience, because the broad conclusion is that Throte is no lawyer. The light-hearted addition of his being known there “onely for a swaggering whyfler” is made as if indifferent to the fact that there *were* lawyers at the Inns of Chancery; only, they came to be grouped in the Orders of the Inns of Court as *persons* of an inferior nature as much as, if not more than, inferior lawyers. This was the pivotal moment for the Inns of Chancery, and though they survived physically for some time, and were used as a meeting place for attorneys and solicitors, they would never again be an important part of London’s legal life. The smallest of the eight Inns identified in 1600 by Coke, Thavies Inn, closed in the late Eighteenth century, and the others closed (and the buildings were for the most part demolished) during Victoria’s reign.³¹

²⁹ *A Calendar of the Inner Temple Records*, i, 190.

³⁰ *The Pension Book of Gray’s Inn 1569-1669*, i, 212-13.

³¹ For details, see Megarry, *Inns Ancient and Modern*, 35-45; Brooks, *Pettyfoggers and Vipers of the Commonwealth*, 158, 329 n. 29.

Shakespeare gives a subtle indication of the beginning of the decline of the Inns of Chancery in *2 Henry IV* (written between 1596 and 1600). Justice Shallow talks about his cousin William to Justice Silent. William is presently a student at Oxford University, says Shallow, and he is about to enter one of the Inns of Court. Conspicuous by its absence is any expectation that William should first put in a preparatory year at an Inn of Chancery. Shallow reminisces about the different path taken in his own legal education, which involved some “mad days” at Clement’s Inn – one of the Inns of Chancery (III.ii.12-14, 32).³² The allusion would serve no purpose as one belonging historically to the reign of Henry IV (1399-1413). This is an example of Shakespeare seasoning an historical drama with a contemporary, topical allusion: the change in expectation about preparatory education for the Inns of Court. Shallow’s cousin – presently at Oxford in preparation for entering an Inn of Court – is the legitimate antithesis of Inns of Chancery man Throte in *Ram Alley*. Even Shallow’s reminiscence of mad days at Clement’s Inn imports ambiguity in connection with the Inns of Chancery, the phrase connoting not only the normally assumed figurative image of youthful high spirits, but a literal image of regrettable foolishness or even mental disorder.

In *Ram Alley*, a speech of Throte’s infers polemically that the mad days of an Inns of Chancery student could threaten something more sinister than could be expected of an Inns of Court man. The un-named Gentlemen of the Inns of Court in act III of the play show no sign of wanting to assist Throte land his rich heiress. Throte addresses them as if he is their colleague, but they remain aloof from him, and Throte’s ostensibly casual change of topic from the Inns of Court to the Inns of

³² *The Second Part of King Henry IV*, Arden edition, ed. A. R. Humphreys (London: Methuen, 1980).

Chancery is significant. Responding to the Gentlemen's reservations about potential danger, Throte exclaims:

Dangerous? Lord where be those gallant spirits,
 The time has beene when scarce an honest woman,
 Much lesse a wench could passe an Inn of court,
 But some of the fry would have bene doing
 With her: I knew the day when Shreds a Taylor
 Comming once late by an Inne of Chancerie,
 Was layd a long, and muffled in his cloake,
 His wife tooke in, Stytycht up, turnd out againe,
 And he perswaded all was but in jest,
 Tut those brave boyes are gone, these which are left,
 Are wary lads, live poring on their bookes (III.i.112).

Throte's suggestion that the days of reckless and rowdy "gallant spirits" are gone can be interpreted as something more than simple nostalgia. Throte characterizes his past as amiably reckless by pairing the Inns of Court and Inns of Chancery. He makes a generalization that appears to flatter past Inns of Court men as incorrigible and always successful womanizers – scarce an honest woman could pass them by. But when Throte particularizes an incident, Barry has the anecdote relate expressly to an Inn of Chancery. It is an impassively offensive and criminal anecdote about a man, Shreds the taylor, forcibly detained while his wife is abducted, assaulted, and casually ejected. What looks like a jocular pairing of the Inns of Chancery and the Inns of Court instead lays open with new polemical purpose a contrast between the self-aware charm of Inns of Court men and the potential for graceless depravity in this representative of men whose legal education was limited to an Inn of Chancery.³³

Throte's nostalgia infers again that the current students of the Inns of Court were self-consciously industrious: they are "wary lads, . . . poring on their bookes." The still

³³ In the fifteenth century, there were incidents among students of the Inns of Court and the universities of Oxford and Cambridge of serious violence and even homicide; see J. H. Baker, *The Third University of England: The Inns of Court and the common-law tradition* (London: Selden Society, 1990), 12.

new, greater availability of books affected all types of education – certainly the approach to learning the law was changed by the increased availability of printed legal texts. Fulbeck highlighted the new possibility of putting “bookes in every mans hands,”³⁴ and the proverbial ethic he attached to legal study demonstrates that qualification as a lawyer was regarded as a valuable accomplishment: “nothing of price and accompt is purchased without great labour.”³⁵

The increased availability of books, and awareness of the difference they made, generated interest in the new generation of students, who were marked apart by the term “the younger sort.” In his *Survey of London* of 1603, John Stow observes that “the younger sort [of the Inns of Court] are either gentlemen of the sons of gentlemen, or of other most wealthie persons.”³⁶ Stow is up-to-date in his tacit recognition that a stay at an Inn of Chancery was no longer a prerequisite of admission to an Inn of Court. He writes only of Inns of Court students “having come thither sometimes from one of the Universities, and sometimes immediately from Grammar schooles.”³⁷ If it seems everyone from judge to servant was aware of the decline of the Inns of Chancery, there could still be found a few who held on to obsolete tradition. As late as 1635, Thomas Powell was still expressing a preference for the younger sort to follow older ways:

³⁴ *A Direction or Preparative to the study of the Lawe*, 29.

³⁵ *Ibid.*, 14. Close study of the law is the subject of a joke which was the sole omission from *Ram Alley* in its 1636 second quarto printing. When, in act I, Boutcher finds Throte sitting in a wooden chair, a legal text open before him, he observes: “You study hard”; Throte returns: “No I have a cushion” (I.i.483-4): Jones, ed., *Ram-Alley or Merrie-Trickes*. A third quarto was printed in 1639.

³⁶ Stow, *A Survey of London*, 77.

³⁷ *Ibid.*, 78.

Onely (for my part) I doe much commend the ancient custome of breeding of the younger students. First in the Innes of Chancery; there to be the better prepared for the Innes of Court. And this must needs be the better way, seeing too much liberty at the first proves very fatall, to many of the younger sort.³⁸

Powell was out of date in preferring the Inns of Chancery by this time. But outmoded guidance could not have been completely unexpected from a manual-writer whose description of himself shows charm but offers something short of full confidence in his legal know-how: “an old Travailer in the sea of Experience, amongst the enchanted islands of ill Fortune.”³⁹ Another provision of the 1614 Orders for the better government of the Inns of Court picked up on the phrase “the younger sort”:

For that all government is strenthned or slackned by the observing or neglectinge of the reverence & respect which is to be used towards the governors of the same therefore it is required that due Reverence & Respect be had by the younger sort of gent: to the Readers, Benchers, & Antients of every house.⁴⁰

On an orthodox reading, this looks like a conservative insistence that supposedly unruly young members of the Inns of Court toe the line. But it is possible to detect at the same time (or instead) a sense that an older sort of lawyer may have begun to feel threatened, and that this was a joint attempt by some of the older members of the Inns to guard their positions and assert power over young exemplars of a new profession interested in working towards a more organized legal system.

³⁸ Powell, *The Art of Thriving. Or, The Plaine Pathway to Preferment*, 56.

³⁹ Thomas Powell, *Tom of All Trades. Or, The Plaine Pathway to Preferment* (London, 1631), 1.

⁴⁰ *The Pension Book of Gray's Inn 1569-1669*, i, 214.

6.2 Other legal matter in *Ram Alley*

There is an explicit call for statutory reform in the play. As Barry maximizes the denigration of Throte's imposture by having a servant look down on the Inns of Chancery man, so does the playwright invest more weight in the issue of reform by putting the related critique in the mouth of a senior Justice. Justice Tutchin is the uncle of the real Constantia Somerfield, and Throte and Tutchin cross paths only as a result of the confusion that arises out of Throte's desire to marry the woman he has been gulled into thinking is the rich heiress. Tutchin is a peripheral figure to the plot of the play, but it is his position that is of importance in the articulation of the call for reform: "for the lawes, / There are so many that men do stand in awe, / Of none at all" (IV.i.513-515). If the number of law-suits and men involved in conducting them were in a sense a symptom of the confusion in the law at this time, one of the key causes was the excess of law itself. Ellesmere's Parliamentary speech of 1604 had been a more than usually important one, being the first following the accession of James I. In it, Ellesmere made a particular point of identifying the need for major reform of England's statutory law. Much of this had become, the Chancellor indicated, superfluous, imperfect, or insufficient, and he sought an examination of all statutes since the reign of Edward I, with the aim of repealing outdated ones, and rewriting others.⁴¹ Francis Bacon had made statutory reform one of the key issues advanced for consideration, too, in his *Advancement of Learning* of 1605: "what is the best means to keep them [the laws] from being too vast in volumes or too full of multiplicity and

⁴¹ Knafla, *Law and Politics in Jacobean England*, 83, 86.

crossness [?]"⁴² The recognition in *Ram Alley* that there had come to be simply too much law provides another example of the play's serious implication and satirical purpose. The call for reform does not make the play anti-law. Rather, it articulates the position of those Inns of Court men who supported the wishes of senior lawyers such as Ellesmere and Bacon for practical and profession-advancing reform of the law.

I have argued that the ostensibly generalized anti-lawyer sentiment in *Ram Alley* is actually directed at the members of the Inns of Chancery, and that the play is thus in favour of Inns of Court lawyers, who were at the time in the process of distancing themselves from the Inns of Chancery. Part of the rationale underpinning this thesis is that Inns of Court lawyers were a recognized part of city comedy's target audience, and so it would have been bad practice commercially, besides anything else, for the writers of the plays to alienate them. But Throte is a negative representation of an Inns of Chancery man, and this would surely have served to alienate another potential section of the audience: any member of the Inns of Chancery who might be interested in attending a performance of the play.

It may be enough to say that maintaining the patronage of discerning Inns of Court playgoers by denigrating the Inns of Chancery justified alienating another potential section of the Whitefriars audience. But there is one ambiguous part of Throte's characterization which could simultaneously appeal to the Inns of Court man and appease the Inns of Chancery playgoer. When Boutcher seeks Throte's help on behalf of Will Smalshankes, as part of the latter's plan to recover his losses, Throte agrees, secretly following Will's expectation that he would develop an interest in marrying Constantia Somerfield, the rich heiress that Smalshankes will have his punk

⁴² In *Francis Bacon: A Critical Edition of the Major Works*, ed. Brian Vickers (Oxford: Oxford University Press, 1996), 287.

Frances pretend to be. Throte finds himself accounting for his motives before Boucher, and an audience might be expected to take it as an affectation, concealing only greed, when Throte explains that he kept Smalshankes's mortgage "To let him know what tis to live in want" (I.i.552). This could be performed in such a way as to make Throte seem disingenuous – he took from Smalshankes because he could, and now he is manoeuvring by any means plausible into what he believes will be a profitable match. This construction would satisfy the Inns of Court man for whom Throte is an inferior legal practitioner, giving his vocation a bad name. But the articulation of the idea of removing property from a privileged young man "To let him know what tis to live in want" – be it disingenuously or not from a rascal like Throte, who has had to make his own chances – can be taken, generally, as quite a modern statement, a serious expression of social conscience. More to the point, it held the possibility of satisfying any present in the Whitefriars audience who were, and would remain, "only" members of the Inns of Chancery. It had become the done thing to diminish the Inns of Chancery as the irredeemably unconnected inferior of the Inns of Court,⁴³ but it seems right that Throte's express pretext for aiding Smalshankes would conceal (besides the motive of winning himself a rich heiress) some note of resentment about the part social and pecuniary advantage had to play in the decline of the Inns of Chancery and its newly downgraded associations.

Gibbons regards *Ram Alley* as the most successful of "conventional" city comedies, for its fast-moving and well-controlled plotting and "sinewy economy" of dialogue.⁴⁴ But he finds the play lacks the serious implications and the satiric purpose

⁴³ Inns of Court lawyers became generally much better regarded than Inns of Chancery men, whose roles were characterized as mechanical and plebeian: Prest, *The Rise of the Barristers*, 115, 287, 313.

⁴⁴ *Jacobean City Comedy*, 113, 115.

of Middleton or Jonson, and that what good points it has have been copied from contemporary successful examples of the genre.⁴⁵ I have suggested already that the play's legal matter has serious implications and the satiric purpose. There may seem serious implications in Barry's treatment of wrongs and injustices. And if one shares Leggatt's view that Barry's comedy conveys only a sense of gleeful participation in immoral acts,⁴⁶ then the playwright's set of apparently nihilistic values – that is, no values to speak of – could seem in itself a serious comment on the time in which *Ram Alley* was written. Barry may be seen actively to celebrate the decadence which the studiously detached Middleton chooses only silently to observe.⁴⁷

Barry appears only to follow convention in his take on the bad-lawyer / good-law topos. Throte's clerk Dash gives the expected glowing report when asked what (or how) he thinks of the law:

Most reverently,
 Law is the worlds great light, a second sunne,
 To this terrestriall Globe, by which all things
 Have life and being, and with-out which
 Confusion and disorder soone would seaze
 The generall state of men, warres, outrages,
 The ulcerous deeds of peace, it curbes and cures,
 It is the kingdomes eye, by which she sees
 The acts and thoughts of men (I.i.463-471).

Critically, the bad-lawyer part of the topos is given to the play's (bad) lawyer-figure, Throte, who responds to his clerk's earnest encomium in cynical terms:

⁴⁵ Principally *A Trick to Catch the Old One* and *Volpone*: Gibbons, *Jacobean City Comedy*, 116.

⁴⁶ Leggatt, *Citizen Comedy in the Age of Shakespeare*, 61.

⁴⁷ Middleton "has no point of view, is neither sentimental nor cynical; he is neither resigned, nor disillusioned, nor romantic; he has no message": T. S. Eliot, "Thomas Middleton," in *Selected Prose of T.S. Eliot*, ed. Frank Kermode (London: Faber and Faber, 1987), 189.

The kingdomes eye,
 I tell thee foole, it is the kingdomes nose,
 By which she smells out all these rich transgressors,
 Nor ist of flesh but meerely made of wax,
 And tis, within the power of us Lawiers,
 To wrest this nose of waxe which way we please.
 Or it may be as thou saist an eye indeed.
 But if it be tis sure a womans eye . . .
 Thats ever rowling (I.i.471-479).

The perception that lawyers could turn a matter which way they pleased was reflected in the understanding that Inns of Court men were “of the same profession with the rhetors of Rome, as much used to defend the wrong as to perfect and maintain the upright answer.”⁴⁸ This much a member of the Inns of Court might acknowledge. But this vacillating sequence of metaphors from a negative example of an Inns of Chancery man looks in part a dramatic technique designed to invite scorn from Inns of Court men – not so much for Throte’s uneven rhetorical skills, as for his presumption in speaking on generalized behalf of “us Lawiers.”

The play’s title is capable of providing a sense of the approach to its legal matter. In a piece of geographic irony, Ram Alley was something like a vein of illegality running into the heart of legal London. It was one of the avenues leading into the Temple from Fleet Street, described in one of Lenton’s caricatures as the castle of broken citizens.⁴⁹ Barry may have flattered Inns of Court men by characterizing them as successful womanizers, but mere flattery on the page can take on a curious (to the modern mind, a more sinister) kind of suggestiveness when viewed in context of the play’s performance by the boy actors of the King’s Revels company. For example, bearing in mind that the play was produced at the Whitefriars

⁴⁸ From John Williams’ 1621 inaugural speech as Chancellor; The Huntington Library, Ellesmere MS 7974; cited in Prest, “The English Bar, 1550-1700,” 74.

⁴⁹ *Characterismi: or, Lentons Leasures*, C2: “9. A broken Citizen.”

(a former monastery in what became a notorious brothel district on Fleet Street⁵⁰), the boy actor playing Throte might have attracted from certain members of the audience a prurient interest in his own imaginable inexperience when the worldly adult character he plays scoffs at Smalshankes, his brother Thomas, and Boutcher: “are you mad? / Come you to seeke a Virgin in Ram-alley / Soe neere an Inne of Court [?]” (III.i.416-418). The suggested unlikelihood of finding a virgin near an Inn of Court might perpetuate the stereotype of the womanizing Inns of Court gallant, but there were most likely members of the audience who would come to view the fresh-faced, virgin-looking boy actors on stage. Such a dynamic has been explored in relation to

Marston’s *Dutch Courtesan*:

. . . a boy plays a bewitchingly pretty girl whose beauty is on offer and at issue – in May 1605 between an audience and some schoolboys on stage, at the Blackfriars theatre close by the Inns of Court and within walking distance of a very different commercial London to the east. . . . The lust a man might feel in the theatre . . . , watching a play, is easy to feel because without consequence, unreal. If the whole situation is non-realistic, . . . one can feel lust with greater ease, even if the pretty young girl when she appears is in fact a pretty young boy.⁵¹

Barry’s joke about the difficulty of finding a virgin near an Inn of Court was capable of seeming at the same time, therefore, both overt heterosexual flattery of the Inns men, and covert pederast tease. Another example of this can be found in an invented term for a law-suit in the play. It is possible to find a colloquial pun on suing and sodomizing where Throte’s clerk Dash tells Constantia, a young lady (played by a

⁵⁰ See Joseph Quincy Adams Jr., “Lordinge (alias ‘Lodowick’) Barry,” *Modern Philology*, vol. 9, no. 4, (Apr. 1912), 567-570, 568-9.

⁵¹ David Crane, “Patterns of Audience Involvement at the Blackfriars Theatre in the Early Seventeenth Century: Some Moments in Marston’s *The Dutch Courtesan*,” in *Plotting Early Modern London: New Essays on Jacobean City Comedy*, ed. Dieter Mehl, Angela Stock, and Anne-Julia Zwielerlein (Aldershot: Ashgate, 2004), 98, 102.

boy) in winsome disguise as a page, about “An action boy, cald firking the Posteriors” (I.i.560). This is presumably an example of the kind of thing which caused Barry’s biographer regretfully to describe *Ram Alley* as being “marred by indecent situations and dialogue.”⁵²

I began the chapter saying that pretence was central to *Ram Alley*. It seems apt to close by noting that Barry’s critical reception has been in one respect characterized by pretence, too. *Ram Alley* was thought for centuries to be Barry’s only surviving play. It now seems likely that he was sole author of the anonymous play *The Family of Love*, long thought to be Middleton’s.⁵³ Some authoritative names have categorized Barry as a conventional, copycat writer for the play known to be his, simultaneously finding unseen depth in *The Family of Love* while it was thought to be Middleton’s.⁵⁴ It has been fine to call *Ram Alley* a competent retread of *A Trick to Catch the Old One*, but there is supposed to be more than meets the eye in *The Family of Love*. For

⁵² C. L’Estrange Ewen, *Lording Barry, Poet and Pirate* (London: n.p., 1938), 1.

⁵³ *The Family of Love* has been excluded from the 2008 *Collected Works*. See Jonathan Bate, “Dampit and Moll: Sexing the language, languaging the sex, doubting all truth, mastering all dramatic modes: enough of a case for Thomas Middleton?” *Times Literary Supplement*, 25 April 2008, 5; Brissenden, “Middletonian Families,” 29; David J. Lake, *The Canon of Thomas Middleton’s Plays: Internal Evidence for the Major Problems of Authorship* (Cambridge: Cambridge University Press, 1975), 91-107; Gary Taylor, Paul Mulholland, and MacD. P. Jackson, “Thomas Middleton, Lording Barry, and ‘The Family of Love,’” *Papers of the Bibliographical Society of America* 93 (1999), 213-41. Charles Cathcart recently made a case for Marston having had a hand in the play’s composition: “‘The Family of Love’ and John Marston,” ch. 7 in *Marston, Rivalry, Rapprochement, and Jonson* (Aldershot: Ashgate, 2008), 79-140.

⁵⁴ Gibbons initiated this by putting Barry’s achievement down to imitation of Middleton: *Jacobean City Comedy*, 113, 115; see also Leggatt, *Citizen Comedy in the Age of Shakespeare*, 10 n. 22; Leinwand, *The City Staged*, 68-9; Brissenden, “Middletonian Families,” 29 n. 4.

example: *The Family of Love* foreshadows the social framework of the later *A Chaste Maid in Cheapside*, Middleton “had more in mind” than an attack on the sect – the play extends beyond its sectaries, and Middleton might have some expectation of sound judgment “from a few” in his audience.⁵⁵ But will Middleton become Barry’s copier if *The Family of Love* is taken, as Leinwand suggests, to foreshadow *A Chaste Maid in Cheapside*? Barry’s certain authorship of *Ram Alley*, and the case for his authorship of *The Family of Love*, make it appropriate to view him as a talented but unlucky (at least in the arts⁵⁶) and less persevering part of a community of writers taking inspiration from, and often playing off, each other. *Ram Alley* shows Barry following the leading names of city comedy in so far as he makes Inns of Court lawyers a favoured part of the target audience for his play, but his unusual explicit

⁵⁵ Leinwand, *The City Staged*, 68.

⁵⁶ Barry started out as a pirate, in or before 1607. An attempt at managing the Whitefriars playhouse and the King’s Revels company was short-lived, ending mainly because of plague-closings and failure to make good on debts. The troupe disbanded following a law-suit in the Court of Chancery. A 1912 article suggests tactfully that, since “we do not again hear of [Barry] in connection with the drama,” financial problems indicated by the law-suit must have led him into “other fields of endeavour”: Adams, “Lordinge (alias ‘Lodowick’) Barry,” 570. Indeed – he returned to piracy. Barry commandeered a boat and raided a Flemish vessel near Tilbury. Most of his accomplices hanged for their part in the matter, but Barry managed to survive. He went on to become a ship’s Captain. In November 1617, Barry was a Captain on Raleigh’s expedition to Guinea. He bought into a trading vessel before dying peacefully in London. Informed by Ewen, *Lording Barry, Poet and Pirate*, 14; Jones, ed., *Ram-Alley or Merrie-Trickes*, ix; William C. Carroll, “Recent Studies in Tudor and Stuart Drama,” *Studies in English Literature, 1500-1900*, vol. 41, no. 2, Tudor and Stuart Drama. (Spring, 2001), 418. Bruster cites Barry’s diversion into piracy as an example of the proximity between legal and illegal commercial activity in the period: *Drama and the Market in the Age of Shakespeare*, 113.

targeting of the Inns of Chancery is one sign that he is no mere imitator of Middleton and Jonson.

Chapter seven

Michaelmas Term and Slade's Case

The conventional ending of Michaelmas Term is more complex than it may appear. I argue in this chapter that Middleton makes it possible to find a dramatic conflict between expectations of literary genre and expectations of law. The judgment at the play's ending conforms to literary convention, but it is capable of interpretation as being contrary to an expectation in law relating to contractual promises, following a momentous legal decision of some four years earlier. This interpretation of Michaelmas Term is consistent with one of the play's themes, deceptive appearances, and I propose that the possibility of making this interpretation contributes to the idea that Inns of Court lawyers were a favoured part of city comedy's audience.

The main plot of *Michaelmas Term* concerns the gulling of young Essex gentleman Richard Easy by woollen draper Ephesian Quomodo and his protean accomplices Shortyard and Falselight. The trick in the play is a complex and ingenious one. Blastfield (Shortyard in disguise) works his way into Easy's affections. Blastfield pretends to need money, and fast. He goes in search of a loan from Quomodo, taking Easy with him. Quomodo agrees to lend Blastfield two hundred pounds for a term of one month, calling in the scrivener Dustbox to attend to the bond, and insisting on a co-signatory. After Quomodo has feigned reluctance about accepting him, Easy allows himself to be talked into standing surety for his new drinking companion and bedfellow, and mortgages his estate against a loan made in over-priced cloth. The loan is unable to be repaid. Blastfield disappears into thin air, and after Shortyard has led the inevitably failed search for his alter ego, Quomodo is left only to foreclose. Easy has his lands restored in the final judgment scene.

I want first to examine Middleton's apparently straightforward obedience to literary convention in the play's conclusion in the context of what was going on in the law at this time. In the second part of the chapter, I question the apparent anti-lawyer sentiment of the play's Induction.

7.1 Legal precedent and *Michaelmas Term*

The plot and characterization of *Michaelmas Term* may be seen to be influenced in part by a law-case. Quomodo bears a resemblance to a real-life cozener, broker William Howe, convicted on 18 June 1596 in the Court of Star Chamber.¹ The character's name is the Latin word for "how," and Quomodo's ingenious gulling of Easy is comparable to the acts for which Howe and his co-defendant, solicitor Francis Easte, were convicted. On the conclusion of the trial, the Lord Treasurer invited

those yt make the playes to make a Comedie hereof, & to acte it wth these names, & gaue good Counsell to there Fathers, yt when they sende there sonnes to th'innes of Cowrte to haue one or too superintendents ouer them that maye looke ouer them.²

Howe and Easte were convicted for "coseninge diuers yonge gentlemen," and procuring them to enter into bonds, statutes, recognizances and confessions of action by attorney (which bound them although under age).³ The two drew a bill and an answer to it, and wrote two counsellors' names to these, without their knowledge, and these "cosiners" procured money from the "erle Lincolne" for the said gentlemen, and a condition with promise of defeasance. For this they were sentenced by the whole Court to be imprisoned for a year, and to be on the pillory at Westminster, at Temple Gate, and in Cheapside, with papers on their heads, to be whipped all through the city in the four terms of the year, and fined each £20 (actually £40 each⁴).

¹ Richard Levin makes the parallel in his introduction to *Michaelmas Term* (London: Edward Arnold Publishers Ltd., 1967), xii-xiii.

² Hawarde, *Les Reportes del Cases in Camera Stellata, 1593-1609*, 47-8.

³ Summary of the case adapted from Levin, introduction to *Michaelmas Term*, xiii.

⁴ *Ibid.*, xiii n. 7.

Richard Levin wondered if the passage of some eight to ten years after the Lord Treasurer's 1596 call for dramatists to write a play about Howe and Easte's cozenages meant that *Michaelmas Term* might not be Middleton's response to the invitation.⁵ In connection with the idea that *Quomodo* may be in part an allusion to Howe, I want to argue that another, far more significant legal decision is capable of producing an alternative interpretation of *Michaelmas Term*, and that the said legal landmark may therefore have renewed any interest Middleton may have had in the open invitation from the Lord Treasurer to compose a play based on a law-case.

The decision in *Slade's Case* (1602) was famous in the early years of the seventeenth century.⁶ This was a decision concerning debt recovery, newly binding England's common law courts. It represented something like the beginning of English contract law as we know it today. It is possible that this momentous case stimulated a complex playwright to compose a more complex play than the simple didactic dramatization of the 1596 trial encouraged by the Lord Treasurer. Taking into account the new ruling in *Slade's Case*, the play's conclusion is capable of seeming more than a swipe at deceitful cozeners. Considering the case's ruling in relation to the play's conclusion makes it possible to interpret *Michaelmas Term* as a paradoxical examination of how a party which city comedy conventionally treated as the victim of a cozening (the privileged young gentleman typified by Easy) might now be regarded as the deceitful party in given sets of circumstances relating to a promise made in a contract. It could be expected that allowing the possibility of a different interpretation based on knowledge of recent legal developments would be an exercise which would

⁵ *Ibid.*, xiii.

⁶ 4 Co Rep 91a, Yelverton 21, Moore KB 433, 667. W. J. Jones puts *Slade's Case* first in a short list of cases "of great fame": *Politics and the Bench*, 49-50.

appeal to lawyers in the audience. At the same time, *Slade's Case* was famous enough for educated lay spectators also to reflect on the possibility of the alternative interpretation proposed. The possibility of such a reading corresponds with the most straightforward lesson of *Michaelmas Term* – that appearances can be deceptive. It offers a solution to Middleton's strange assurance in the Induction – that a play named after the inaugural term of the legal year has nothing much to say about the law:

Why call we this play by such a dear and chargeable title, *Michaelmas Term*? Know it consents happily to our purpose, though perhaps faintly to the interpretation of many, for he that expects any great quarrels in law to be handled here will be fondly deceived (Ind. 66-71).

Gail Kern Paster is happy to accept that *Michaelmas Term* has not much to say about the law, arriving at a conventional conclusion: “In this regard the play deceives just as the lawyers and the justice system do.”⁷ Paster hopefully means that the play says things which are ambiguous, capable of more than one interpretation, as lawyers and the justice system do. To suggest merely that play, lawyers and legal system are all characterized by falsehood would seem too broad and unsatisfying a generalization.

In order to explain the interpretation proposed I now provide background information on *Slade's Case*. The main importance of the case was that it provided a single form of action at common law – the action of assumpsit – for failure to pay a definite sum of money, or a failure to do something else.⁸ Assumpsit was formerly an action with no apparent connection to the law of contract – it had been an action only in tort law, for remedying wrongs or torts (then called trespasses). A case of

⁷ Paster, ed. *Michaelmas Term*, 62 n. 71.

⁸ Material concerning the law relating to debt and its recovery informed by A. W. B. Simpson, introduction to *Cheshire, Fifoot and Furmston's Law of Contract*, 12th ed., by M. P. Furmston (London: Butterworths, 1991), 1-16.

negligence, say, was actionable by alleging in the Latin pleadings that a defendant undertook (*assumpsit*) to do something, only then to do it badly. There would long have been a tortious *assumpsit*, for example, in the circumstances proposed in a law manual from the later seventeenth century: “An Action . . . lies against a Chirurgeon, who undertakes to cure a man of a wound, and neglects it, whereby a man grows worse, and makes it through his negligence incurable.”⁹ Had the patient paid for the operation, he could only have been certain of being able to pursue an action of contractual *assumpsit* from 1602, for what consolation that might have been. Where life was not at stake, though, the evolution of contractual *assumpsit* really was a momentous innovation. Through a complicated history, the common law developed, or acquired, in the sixteenth century an action by which, in principle, any undertaking could be sued upon; be it, for example, for sale of goods, provision of services, conveyance of land, or failure to pay a debt. It was the adoption in contract law of the tort remedy of *assumpsit* that gave contract law a single, general action for breach of promise.¹⁰ This is not to say that there existed beforehand no means of pursuing legal remedies in contractual matters; only that remedies could not be sought in the central common law courts. Applications needed to be made in whichever might be appropriate of the bewildering array of county courts, borough courts, market and fair courts, Church courts, manorial courts, and so on. The development of this common law action for breach of promise generated two problems, though, which would cause disagreement between the courts for the remainder of the sixteenth century. One was

⁹ *The Practick Part of the Law Shewing the Office of an Attorney And a Guide for Solicitors* (London, 1681), 115.

¹⁰ The action for breach of promise evolved through a series of cases culminating in 1533; see Furmston, *Cheshire, Fifoot and Furmston's Law of Contract*, 12th ed., 5.

the relationship between assumpsit and older forms of contractual remedy. The other was how to define which promises were actionable and which were not – how to define the scope of promissory liability at law.

I shall outline the older forms of contractual remedy as a preliminary to looking at the nature of the change made by *Slade's Case*, and considering how this impacts on events in *Michaelmas Term*. What were the older remedies? There were three main forms of action: the action of covenant, for contracts under seal; penal bonds; and an action known as debt *sur contract*. From the early fourteenth century, the action of covenant was the appropriate action for formal agreements, made “under seal.” The action of covenant was an action for damages, assessed by a jury, for the wrongful breaking of a covenant. A seal made a written contract a formal agreement: it was in the early fourteenth century that the term “covenant” came to mean not simply “agreement” but “agreement under seal” – the meaning it has to this day. A seal might be highly elaborate or a simple blob of wax with a finger-nail imprint. In practice, and as legal scholar A. W. B. Simpson puts it, “for reasons which are not fully understood,”¹¹ the action of covenant was rarely used.

Important agreements were more commonly made using “penal bonds.” Howe and Easte’s cozenages – in the Star Chamber source for Quomodo’s gulling of Easy – were made using penal bonds. This is apparent because of the mention in the report of that technical term: the condition with promise of defeasance. What this meant was that the borrowing parties entered into bonds to pay penal sums of money unless they carried out their side of a bargain. L would lend B £100, for example, and B would contract to pay L £200 (a penal sum) on an agreed date; the bond would include a condition that it would become void (the condition of defeasance) if £100 were paid

¹¹ Simpson, introduction to *Cheshire, Fifoot and Furmston's Law of Contract*, 3.

before that day, and B would give L this bond as he received the £100 loan.¹² These penal bonds with conditional defeasance were adaptable to cover most transactions – Antonio and Shylock’s peculiar agreement in *The Merchant of Venice* is figured on the common penal bond. As is very nearly the case in Shakespeare’s play, though, the law could be harsh about penal bonds. If a creditor lost his bond, or the seal came off, he lost his remedy; if a debtor paid, but did not have the bond defaced, his liability continued. A debtor in default was at his creditor’s mercy: a creditor could have a debtor imprisoned indefinitely for default.

Informal or “parol” (oral) agreements for debt claims to a specific sum were actionable by a remedy known as debt *sur contract*. This action focused on the sum or the property in a contract, on trying to enforce a defendant simply to pay what he owed. There was obviously a big demand for an action like this, but there were considerable problems with the law on debt recovery in the early sixteenth century. There was, for example, the possibility of a defendant entering a plea in “compurgation” or “wager of law.” A defendant could swear on oath that he owed nothing, and, providing he brought eleven others to support his oath, and they carried the relevant ritual through to conclusion, the action was lost, in the reckoning that twelve people would not endanger their souls by perjuring themselves. As might be imagined, by the sixteenth century the idea of wager of law had become an out and out farce – the threat of the soul’s eternal damnation was no longer enough to prevent jobbing oath-swearers casually hiring themselves out at a reasonable rate to support the bogus denials of defaulting debtors.¹³

¹² Ibid., 2-3.

¹³ Baker, “New Light on Slade’s Case, Part II,” 228-230. See also Simpson, introduction to *Cheshire, Fifoot and Furmston’s Law of Contract*, 4.

The problems of the law on debt recovery in the fifteenth century inspired England's chancellors to bring in equitable remedies. Cowell defined in his *Interpreter* the role of the law of Equity to be one of "moderating the rigour of other courtes, that are more streightly tyed to the leter of the lawe."¹⁴ In the case of debt recovery, Equity might be said in the fifteenth century to have instituted a degree of rigour where the law was too confused for different jurisdictions to be able to arrive at any suitable level of agreement on quite what the law's letter might be. Equity's interception was probably a partial influence on the common law courts' initiative to amend the flaws in their own system for debt recovery.

The other important innovation in the law of contract in the sixteenth and early seventeenth century was the founding of the doctrine of "consideration." The doctrine of consideration evolved in assumpsit cases in the mid-sixteenth century,¹⁵ and it was this that served to define the scope of promissory liability following the recognition of new liabilities in contract law. Previously, the hearing of a debt action centred on the money or property exchanged; the fundamental difference made by the doctrine of consideration was that the motivating reason why a promise had been made became a material consideration in an action for debt recovery in informal contracts: that is, the reason for the promise became the reason why it should (or should not) be enforced.

One way in which the importance of the principle in *Slade's Case* is demonstrated is by its six-year passage through a series of appeals following the

¹⁴ Cowell, *The Interpreter*, s.v. "Chancerie (cancellaria)."

¹⁵ The history of consideration remains controversial. The key disagreement is whether consideration was purely a home-grown development (perhaps deriving, for but one example, from the doctrine of *quid pro quo*, as found in medieval case law on debt), or ultimately derived from canon and civil law, in particular relation to uses of land (the use was the forerunner of the modern trust). See Simpson, introduction to *Cheshire, Fifoot and Furmston's Law of Contract*, 1 n. 1, 7 n. 3, 8-9.

decision of the court of first instance in 1596 (the Exeter assize court). The particular question in the matter was whether an oral agreement, here an agreement to purchase grain, implied a promise to pay for it where a promise had not been made expressly. After prolonged argument, the *ratio* in the case was that a bargain constituted a binding contract notwithstanding the absence of an express promise. Another demonstration of the contemporary importance of the case was the stature of the legal-minds charged with making the final appeal decision. Coke's judgment was based on the presumption that a party to a contract entered into it knowingly, and he stated that a failure to perform the contract constituted deceit.¹⁶ Bacon and others argued for the respondent that assumpsit required deceit, and failure to perform a contract requiring the payment of money did not necessarily imply intention to deceive. Coke disagreed: "It is clear that when a man contracts with another to pay money or do anything, and does not perform it, this is a deceit."¹⁷ *Slade's Case* was a landmark legal precedent that had a direct impact on the public at large, in that it changed people's understanding of debt and debt recovery – the focus shifted from property to promise in debt matters involving informal contracts.

What impact has all of this on *Michaelmas Term*? After *Slade's Case*, it becomes possible to see Easy – as much as if not more than Quomodo – as a deceiver in the play. In line with literary convention, a roguish merchant citizen (Quomodo) gets the upper-hand in dealing with a well-to-do young gentleman (Easy), before the "traditional order" is restored at the end of the play. Easy is certainly cajoled into

¹⁶ The synopsis of Coke's and Bacon's judgments is informed by Nina Levine's analysis: "Extending Credit in the Henry IV Plays," *Shakespeare Quarterly*, vol. 51, no. 4 (Winter, 2000), 403-431.

¹⁷ *The Reports of Sir Edward Coke, Knt.*, ii, 94. See Baker, "New Light on *Slade's Case*, Part I," 62; Levine, "Extending Credit in the Henry IV Plays," 423.

being second surety, and Quomodo's gulling of him is undoubtedly crafty. But the dubious morality of the route to entering into legal relations does not automatically render void the formal agreement into which both parties enter. In legal terms, Quomodo may be interpreted to provide the play's most important, concrete didactic message – not to be frivolous when entering into a legally binding agreement. In the agreement executed in the central gulling scene (act II, scene iii), Easy agrees to the terms Quomodo proposes, and, after some verbal to-ing and fro-ing, he signs the deed. An important ethic concerning legal responsibility is articulated in the play – by the character that is supposed to be the conventional rogue, Quomodo:

Mark but this note; I'll give you good counsel now. As often as you give your name to a bond, you must think you christen a child, and take the charge on't, too; for as the one, the bigger it grows, the more cost it requires, so the other, the longer it lies, the more charges it puts you to. Only here's the difference: a child must be broke, and a bond must not; the more you break children, the more you keep 'em under, but the more you break bonds, the more they'll leap in your face . . . (III.iv.134-142).

Easy learns (if only for a short while) that there is nothing “mere” about legal formality, or, as I explain below, legal evidencing. Easy enters into the agreement assuming his role is something like nominal ballast, without obligation – he is too infatuated with Shortyard to question the suggestion that “the second man enters [as surety] but for custom sake” (II.iii.238). In contemporary England, he would be wrong (in legal London, more obviously wrong), and it may be only the peculiar rules of the forum in this play's final scene, dictated by literary convention, that could see him emerge triumphant.

One thing which can be taken to support the idea that Middleton is quietly setting up an ironic ending to *Michaelmas Term* (in favour of Quomodo) is that it is difficult to find sympathy for Easy at any point in the play. As Levin says:

... we are never wholly convinced that we should rejoice in the defeat of those whose cleverness has been the principal source of our pleasure, or in the victory of one of the weakest and least interesting characters in the play.¹⁸

Easy has none of the wit and charm of the young gallants to be found in other city comedies. His infatuation with absent bedfellow Blastfield/Shortyard makes him at times an uncommonly over-sentimental figure in the genre: “Methinks I have no being without his company; ’tis so full of kindness and delight, I hold him to be the only companion in earth” (III.ii.6-8). For audiences with a taste for sharp satire, this level of mawkishness could have seemed a deliberate invitation to scorn the character. Certainly, the play’s minor legal-figure has no patience with him. When Easy asks Dustbox how he likes his Roman style of handwriting, the scrivener’s response shows, light-heartedly or not, contempt for an indulgent, over-privileged young man: “Exceeding well, sir, but that you rest too much upon your R’s, and make your E’s too little” (II.iii.347-8).

When it comes to making the agreement, Easy signs the document aware of the possibility of forfeiture, and the bond in this drama concerns land, not flesh – properly alienable real property. In *The Merchant of Venice*, execution based on strict construction of the bond promises the egregious incident of Antonio’s gory death; *Michaelmas Term* is different. Easy is the casual – the too-casual – signatory to a formally sound agreement. He takes on a risk in which breach threatens something undesirable to him (as contracts normally do), but nothing extraordinary or inequitable. Easy signs the bond, but no mention is made, in an otherwise fairly detailed scene, of the document being sealed (II.iii.297-353). Quomodo has gone to

¹⁸ Levin, ed. *Michaelmas Term*, xix

the trouble of getting in a scrivener¹⁹ to attend to formality, but is this a formal agreement? No. The bond should be presumed to be an informal agreement, because there is not a mention even of a blob of wax and a finger-nail. Is Dustbox, whose name defines him as the ink-blotting scrivener,²⁰ therefore remiss in his duties? No. There is a quiet formality, and an appealing, understated acerbity to Dustbox that gives an impression that he would do exactly what was necessary for his client, Quomodo. And, following the decision in *Slade's Case*, he does: it is immaterial that this is not a contract under seal. Quomodo has an informal agreement, and the document signed by hand is, even without a seal, evidence still of Easy's promise in the agreement, which is now actionable using *assumpsit* in the common law courts.

I suggested earlier that *Slade's Case* may have jogged Middleton's memory about the Lord Treasurer's invitation¹⁹ to compose a play based on the matter of Howe and Easte. I shall explain the possible connection. With Howe and Easte, we are looking at criminal acts. Cowell says in his *Interpreter* that "*Cosening*, is an offence

¹⁹ Dustbox presents the deed in II.iii. The main work of scribes was the drafting of contracts and conveyances. The deed-drafting work of scribes led some of them into money-lending, but, while drafting documents was not invariably a legal role, at least ten men admitted to the Scribes' Company of London between 1550 and 1640 practised at the same time as attorneys: Bodleian Library, Rawlinson MS D.51/24-29; cited in Brooks, "The Common Lawyers in England," 49-50, 62 n. 36. An early modern scrivener's practice is outlined in A. E. B. Owen, "A Scrivener's Notebook from Bury St Edmund's," *Archives*, vol. 14 (1979), 16-22; see also Baker, "The English Legal Profession, 1450-1550," 27, 38 n. 46. On the matter of legal practitioners lending money, Dampit in *A Trick to Catch the Old One* (1605-6) is ostensibly a lawyer, but he is more prominently a usurer in the play. Dampit refers to Barnard's Inn (III.iv.59), an Inn of Chancery, so the representation of Dampit in the undesirable role of money-lender would have suited the purpose of the Inns of Court men fashioning their role as specialist professionals; see "The New Profession" in Baker, *An Introduction to Legal History*, 162-5.

²⁰ Scribes would carry a "dustbox" containing sand for the purpose of blotting ink.

unnamed, whereby any thing is done guilefully in or out of contracts which cannot be fitly termed by any special name.”²¹ Cowell’s concept of anything in or out of a contract without a special name seems today an imponderably broad semantic catch-all. In relation to Howe’s and Easte’s convictions, the material issue is not the class-based one whereby “diuers yonge gentlemen” are gulled by their social inferiors (as is often the case in literary convention where city comedy is concerned); what seems clear in the case of Howe and Easte is that dishonest intentions coincided with culpable procedural irregularities. There were fraudulent representations made in connection with the young gentlemen’s ages, and there was the attendant forgery of the counsellors’ names. These two real miscreants had criminal minds as they performed their criminal acts – this was inventive theft by clever people (if not so clever that they could escape being caught).

By way of contrast, in *Michaelmas Term*, Quomodo’s actions leading up to the making of the agreement, though morally questionable, do not strictly appear, at any material time, to be criminally dishonest. He even gives Easy good counsel about not breaking bonds. If Quomodo is crafty, it is Easy who shirks legal responsibility. Easy’s denial of liability – “You tell me of that still which is no fault of mine, Master Quomodo” (III.iv.131-2) – should have provoked technical objections from the Inns of Court men in the audience, for its denial of a new understanding of the promise in an agreement. Quomodo’s response to Easy’s protest turns on him the matter of dishonesty, of deceit, in fact – there is more than dramatic irony of characterization when Quomodo enquires blithely “what’s a man but his honesty, Master Easy?” (III.iv.133). Breaking one’s word is “a fault amongst most of us all” (134), Quomodo continues, and Easy’s light treatment of his responsibility conflicts with the increased

²¹ Cowell, *The Interpreter*, s.v. “cozening.”

sense of responsibility newly expected of, or at least ascribed in case of default, to borrowers, or, in Easy's case, borrowers' sureties.

The jurisdiction of the hearing in the play's final scene is not clear. Alexander Dyce, editor of the nineteenth century edition of Middleton's works, decided the play's final scene took place in the Judge's house.²² This would be a questionable start to the validity of the proceedings. The judge expresses surprise that Quomodo is the plaintiff in what should be a contractual matter (V.iii.1), preferring the idea of trying him criminally as a cozener (1.20). But Quomodo *should* be the plaintiff in a contractual matter – in a common law action of assumpsit, following Easy's complacent insistence that default on his responsibility as surety is “no fault of mine.” The change in Quomodo's character in this scene (from being all the way through a sharp-witted, voluble opportunist, he becomes suddenly and strangely passive) may well be meant to imply a discrepancy between the artificiality of literary convention, with city comedy's restoring of the traditional order, and law-structured reality – where vigilance is needed when entering into contracts, since sharp-witted opportunists do not care about tradition and convention, but they do care about default on promises and the attendant possibilities within the law in actions of assumpsit.

In the final scene, the Judge has a firm presumption against the plaintiff, Quomodo. Easy's insistence that the lands are his again – “the lands know the right heir; / I am their master once more” (V.iii.76-7) – rests on acceptance of a sequence of events that should be regarded as legally valid only in the event of Quomodo's actual

²² See Levin, ed., *Michaelmas Term*, 120.

death. Like Volpone,²³ Quomodo fakes his death in the play, in order to see what the after-effects of his life will be. His wife's and son's lack of affection apart, no sooner is Quomodo's son, Sim, taken to inherit the lands than Shortyard cozens him out of his apparent hereditament,²⁴ and, as the play nears its end, sharp dealer Shortyard is mystifyingly humbled into surrendering the lands (at this stage, the invalidly acquired subject of an inheritance void *ab initio*²⁵) to Easy. But Quomodo lives. The faked death amounts to nothing more than an elaborate practical joke, and the consequent sequence of transfer of the lands should be regarded as void.

Easy's apparent acceptance of the lands from Shortyard in V.i infers, in fact, that Easy accepts (rightly) that the lands were validly forfeited to Quomodo. It demonstrates furthermore that Easy is prepared to have the lands returned on the basis of what would be (had Sim's purported hereditary entitlement been valid) ill-gotten gain. On this reading, Easy can be viewed as a crook. And if Quomodo's name can be read as a Latinized "Howe," so is Easy's name capable of seeming in part an allusion to "Easte." The interest in the lands should remain Quomodo's, and Quomodo is understandably surprised in the final scene to hear Easy declare to the Judge that the interest in the lands he forfeited by bond are his again. "Have you the lands?" Quomodo jumps to ask Easy (V.iii.77); Quomodo's follow-up question – "Is this

²³ It is not known which came first of Jonson's more famous *Volpone*, with its similar faked death and final judgment scenes, and Middleton's *Michaelmas Term*. It is known only that the two plays appeared contemporaneously.

²⁴ In law, a right that is heritable; that is, a right capable of passing by way of descent to heirs.

²⁵ In law, a transfer may be judged void *from the beginning*. Jonson uses the term in the Prologue to *Every Man Out of His Humour*, where Cordatus and Mitis discuss the laws of comedy: "If those lawes you speake of, had beene deliuered vs, *ab initio*, and in their present vertue and perfection, there had beene some reason of obeying their powers" (252-3).

good dealing?” – appears to be addressed at once to Easy, the Judge, and the audience (1.78). It should have been delivered in imploring fashion – it is reminiscent of a real-life courtroom utterance. The judge at first instance in the matter that would be finally reported as *Slade’s Case* might have earned Quomodo’s incredulity, as well. In the 1596 ruling that would be soundly overruled on appeal, Mr Justice Walmsley called it “plain dealing” for a man not to pay if he had no money.²⁶

Quomodo’s scheme in the play is opportunistic, but, as the name suggests, Easy is an opportunity waiting to be had. Easy entered knowingly into the bond as surety for a loan; as it happened, the other signatory was an imposter – Shortyard played Blastfield. But a bargain was formulated, and despite Quomodo’s knowledge (his supervision even) of Shortyard’s imposture, to enter into an agreement brings with it a responsibility to honour the agreement, and several liability in the event of default is the principal rationale for involving a surety. Certainly, Quomodo only feigns disappointment that Easy does not perform the contract – it is all part of the plan. But what purpose would it serve to have a guarantor to a bond if he was not to take his liability seriously? The law on debt recovery before the 1602 decision in *Slade’s Case* seemed unduly to favour defendants: the availability of wager of law made it easy for them to escape debt liability by perjuring themselves, and finding eleven more people prepared to risk the spiritual consequences for a fee. The law on debt recovery after *Slade’s Case* came to be seen by some conversely to make it too easy for plaintiffs, who could bring assumpsit actions on parole agreements insufficiently proved – the law, always evolving, would acknowledge the criticism

²⁶ Baker, “New Light on *Slade’s Case*, Part II,” 220; see also Levine, “Extending Credit in the Henry IV Plays,” 423.

and eventually legislate for it.²⁷ In any event, the great importance of *Slade's Case* was the increased sense of personal responsibility it placed on parties entering into an agreement – irrespective of social rank or occupation.

The arguably happy ending to *Michaelmas Term*, in which unsympathetic character Easy has his lands restored to him, is capable of interpretation as an invitation to question why Easy should succeed – both in a literary sense, as Levin suggests, and in a legal sense, following *Slade's Case*. Generic convention may demand that the traditional order be restored, but after *Slade's Case* even a privileged litigant could not be given invariably to expect success by crying “unfair” when the law pointed to a loss on his part as a result of his failure to take sufficiently seriously his role as party to a debt agreement. What I suggest here is that *Michaelmas Term* ends on a note of high irony, being left open to interpretation as a complex treatment of complacent presumptions about the interface of law and social privilege. The surface vigour of the play is brought to an abrupt halt in the final scene, where the hitherto appealing and vital Quomodo becomes suddenly passive, while the previously ineffectual Easy is transformed into a harder, sharp-witted individual. The possibly intended purpose of highlighting the difference between artificial literary convention and law-based reality may be to demonstrate the lack of credibility in the expectation that social superiority alone would continue automatically to win favour

²⁷ See Simpson's commentary on the *Statute of Frauds* (1677) in the introduction to *Cheshire, Fifoot and Furmston's Law of Contract*, 10. Daniel Klerman recently asserted that the common law had a pro-Plaintiff bias, while acknowledging (a) that the existence of the bias was controversial, and required substantiations, and (b) that counter-examples of something more like a pro-Defendant bias exist, such as defences in defamation law: “Jurisdictional Competition and the Evolution of the Common Law: An Hypothesis,” in *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe*, ed. Anthony Musson (Ashgate: Ashgate, 2005), 149, 163.

at law, irrespective of an individual dispute's merit. The literary genre of city comedy would have been a suitable medium for making such a point, since genre is, like social classification, all about great expectations. Part of the "how(e)" of *Quomodo* is how he could lose in the end, when *Slade's Case* had in the last few years changed the law on the promise in what should have been his favour. Playgoers expecting a great quarrel in the law in *Michaelmas Term* should not have gone away disappointed.

7.2 The Induction to *Michaelmas Term*

The Induction to *Michaelmas Term* looks like an obvious example of anti-lawyer sentiment. The formidable *Michaelmas* walks on stage and removes a whitish cloak before slipping into the black gown of a lawyer. He explains to the audience as much as to his lagging boy assistant the symbolic substitution of black for white:

Lay by my conscience,
Give me my gown, that weed is for the country;
We must be civil now, and match our evil;
Who first made civil black, he pleas'd the devil.
So, now know I where I am . . . (Ind. 5).

Michaelmas seems the embodiment of corruption in the law as he continues: "From wronger and from wronged I have fee" (Ind. 8). Paster affirms the conventional view that the Induction is a "sharp satire against the law as a mercenary system run for its own benefit."²⁸ The original audience at Paul's would not have seen the written text before witnessing the play, so it is easy to go along with the idea that playgoers must at first have taken this to be the case. But only at line 35, where another of the personified Terms hails *Michaelmas* as "father of the Terms," do *Michaelmas's* and

²⁸ Paster, ed., *Michaelmas Term*, 57.

the other Terms' identities begin to become apparent.²⁹ It makes a difference that the speaker of the Induction is not a lawyer, as the figure first appears, but a personified period of time, and a period of time associated with a particular space: "now know I where I am." It is easy to overlook the unreal, fantastical character of the Induction, with the inaugural law-term given dramatic representation as corporeal, city-bound lawyer. With knowledge of the Induction's characters' immateriality should come recognition that the Induction is an insubstantial pageant, and that all stuff about devilish black fabric is baseless. Michaelmas is made to look like the stereotypical figure of an ambidexter lawyer, profiting from both sides.³⁰ But the law-term does have fee "from wronger and from wronged" because both parties must come cash-in-hand to the city when Michaelmas is there (or when there it is Michaelmas) for the purpose of settling their disputes.

Editors favour the construction of Michaelmas's use of the word "civil" as "citified,"³¹ and not simply because he is "new come up out of the country" (Ind. 0.1). It is the city, not the lawyer or the lawyer's gown, that has come to signify evil: London is given later in the play the vivid description of "man-devouring city" (II.ii.21). This notion may be presumed to be in part a reflection of increasingly overwhelming, increasingly impersonal, commercial urban expansion. So, in this

²⁹ Though Michaelmas is regarded by his three subordinates as "father of the Terms" (Induction 35), he has already declared himself childless (Induction 19).

³⁰ *Oxford English Dictionary*, 2nd ed., s.v. "ambidexter": the earliest sense in English is that in law, for one who takes bribes from both sides; examples date back to 1532: *Use of Dice Play*.

³¹ Levin, ed., *Michaelmas Term*, 3 n. 3.

connection, the change into the black cloak may be taken to represent the city of London in at least as negative a light as its lawyers.³²

The inclusion of a dumb-show is a telling indication of the attitude set up by the Induction. The example in the play mimes the career of Andrew Lethe, and Michaelmas's immediate enquiry on the character's exit – "What subtlety have we here?" (Ind. 30) – is ironic for its description of the dumb-show as a subtle device. At the time *Michaelmas Term* was first performed, the dumb-show miming an aspect of a play's story was used by "some of the more acid playwrights" for the reason that it had become laughably archaic.³³ We cannot know whether a boy actor would have delivered Michaelmas's enquiry comically askance, but the dumb-show represented, as the playwright knew, the opposite of subtlety for fashionable theatre-goers, irrespective of its function in the text. So, the dumb-show is out of vogue in 1606 (the year in which the play was first performed), and this "acid" playwright's purposeful use of an over-obvious dramatic device amounts to an invitation to the dramatic connoisseurs in the audience to look beneath the surface for alternative meaning, such as that described above in relation to the negative representation of the city.

Might there be further significance in the matter of the black gown? A small number of common lawyers did not wear black. The most prestigious branch of the early modern legal profession was that of the serjeants-at-law – the exclusive practitioners of Westminster's principal common law court, the Court of Common Pleas. The serjeants-at-law were distinguishable by their colourful monkish habits and

³² Lawyers became increasingly associated with London in sixteenth century satire: Gieskes, *Representing the Professions: Administration, Law, and Theater in Early Modern England*, 139.

³³ Dumb-shows became fashionable again for some years after *Pericles* in 1607: Gurr, *The Shakespearean Stage, 1574-1642*, 234. *Michaelmas Term* was produced a year before *Pericles*.

white linen coifs.³⁴ In *Slade's Case*, the serjeants-at-law lost the argument to the black-wearing lawyers in the Court of King's Bench; so, if the playwright of *Michaelmas Term* intended to leave the play open to the interpretation proposed in the previous section, Michaelmas's pointed change into a black gown at the front of the play can be taken as support for the more numerous (and theatre-going) black-wearing lawyers against the white coifed serjeants-at-law. Among young lawyers themselves, while there were doubtless many who wore their black robes and gowns with pride, there seems to have been some resistance to this in the Inns of Court, where, even away from the city's courtrooms, full court dress was required to be worn.

Disciplinary procedures were taken against those who "presumed to come into Hall in coats or cloakes and not in gownes," with one barrister reported as wearing a scarlet coat; such infractions were punished by periods of suspension.³⁵ There is, incidentally, another allusion to lawyers' gowns in *Michaelmas Term* besides the one in the Induction. Quomodo explains in a joke that making his son Sim a lawyer will be good for his drapers' trade, because it "increaseth the number of cloth gowns" (II.iii.418-420). At the time *Michaelmas Term* was produced, and for some eighty years after, it was only students, not qualified lawyers, who wore the plain, sleeveless black cloth gown, with a round, black cloth cap. Different ranks could be distinguished by their apparel. Barristers wore uncomfortable, long, black grogram (a mixture of silk, mohair and wool) robes with two velvet welts on long, hanging

³⁴ Baker, "The English Legal Profession, 1450-1550," 18-19. Cowell, *The Interpreter*, s.v. "Sergeant": "[a word] diversly used in our law . . . Sergeant at lawe [is the] highest degree taken in that profession [the common law], as a Doctor is in the civill lawe." Prest says the rise of the barristers paralleled the decline and foreshadowed the eventual extinction of the serjeants: "The English Bar, 1550-1700," 72.

³⁵ *The Records of the Honourable Society of Lincoln's Inn, 1422-1914. The Black Books*, ii, 319, 324; see Richardson, *A History of the Inns of Court*, 265.

sleeves; the high-ranking benchers wore knee-length gowns tufted with silk and velvet.³⁶ Not until 1685 did barristers adopt as their professional dress the lightweight black cloth gown, following its introduction as mourning for the death of Charles II.³⁷

In connection with Michaelmas Term's replacement of a white gown by a black one, the colour white does not always have good associations in the play. Quomodo's wife, Thomasine, does not like her prospective son-in-law Lethe, and Middleton borrows from *The White Devil* in having Thomasine observe of him: "how does he [Lethe] appear to me when his white satin suit's on, but like a maggot crept out of a nutshell" (II.iii.12-13).³⁸ Lethe is again given a bad-white association in an allusion by the gallant Rearage, Lethe's rival for Quomodo's daughter Susan, to the custom of doing public penance; as far as Rearage is concerned, Lethe's "name stands in a white sheet . . . and does penance for him" (III.v.3-4).

Lethe's exchanges with the Judge as his fate is decided in the final judgment scene provide another sign of Middleton's readiness to play around with literary convention, as I suggest he does in relation to the apparent anti-lawyer sentiment in the Induction, and in the play's conclusion, which I proposed in the previous section was conspicuously at odds with the notable new law on the promise. There are made

³⁶ William Dugdale, *Origines Juridicales* (London, 1663), 278; cited in Prest, *The Inns of Court*, 48. See also William N. Hargreaves-Mawdsley, *A History of Legal Dress in Europe until the end of the Eighteenth Century* (Oxford: Clarendon Press, 1963), 92-4; J. H. Baker, "The Origin of the Bar Gown," *Law Guardian*, 49 (June, 1969), 17-18.

³⁷ J. H. Baker, "History of the Gowns Worn at the English Bar," *Costume*, Vol. 9 (1975), 15-21; Prest, "The English Bar, 1550-1700," 81, 85 n. 58.

³⁸ The Machiavellian Flamineo says of Camillo: "when he wears white satin, one would take him by his black muzzle to be no other creature than a maggot" (I.ii.142-4): *The White Devil*, in *Three Jacobean Tragedies*, ed. Gāmini Salgādo (London: Penguin, 1987), 150.

to seem not many worse fates in city comedy than marriage to courtesan, whore, punk or prostitute. Subtle, in *The Alchemist*, for example, splutters: “Marry a whore! Fate, let me wed a witch first” (IV.i.90). In *Michaelmas Term*, ordered by way of punishment to marry Country Wench, Lethe responds at first conventionally: “Oh, intolerable!” (V.iii.109). Shortly after, his attitude in an aside is more pragmatic: “Marry a harlot, why not?” (V.iii.122)

The theme of deceptive appearance pervades the play in connection with both language and apparel. Midway through the play, Lethe’s pander Hellgill poses a series of questions clearly intended as rhetorical forms of truth by the character (as Polonius assumes the truth in *Hamlet* [I.iii.72] of his proverb about apparel oft proclaiming the man): “What base birth does not raiment make glorious? And what glorious births do not rags make infamous?” (III.i.1-3). Hellgill’s rhetoric is itself deceptive – the character means it, but the playwright is being ironic. Like Lethe, who tries to bury the past by means of fancy name and fancy clothes, Country Wench comes to the city in order to be a gentlewoman, an ambition she believes she achieves by dressing impressively while becoming a prostitute. Hellgill’s rhetoric invites an audience’s derision, therefore, in view of Lethe’s and Country Wench’s failure to match the stereotypical or popularly connotative character of their apparel. *Michaelmas Term*’s immediate, obvious switch from white to black law-gown may consequently be seen to become still more questionable in retrospect, as it becomes apparent that Middleton plays consistently against stereotypical connotations of apparel.

I referred in the first section to the claim made in the Induction that *Michaelmas Term* contains no real legal matter, a claim I suggested to be mischievously deceptive. The disingenuous disclaimer was common enough to be considered a convention in city comedy. For example, the dedicatory epistle to

Marston's *The Malcontent* has something to say in connection with the writer's reputation for satire:

(I heartily protest) it was my care to write so far from reasonable offence, that even strangers, in whose state I laid my scene, should not from thence draw any disgrace to any, dead or living (Ded. 9-13).

Marston reiterates his protest a few lines later (l.20), giving the unavoidable impression that he is protesting too much his innocence of personal and topical allusion. It *is* the case that there is no prominent legal-figure in *Michaelmas Term*. The first mentioned, Master Difficult the lawyer, is not even actually in the play – so busy was he in term time, he had to wait for the recent vacation to die (I.i.28-30). The lack of a prominent legal-figure could lead the audience member or reader into reading nothing extra into the Induction's seemingly earnest suggestion that the play “only presents those familiar accidents which happen'd in town in the circumference of those six weeks whereof Michaelmas Term is lord” (Ind. 71-3). But there is a wake-up call tagged on to the Induction: “*Sat sapienti*;³⁹ I hope there's no fools i'th'house” (Ind. 73-4). Swapan Chakravorty sees the Inns of Court men in the audience as being committed to smart laughter by this line.⁴⁰ Chakravorty finds a connection between the line and Quomodo's show of bravado at the end of the gulling scene, suggesting that the Inns men's desire to participate in clever amusement is betrayed into uneasy complicity in laughing at the draper's invitation to “Admire me, all you students at Inns of Cozenage” (II.iii.441-2). But it may be a mistake to see the use of the word “cozenage” as always necessarily implying a pejorative. Attitudes to

³⁹ Shortened form of a proverbial expression contained in Plautus's *Persa* (l.729) and Terence's *Phormio* (l.541): *dictum sapienti sat est* – “a word to the wise is sufficient”: Levin, ed., *Michaelmas Term*, by Thomas Middleton, 6 n. 73.

⁴⁰ *Society and Politics in the Plays of Thomas Middleton* (Oxford: Clarendon Press, 1996), 52.

cozenage can be matched in this respect with contemporary attitudes to casuistry, the method of reasoning that evolved from early medieval Christian theology. Casuistry came in the early modern period to be seen by some as a devious misuse of a philosophical art, a superior talent put to malicious ends.⁴¹ There is a similarity in ideas about the powers of poetry to seduce minds, as answered by Sidney and Jonson.⁴² The ambiguous relation of playwright and audience in *Michaelmas Term* is established early on, when Middleton has Michaelmas say in the Induction that “the interpretation of many” may well be the result of their having been “fondly deceived” (Ind. 69, 71). Levin remarks on the adverb, favouring a construction that attaches to the audience member, who is *foolishly* deceived.⁴³ But the *O.E.D.* gives examples of “fondly” meaning “affectionately, lovingly, tenderly” dating back to 1593,⁴⁴ so the

⁴¹ Casuistry’s final fall into disrepute is commonly attributed in substantial part to Pascal. Pascal published his *Provincial Letter* in 1656. Writing on behalf of the Catholic Jansenists, his polemic caricatured their political enemies, the Jesuit casuists, as “ingenious defenders of moral laxity, capable of justifying virtually any outrage by way of shrewd moral manoeuvring.” Carl Elliott, “Solving the doctor’s dilemma?” *New Scientist*, 11 January 1992, 42. On the history of casuistry and its revival in medical ethics in the late 1980s: Albert R. Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (London: University of California Press, 1989). In connection with humanist education’s renewed interest in rhetoric, ancient eloquence was contrasted to the language of the law, and simultaneously proposed as a means of improving its verbal form: Kahn and Hutson, *Rhetoric and Law in Early Modern Europe*, 1.

⁴² Sidney, *An Apology for Poetry, or the Defence of Poesy* (*supra*, 163 n. 51); Jonson, *Timber* (*supra*, 39 n. 116).

⁴³ Levin, ed., *Michaelmas Term*, 6 n. 71.

⁴⁴ *Oxford English Dictionary*, 2nd ed., s.v. “fondly,” definition 3. The 1593 example is Shakespeare’s *Richard II* (III.ii.9): “As a long-parted mother with her child / Plays fondly with her tears, and smiles in meeting, / So, weeping, smiling, greet I thee my earth, / And do thee favours with my royal hands.”

adverb may attach equally to the playwright, who *affectionately* and light-heartedly deceives only at the beginning of the play with the claim that he has nothing special to say about the law. Whether or not the playwright intended as much, the potential there existed in the text for making an alternative, law-based interpretation of the play's conclusion could bring any who recognized it – as members of the Inns of Court could have been expected to – to relate to the writer as, again, “mutually constituting members of a self-identifying community.”⁴⁵

⁴⁵ See *supra*, 42.

Chapter eight

Conclusion

One extraordinary aspect of city comedy is its association with lawyers. More perhaps than any other literary genre these are texts with a strong connection in terms of allusion and audience to the legal profession. For this reason, it is surprising that a full-length study of lawyers in city comedy has not been made before. If there is a reason for the absence of a study before now, it is perhaps that city comedy's participation in a tradition of anti-lawyer sentiment has been taken largely at face value. This thesis aims to open up the topic, and to demonstrate that city comedy's treatment of lawyers and the law is more complex than has been assumed.

I divide this conclusion into four parts: contribution, significance, limitations, and suggestions for further work.

8.1 Contribution

Four main contributions to knowledge are proposed.

The first is that Inns of Court lawyers were a favoured part of the target audience of the private playhouses, making it questionable that they would be represented negatively in city comedy.

The second is that lawyers as represented in city comedy are not a single or a simple category. I provide examples of instances in the plays where negative allusions *are* to be taken as read, for the reason that such allusions amount to negative fashioning of contemporary legal practitioners to whom the members of the Inns of

Court had some antipathy; for example, common law attorneys, civil lawyers, and amateur, quasi-lawyers. I argue that the purpose of negative representation of other practitioners was to valorize the barristers of the Inns of Court; conventional interpretations are thus sometimes questionable by reason of their over-generalization of the word “lawyer.”

The third is that representation of lawyers is inflected by the various forms and impulses of city comedy. Some apparently negative allusions to lawyers are not to be taken as read since they are examples of different kinds of literary strategy – be it, for example, irony, purposeful depiction of foolish characters, or a broader connection to antecedents, such as the notion suggested of deliberate failure influenced by Juvenal.¹

The fourth is that city comedy incorporates some reflection of the increasing professionalization of legal practice in the period. It is possible to find in city comedy representations of changes made in the first decade of the seventeenth century relating to legal education and the requirements for membership of the Inns of Court.

8.2 Significance

I begin this section with two paragraphs on the general significance of the thesis; I proceed to look at the specific significance of each chapter.

The thesis presents an alternative interpretation to the conventional analysis of the genre’s representation of lawyers, which has remained unchallenged since Brian Gibbons articulated it in his landmark study of the genre.² It has been recognized that this conventional analysis results in a paradox: that city comedy should be hostile to

¹ *Supra*, 50-3; in particular, the Juvenal reference, 52 n. 155.

² *Supra*, 1 n. 2.

the legal profession when the plays were written for performance before Inns of Court men.³ A key part of the significance of the thesis is that it endeavours to solve this problem. More broadly, the thesis highlights the significance of the role that city comedy played in representing important contemporary distinctions lawyers made, and were beginning to make, about themselves in relation to other legal practitioners.

I wrote in the introduction of how Geoffrey Vos's speech at the Bar's annual conference for 2007 made national news for calling for lawyers to be recognized in a positive light.⁴ Vos is reported in the Bar's press release as taking a colloquial line in identifying what he sees as the current negative presumption about barristers: "They are", he says, "in no sense fat cats."⁵ The negative as Vos expresses it, and as he feels inclined to rebut it, says something interesting about a distinctly and perennially British habit of deprecating success, prestige, and power. This is, at the same time, the inverse of a back-handed compliment: the reason Vos's speech made national news has probably to do with the fact that there is something a bit rich in his calling for sympathy for lawyers for their being notionally characterized to any extent as successful and prestigious "fat cats." The relevance of city comedy in this connection is that the affirmative I argue for in this thesis sees the genre making a significant contribution to a contemporary drive to increased organization and regulation of the common law professional, bringing increased success and prestige to the profession of the Inns of Court lawyer. City comedy might be said, that is, to play on the implicitly valorizing *back-handed insult* in which the common law court pleader becomes

³ *Supra*, 31-2.

⁴ *Supra*, 5.

⁵ "Bar Chairman Champions Barristers' Public Service Role, 3 November 2007" from the Bar Council's website.

prototypical successful and prestigious fat cat. Vos's mission for today is, incidentally, in one way doomed to failure – doctors and nurses cure ills that cannot be helped; the ills and problems lawyers “cure” habitually reflect their clients' own worst instincts: anger, revenge, covetousness, intolerable behaviour to a spouse.

I have attempted to show how the playwrights of city comedy were contributing subtly to the positive fashioning of what J. H. Baker calls the New Profession.⁶ Theodore B. Leinwand's analysis of city comedy can seem capable of being adapted to explain the paradox that the genre is hostile to a significant part of its audience in his suggestion that city comedy invited its audience to laugh at attitudes which were already stale and inadequate.⁷ But where lawyers and Inns students were concerned, in particular, the joke proposed in that analysis would have worn thin with repetition in the plays – certainly, if nothing else was going on in terms of how lawyers and law were represented. I contend that other legal business *was* going on. If the playwrights of city comedy were in part, as Leinwand proposes, critiquing an existing element of culture by rendering negative stereotypes stale by exaggeration and parody, I have attempted to show that they were doing something more complex, at least where representations of lawyers were concerned. They did this by alluding directly and indirectly to things such as landmark legal decisions, legal doctrines and debates.

The thesis acknowledges that negative representations of legal-figures are sometimes unambiguously negative. But close examination shows that such representations tend to be directed not at Inns of Court lawyers, but at other workers in the legal system – amateur, quasi-lawyers such as Throte in *Ram Alley*, or civil

⁶ *Supra*, 114.

⁷ *Supra*, 57-8.

lawyers such as Voltore nominally is in *Volpone*. Where negative opinion *is* directed at the Inns of Court, there is literary strategy at work. The speaker might be, for example, an obviously foolish character, whose provocative opinion about a significant element of the audience is included for something like pantomimic effect, as with Tucca in *Poetaster*.

I arrived at a number of subordinate, interim conclusions in the preceding chapters. I want to draw these subordinate conclusions together to the end of showing how they support the fundamental thesis: that lawyers and law are represented positively in Jacobean city comedy.

Jonson's *Poetaster* may be seen to turn on its head the literary convention of anti-lawyer sentiment: it refutes perceived negatives, and pleads positives. The playwright defends the form of satire in the play against accusations of defamation by arguing that, contrary to being a malicious form, conscientious satire performs a service useful to the state. The playwright's compelling general defence is consistent with the idea of positive representation of lawyers in three ways. Firstly, viewing Jonson's particular denial of having "tax'd / The Law, and Lawyers . . . / By their particular names" (68-70) in the context of his general denial of defamation, his counter-argument of performing a useful service implies not a passively neutral but an actively positive representation of the law and lawyers. This points to the second way in which Jonson represents lawyers positively: he makes a great lawyer of history, Trebatius, a character in the play; moreover, he uses the lawyer-figure to emphasize the poet Horace's rectitude. The third point on positive representation in *Poetaster* relates to the law. Matthew Greenfield's recent argument relates to the play's subtitle (and original main title): Jonson, he says, has a legal "genre" of *arraignment* displace

the conventions of verse satire.⁸ Greenfield's proposition corresponds with the fundamental idea of this thesis in so far as it represents an example of literature's affirmation of legal method by adoption of the law's formal aspects – and its doctrines, with the concept of *mitior sensus* in mind, encouraging mild construction. But Jonson does not, I suggest, “displace” the conventions of verse satire – this may seem the last thing he would have wanted to do. Rather, he signals a reciprocal – that is, a positive – interest and engagement between poet-playwright and lawyer: vocations seen before and after this time as, in effect, mutually exclusive.⁹ I provide a notable example of this reciprocal interest by arguing that Jonson is to be credited with the early drawing of a distinction between slander and libel in the 1601 play, such distinction being normally said to be post-Restoration.¹⁰

The title of *The Phoenix* gives an indication from the start of a sense of new things rising from old. Middleton represents the tangled old legal system in old quasi-lawyer Tangle, but the debate between Tangle and old Justice Falso about a new method of physical fighting may be interpreted as a metaphor for a self-conscious drive for increased professionalism in the Inns of Court. That the notion of supposed anti-lawyer sentiment in city comedy ought not to be regarded as specific hostility is shown by the fact that *all* professions are alluded to pejoratively in *The Phoenix*: the law is only one of them. Young prince Phoenix suspects “infectious dealings in most offices, and foul mysteries throughout all professions” (I.i.109-10), and towards the play's end he declares: “I'm sick of all professions” (IV.ii.98).

⁸ “Trial by Theater: Jonson, Marston, and Dekker in the Court of Parnasus,” in *Solon and Thespis: Law and Theater in the English Renaissance*, ed. Dennis Kezar (Notre Dame, Indiana: University of Notre Dame Press, 2007), 20-1.

⁹ Prest, *The Rise of the Barristers*, 184.

¹⁰ *Supra*, 79-83.

I challenged the authoritative view that John Day's play *Law Tricks* contains no legal matter, since the whole play turns on the legal matter of a bought-divorce.¹¹ Day participates in the elusive and antithetical discursive practice which had become fashionable in educated circles by the early years of the seventeenth century.¹² This accounts for some ostensibly meaningless, gratuitous, and incorrect legal usages in the play. I suggest these have meaning or at least purpose. For example, where Lurdo uses the term *habeas corpus* incorrectly, it is not a matter of Day being ill-informed, but a characterization of an unqualified legal-figure, resembling the amateur quasi-lawyers from whom the young members of the Inns of Court had recently begun to distance themselves. Day's play performs them a service by representing negatively Lurdo's wrongly assumed legal know-how.

I followed the chapters on *The Phoenix* and *Law Tricks* with one that makes reference to those and other, non-dramatic literature in connection with the subject of early modern wife-sale. The significance of this chapter is that it points to an affirmative representation of the law that is more complex than the "bad-lawyer / good-law" topos. I argue that, since divorce was in effect impossible for all but the very wealthy, emphasis on quasi-legal formality shows respect and desire for the organizing principles of the law. Consequently, representations of wife-sale demonstrate a specific, affirmative response to law that goes beyond the lip-service paid to the general "good law" topos. Broader significance rests in the collecting together of Elizabethan and Jacobean literary allusions to wife-selling, which are capable of being interpreted to suggest that wife-selling was not quite so rare in the early modern period as has hitherto been thought.

¹¹ Gibbons, *Jacobean City Comedy*, 112.

¹² *Supra*, 42, 47.

Recognizing the clear distinction Barry makes between the Inns of Court and the Inns of Chancery is the key significance of the chapter on *Ram Alley*. The negative representation of the Inns of Chancery in the play serves to emphasize the positive representation of the Inns of Court. The significance is heightened by the fact that the most clearly negative representation of the Inns of Chancery – “Were the Rogue a Lawyer, but he is none,” and so on (II.i.296) – is uttered by a servant. By implication, it was not only those within legal circles, or even the more well-to-do members of society, who were aware of the diminution of the professional and educational role of the Inns of Chancery: ordinary people became aware of the change. There is no allusion in the play to the 1590 ruling of *Broughton vs. Prince*,¹³ but a clear premium is placed on a full Inns of Court education. The chapter contributes to the central significance of the thesis in recognizing that the negative representation of the ostensible lawyer-figure is in fact a representation of an unqualified, quasi-lawyer, a figure towards which the members of the Inns of Court had an antipathy.

The chapter on *Michaelmas Term* contradicts the idea that the play has little to say about the law.¹⁴ I argue that it is possible to find a dramatic conflict between, on one hand, generic convention and, on the other, a hugely important and contemporarily well-known legal precedent. This puts an ironic slant on the interface of law and social privilege: Quomodo is made the loser in the play, but it may be left to the audience of the day to see that he should not be. In law, the judgment in the play’s final scene is inconsistent with the 1602 decision on contractual promises in *Slade’s Case*. In dramatic terms, Quomodo may appear, then and now, a more

¹³ *Supra*, 191, 193. The decision made call to the bar of an Inn of Court the required qualification for rights of audience before the superior common law courts.

¹⁴ *Supra*, 213-14.

interesting, more likeable character than young gentleman Easy.¹⁵ Social degree does win at the end of the play, but, I suggest, only because dramatic convention demands it, and the tone and dialogue of the scene invite an audience to question the assumptions of the generic demand. The significance of this is that it allows an audience to question the genre's conventionally assumed political sympathies.

8.3 Limitations

In this section, I comment on four limitations. I begin with evidence of audience composition; I go on to comment on three areas touched on but not given fresh attention: plague, primogeniture, and documentary evidence of wife-sale.

I have attempted to provide a sense of the contemporary lawyers in the different Inns of Court, who may therefore be considered potential members of the audience for city comedy. I referred, for example, to the case of Christopher Merrick and Robert Pye of the Inner Temple, whose real-life story involved something of the high risk and trickery (and the punitive judgment) of a city comedy plot.¹⁶ I referred, as well, to such as John Greene of Lincoln's Inn, whose short diary entries relating to playgoing are the best we have to go on in terms of connecting particular Inns men with the private theatres with which city comedy is mostly associated.¹⁷ The plays themselves contain evidence that the Inns of Court men formed a significant element of the audience for the plays. For example, Jonson appeals in the Induction to *Bartholomew Fair* to "my witty young masters o' the Inns o' Court" (34-5). But I

¹⁵ See Levin, *supra*, 220.

¹⁶ *Supra*, 15-16, and Appendix 1, 250-4.

¹⁷ *Supra*, 36.

acknowledge the lack of detailed evidence of audience composition for city comedy, and the lack of detailed contemporary accounts of early modern audience responses.¹⁸ Lack of detailed evidence in these areas must be acknowledged to be a limitation, since a broad selection of detailed accounts of Inns of Court men's own responses to the plays might serve to confirm or reject the thesis. This is, in any event, a limitation shared by all studies of city comedy.

Paul Slack's 1990 work *The Impact of Plague in Tudor and Stuart England* is a comprehensive, some would say definitive, study on that subject. I refer only briefly to the plague in the thesis.¹⁹ I feel it is a limitation of any study of city comedy to make only brief mention of the impact of plague on the genre, in particular on the subject and function of comedy. At the same time, that is a significantly broader topic than the one on which I have chosen to concentrate. As such, I believe it was appropriate to restrict my mention of it to only a few pages. Since the impact of plague is such a large topic, it might be asked why I bother to mention it all when my concern is specifically representations of lawyers and law. As I point out, it is worth bearing in mind that anxiety about the mortality rate must have had an effect on the ideas of the student members of the Inns of Court about the years of study and training necessary to becoming a successful lawyer. I mentioned, too, that the description in a contemporary text of Jonson as "a pestilent fellow" provides an example of how an apparent insult can turn out to be, at once, a recommendation and a description of the type of wit developed in the genre of city comedy.²⁰

¹⁸ *Supra*, 44-5.

¹⁹ *Supra*, 62-5.

²⁰ *Supra*, 65.

There is perhaps a limitation in not having given the matter of primogeniture more coverage, attaching to the interpretation relating to legal education. Griswold's analysis – that an Inns of Court education became in part a replacement for the course of entering the monasteries for younger sons²¹ – provides an interesting indication of increasing secularization in early modern England. Not only for the obvious point: the monasteries represented religion, whereas the Inns, despite the faith of their members, strictly did not. The dual point here is that the members of the Inns possessed, in arguable degree, an antipathy to the civilians, who were sometimes denigrated as “popish.”²² So, broadly speaking in this connection, Catholicism changes from the former pursuit of younger sons to the justification for antipathy against legal rivals. There is an element of affirmative and negative representation here, so, in that sense, it is a limitation of the thesis that I do not say more about it. But this is more a sociological point than one driven by representation in the plays themselves, so, for this reason, I chose not to follow this line of enquiry.

There is a limitation to my suggestion that wife-sale was more common in the early modern period than surviving evidence shows. This conclusion is based only on the basis of literary representations of the practice. This is an example of the problem articulated by Jonathan Rose in connection with accepting some of the conclusions of interdisciplinary studies of law and literature: literature is, first, fiction, and, second, indirect evidence.²³ My thesis acknowledges – in fact, it rests on – the idea that Jacobean comedy is not to be taken as a straightforward attempt to document reality: I examined in the introduction some extended implications of the idea Jonson puts

²¹ *Renaissance Revivals*, 245 n. 78.

²² *Supra*, 19, 22.

²³ *Supra*, 66.

forward in *Every Man Out of His Humour* of opposing a mirror to the time's deformity.²⁴ But where direct evidence is lacking – as is the case with early modern wife-sale – even if the fictional, indirect evidence of literature has to hold less weight than factual, direct evidence, it still holds some value. It shows at the very least that people were thinking about the practice, and that begs the question *why?* I offer an interpretation on that line of enquiry. There is dispute between the factual, directly evidenced studies on wife-sale, in any event.²⁵ And my proposal is consistent with at least one authoritative historian's conjecture, that wife-selling in the eighteenth and nineteenth centuries was at least as likely to be a survival as a novelty.²⁶ Christopher Hill's point is that, in spite of the scarcity of surviving early modern evidence, the apparent explosion in the frequency of wife-selling in the eighteenth and nineteenth centuries is as likely to mean that earlier cases were not discovered, prosecuted, or documented (or that evidence was simply lost or destroyed), as that the practice simply suddenly increased in frequency.

8.4 Further work

The evidence relating to lawyers being part of the audience for plays in the late sixteenth and early seventeenth centuries concerns mainly the amphitheatres. The desire to know more about early modern audience composition is implicit in Gurr's leading study.²⁷ Gurr makes an important distinction in connection with contemporary

²⁴ *Supra*, 40-2.

²⁵ *Cf.* Menefee and Thompson; *supra*, 172 n. 22.

²⁶ 175 n. 33 for the Christopher Hill reference.

²⁷ For evidence of lawyers being part of theatre audiences, see Gurr, *Playgoing in Shakespeare's London*, 3rd ed., 77, 79-82.

evidence suggesting that a full range of society was present at plays: such descriptions come “from around the 1590s,” he says, when only the amphitheatres are open.²⁸ It seems worth pointing out another distinction when discussing evidence relating to audience members from the Inns of Court, though. Inns of Court students were regular playgoers from the start, says Gurr, and he cites two instances of disorder and affray involving Inns of Court students at the amphitheatres, from 1580 and 1581.²⁹ Gurr suggests that this hostility must have had a social origin, and he observes that affrays grew less over the next twenty years,³⁰ but no particular reason is proposed for the change in conduct. This may reflect the drive to increased professionalism by the members of the Inns of Court, and the eviction of the attorneys to the Inns of Chancery. These developments occurred after the dates about which Gurr writes. It would be desirable to know more about the lawyer-contingent in the audience for any plays from the period, but hard to find as we know this is, the perspective of changing conduct of Inns of Court members in the last years of the sixteenth century and the first years of the seventeenth, when the important changes involving the Inns of Chancery began to be made, might prove a useful, narrower perspective for further work in literary studies.

I noted in chapter six that little is said about the Inns of Chancery in literary commentaries.³¹ The main reason for this has to be that legal historians admit to knowing less about the Inns of Chancery than they do about the Inns of Court.³² The

²⁸ *Ibid.*, 79.

²⁹ *Ibid.*, 80-1.

³⁰ *Ibid.*, 81.

³¹ *Supra*, 184-5.

³² Richardson says the number of the Inns of Chancery is almost as hard to establish as their origin: *A History of the Inns of Court*, 5. Brooks observes that establishing membership of the Inns of Chancery

desire to know more about the Inns of Chancery is already implicit in studies of legal history, therefore. In the context of literary studies, there is a less acknowledged shortage of attention to the Inns of Chancery as distinct from the Inns of Court. In my chapter on *Ram Alley*, I examine the importance of the contemporary decision to segregate barristers and attorneys, and how this impacted on the educational role of the Inns of Chancery. The Inns of Chancery continued, becoming, in effect, social clubs and boarding societies, but after 1827 they could justly be described as a legal anachronism.³³ The Inns of Chancery have a long and greatly varying history, then – one deserving their own dedicated examination in literature.

is especially difficult: more so than with the Inns of Court: “The Common Lawyers in England,” 46-7. Prest says there is no way of telling how many prospective barristers between 1590 and 1640 took the “highly traditional course” of being placed in an Inn of Chancery before acting as clerks in the office of a prothonotary of the common pleas: *The Rise of the Barristers*, 113.

³³ The Inns’ struggle for survival saw them invaded by non-legal members, and the establishment of the Law Society removed any excuse for their continued existence in a legal context. The Law Society was established in 1827, and incorporated in 1831; the *Judicature Act* of 1873 provided that the “attorney” would in name and function be subsumed by the “solicitor.” On the demolition of the Inns of Chancery, see Richardson, *A History of the Inns of Court*, 7.

Appendix 1

Report of the case of Mericke v. Pie, A.D. 1602

*In Camera Stellata, coram Consilio ibidem, Mercurij, 5 Maij, 1602, annoque Elizabethæ Reginae 44.*¹

Coke, Queen's Attorney, informed on the relation of Christofer Merrike of the Inner Temple, utter barrister, against Robert Pye, defendant, of the Inner Temple, also utter barrister, for practice as to the life, lands, and goods of the said Cristofer Merrike, for perjury touching the execution of this, and for other misdemeanours, as follows, namely: –

Merrike, – Feb. 1601, at the request of Pie, delivered to him *3li.* for a week; Pie did not repay this within three months, after Merrike had often demanded and sent for it, and at last threatened the arrest of Pie. Whereupon Pie, on – July, carried *56s.* to Merrike's chamber in the Inner Temple, and offered payment of this; Merrike said that he had lent *3li.*, and without acquittance, and therefore he would not deliver any acquittance. Pie replied that *4s.* was to be abated for a wager, touching a case, that Merrike had lost to Pie, because Pie averred that when an infant enters upon the twenty first year he is of full age, Merrike upon the contrary [said] that not before he had accomplished the twenty one years fully, days and hours. Whereupon Pie refused to pay the *56s.*, and Merrike with violence took the money and Pie's ink-horn [*galiere*], and beat him. Whereupon Pie indicted Merrike at Newgate, and gave instructions to one Grove, the clerk there, to fashion the indictment . . .

¹ Hawarde, *Les Reports del Cases in Camera Stellata, 1593-1609*, 133; *A Calendar of the Inner Temple Records*, i, 473-6.

Pie himself was sworn to the indictment and gave the evidence at the Grand Inquest [*i.e.* to the Grand Jury] that it was on the Queen's highway, and that he [? Merrike] took to flight; whereupon a true bill was found. The Recorder, John Crooke seeing the indictment and knowing the parties, demanded of the Grand Inquest who gave evidence, and what evidence he gave; they answered as above. Whereupon the Recorder conferred at the bar with Pie, and said that this could not be either robbery or felony, and therefore advised him to be careful how he proceeded. The next day Pie was enjoined to proceed to the indictment; Merrike, then present, was arraigned. Pie, confidently and impudently, gave the same evidence, whereupon he was committed to the sheriff and bound to appear in this Court the next term. The same night after the indictment, Pie went to the Court at Grenewige and there acquainted Ferdinando, servant and musician in the Privy Chamber, that one of good estate had committed felony and had forfeited his goods and lands, and demanded his letters to divers of the bench to have a gracious hearing by the Queen; whereupon [Ferdinando] wrote a letter to Sir Robert Wrothe and others, and so [the case] went to trial; and on the arraignment, Merrike was acquitted by the same jury as indicted him on the Grand Inquest. Then the Benchers of the Inner Temple examined this, and put Pie out of Commons, and referred him to the next Parliament; and they suspended Merrike in Commons for a time of forbearance, but in a short time restored him. But at the next Parliament they examined the matter at large, and put Pie out of the House [*i.e.* the Inner Temple], and degraded him from the Bar and from all practice: and in the same vacation the Queen's Attorney and the Recorder took Pie's examination in writing, when he confessed all, and subscribed his hand: and thereupon the Attorney in Michaelmas Term next following informed *ore tenus* on this confession against Pie, when Pie denied it to be his hand, and said it was not rightly [*dumente*] taken, and

prayed to have the benefit of the law, [25] Edw. III., cap. [4] *quod nullus liber homo imprisonetur sans judgmente*, and that he should not be condemned before bill and answer: Whereupon it was ordered by the Court that the Attorney should inform at once, because now Parliament is sitting [*continue*] and a pardon is expected, but if this cause be not heard before the pardon, the Lord Keeper would have care that this [case] should be excepted from the pardon if the bill was pending before the pardon: Phillips was assigned as Counsel with Pie, but when he saw Pie's answer, he moved for and obtained an order for his discharge: Pie was committed to the Fleet, and there remained until the sentence of the cause was heard. Pie did not submit himself, but in substance confessed all in his answer, and did not excuse himself in a reasonable or sensible word, but audaciously and impudently scandalized with imputations not only the Attorney, the Recorder and Merrike, but all the Judges and Justices, without any colour of cause. And he examined no witnesses, but Merrike examined Grove and three of the Grand Jurors and those witnesses which Pie said he had for himself and for the Queen, and they all deposed plainly and directly against Pie. To which he answered nothing, but only [said], "God knows the truth of all, and they may as well depose any thing [else] against me as this; for may I be hanged, and my neck cut off . . . if this be true." And at last he craved the benefit of the Statute of 20 Edward I., *De defensione juris*, that no one should be admitted to sue before he has found surety to answer the issues and damages, etc. And thus he would take away the jurisdiction of this Court (as in the former Statute that he vouched), the authority of the Queen, which is present here, of her Council, of all original writs, and of all Justice. Then he craved the consideration of the Court inasmuch as the bill and the offences in it were not particular, and he was not charged with committing them contrary to the statutes and laws of this realm. But this notwithstanding [the bill] was

held good by the Court and these exceptions [were considered] frivolous, Pie having superficial knowledge or taste of this, but not intellect.

Merrike was commended by the Attorney as a good student and of as good conversation as any in the Temple: But Pie falsely scandalized him for coveting and beggaring his brothers, taking forfeitures, suing men without cause and otherwise cruel and extorting 'courses' in general without cause or colour: And [Pie] also imputed falsely that the Recorder had taken 10*li*. From Merrike for a fee before the commencement of this suit, and as to this he vouched Serjeant Woodde, who cleared the Recorder of this imputation, and said of Merrike that he had intermeddled with Pie honestly, pitifully and conscionably.

Pie's offence was condemned by the whole Court to be horrible and odious, and the offence of robbery, murder and perjury against God; . . . And Pie had intended murder and robbery in his heart, which is an offence before God: And the offence is more odious and detestable in this, that he has made Justice a murderer and robber.

Pie was sentenced to a fine of 1,000 marks, pillory at Westminster and there to lose one ear, papers, from [Westminster] Hall to ride with his face to the horse's tail to 'Temple Gate,' and there to be pilloried and to lose the other ear, and perpetual imprisonment. As for Merrike, he was acquitted with great favour and grace, and delivered from all imputation of 'intemperancye' or 'heate.' And since they were both professors of law, [the Court] exhorted them that have authority to admit to the bar, to have care to name those that were literate, honest and religious, and in the admittance of such to the House [Inn], for if they had had [such care], they would never have admitted Pie to the House, but he would have pursued his father's trade, who was a butcher; and they should not have calls by the dozens or scores, as now is the use: For the good and literate professors of the law are as good members of the

Commonwealth as any others, but the ignorant and bad professors of the law are as ‘daungerouse vermin’ to the Commonwealth as ‘Caterpillers,’ etc.

Postscript

The supercilious allusion to Pye’s being the son of a butcher appears to be mistaken. If the appendix to Hawarde’s reports and the list of Admissions to the Inner Temple are to be believed,² Pye was the second son of Sir William Pye of Mynde Park, Hereford.³ According to the Inner Temple records, he did not suffer the *perpetual* imprisonment handed down in Star Chamber, managing against incredible odds to build a successful after-career:

[Robert Pye] was auditor of the Exchequer under King James I. and Charles I., was knighted in 1622, and defended his residence, Faringdon House, Berks., on behalf of the King against the Parliament in 1645-46. He was M.P. for Bath, 1620-24; for Ludgershall, 1625; for Westminster, 1625-26; for Grampond, 1627-28; for Woodstock, 1640; and for Berkshire, 1654 and 1658-59. He died in 1662. Of Christopher Merricke nothing is known except that he was “from Southwark.”⁴

² *Les Reports del Cases in Camera Stellata*, 410; “Admissions to the Inner Temple to 1659.”

³ *A Calendar of the Inner Temple Records*, i, xcii

⁴ *Ibid.*

Appendix 2

Plays performed at the Inns of Court, 1500-1615

Each of the Inns of Court presented dramatic performances at regular intervals at different times in their histories, but exact details of the number of presentations and the titles of many cannot be known.¹ This is a short, selective list of plays performed at the different Inns up to the period covered by this thesis, including a few key titles.

(i) Gray's Inn

1	<i>Lord Governance and Lady Publike-Wele</i> . Title applied to a political satire by John Roo of Gray's Inn.	Christmas 1526
2	<i>The Supposes</i> . Translation by Gray's Inn man George Gascoigne of Ludovico Ariosto's <i>Suppositi</i> .	1566
3	<i>Jocasta</i> . Translation by Gray's Inn men George Gascoigne and Francis Kinwelmershe of Lodovico Dolce's <i>Giocasta</i> . Christopher Yelverton of Gray's Inn wrote the Epilogue.	1566
4	Jonson's <i>Catiline</i> performed for Lord Burghley.	16 January 1588
5	<i>The Misfortunes of Arthur</i> . By Thomas Hughes of Gray's Inn. Performed at Greenwich for the Queen.	22 February 1588
6	<i>The Comedy of Errors</i> . Possibly the first production of Shakespeare's play. ²	December 1594

¹ Richardson, *A History of the Inns of Court*, 243, n. 120; list informed: *ibid.*, 211-44, 401-4.

² Stanley Wells and Gary Taylor, eds., *Complete Works of William Shakespeare* (Oxford: Clarendon Press, 1999), 257.

(ii) Inner Temple

1	<i>Gorboduc</i> . By Thomas Norton and Thomas Sackville of the Inner Temple. A later edition written by John Day in 1570-1 (n.d.) is titled <i>Ferrex and Porrex</i> .	6 January 1562
2	<i>Gismonde of Salerne in Love</i> . Principally by Inner Temple man Robert Wilmot; assisted by Henry Noel, Christopher Hatton, Rod. Stafford, and other Inner Temple men. Rewritten in blank verse in 1592 as <i>Tancred and Gismund</i> .	1568
3	<i>Lady Amity?</i> A “show” mentioned by Francis Beaumont (admitted to the Inner Temple in November 1600).	One Christmas 1600-1605
4	<i>Oxford Tragedy</i> (possibly <i>A Yorkshire Tragedy</i>).	2 February 1608

It is not known whether the 1556 *Love and Life* (a lost play written by William Baldwin for performance by students of the Inns) was actually performed.³

(iii) Lincoln’s Inn

1	Unknown play.	2 February 1500
2	<i>The Play of Love</i> . Interlude by John Heywood.	Christmas 1529?
3	Unidentified play performed by the boys of the royal chapel; perhaps Richard Edwardes’ <i>Damon and Pithias</i> .	2 February 1565
4	Unidentified play performed by the boys of the royal chapel.	2 February 1566

³ Albert Feuillerat, *Documents Relating to the Revels at Court in the Time of King Edward VI and Queen Mary* (Louvain, 1914), 215-17; cited by Richardson, *A History of the Inns of Court*, 240 n. 108.

5	Unknown play presented by the players of Sir Richard Rich.	2 February 1570
6	Unidentified comedy presented by the boys of the royal chapel; directed by Richard Farrant.	Christmas 1580

(iv) Middle Temple

1	Marston's <i>Histriomastix</i> . Possibly part of the Middle Temple revels of 1598-99.	About 1599
2	<i>Twelfth Night, or What you Will</i> . Noted in Middle Templar John Manningham's <i>Diary</i> . ⁴	2 February 1602
3	<i>The Fleire</i> . By Middle Templar Edward Sharpham.	1607-1610
4	<i>The Bridegroom and the Madman</i> . Author not known.	2 February 1613
5	Unidentified play.	2 February 1615

⁴ *Diary of John Manningham, of the Middle Temple, 1602-1603*, ed. John Bruce (London, 1868), 18; entry dated 2 February 1602.

Appendix 3

STC numbers and location of early modern books

Extended titles are stated in shortened form. Full titles are stated in the Bibliography.

Book	Location	STC system no.	STC citation no.
Barry, Lording. <i>Ram-Alley or Merrie-Trickes</i> . London, 1611.	British Library	006172634	S100951
Burnet, Gilbert. <i>The Life and Death of Sir Matthew Hale, Kt.</i> London, 1682.	British Library	006122078	R215370
Coke, Sir Edward. <i>A Booke of Entries</i> . London, 1614.	British Library	006193114	S121747
Cowell, John. <i>The Interpreter</i> . Cambridge, 1607.	British Library	006180652	S108959
Croke, George. <i>Reports</i> . London, 1661.	British Library	006098296	R31318
Cupper, William. <i>Certaine Sermons</i> . London, 1592.	British Library	006187774	S116429
Dalton, Michael. <i>The Countrey Justice</i> . London, 1618.	British Library	006178983	S107267
Dekker, Thomas. <i>The Seuen deadly Sinnes of London</i> . London, 1606.	British Library	006176972	S105270
Finch, Henry. <i>Law or a Discourse Thereof in Foure Bookes</i> . London, 1627.	British Library	006193414	S122048

Fletcher, John. <i>Wit without Money</i> . London, 1639.	British Library	006172892	S101208
Fraunce, Abraham. <i>The Lawiers Logike</i> . London, 1588.	British Library	006174317	S102621
Fulbeck, William. <i>A Direction or Preparative to the study of the Lawe</i> . London, 1600.	British Library	006174454	S102759
Gibbon, Charles. <i>The Praise of a good Name. The reproach of an ill Name</i> . London, 1594.	British Library	006185220	S113889
Hake, Edward. <i>Newes out of Powles Churchyarde</i> . London, 1579.	British Library	006177850	S106141
Jenner, David. <i>The Prerogative of Primogeniture</i> . London, 1685.	British Library	006084010	R17940
Jonson, Ben. <i>Workes</i> (vol. 2). London: 1641.	British Library	006183169	S111824
<i>The Just Lawyer</i> . London, 1631.	British Library	006180078	S108388
Lambarde, William. <i>Eirenarcha</i> . London, 1581.	British Library	006181015	S109320
Langbaine, Gerard. <i>An Account of the English Dramatick Poets</i> . Oxford, 1691.	British Library	006086954	R20685
Lenton, Francis. <i>Characterismi</i> . London, 1631.	British Library	006181089	S109394

March, John. <i>Actions for Slaunder</i> . London, 1647.	Trinity College, Cambridge	006096346	R29500
Copy used.	British Library	Integrated Catalogue system no. 002376289	
— . <i>Reports: or, New Cases</i> . London: 1648.	British Library	006103052	R6440
Martin, William. <i>Historie, and Lives of the Kings of England</i> . London, 1615.	British Library	006185591	S114259
Mulcaster, Richard. <i>Positions wherein</i> London, 1581.	British Library	006185585	S114253
Perkins, John. <i>Profitable Booke</i> . London, 1597.	British Library	006185616	S114284
Petowe, Henry. <i>Londoners their Entertainment in the Countrie</i> . London, 1604.	Bodleian Library, Oxford	006184021	S112686
Powell, Thomas. <i>The Art of Thriving</i> . London, 1635.	College of Cardiff, University College of Wales	006186323	S114990
Copy used.	British Library	Integrated Catalogue system no. 002974004	
— . <i>Tom of All Trades</i> . London, 1631.	British Library	006186325	S114992

<i>The Practick Part of the Law Shewing the Office of an Attorney And a Guide for Solicitors.</i> London, 1681.	British Library	006154218	R184827
Pricket, Robert. <i>Lord Coke, His Speech and Charge.</i> London, 1607.	British Library	006180145	S108454
Prynne, William. <i>Histrion-Mastix.</i> London, 1633.	British Library	006186652	S115316
<i>Reports of Certain Cases.</i> By John Godbolt. London, 1652.	British Library	006090879	R24389
Rolle, Henry. <i>Un Abridgement des Plusieurs Cases.</i> London, 1668.	British Library	006135084	R353288
S. S., <i>The Honest Lawyer,</i> London, 1616.	British Library	006187679	S116335
Sheppard, William. <i>Epitome.</i> London, 1656.	British Library	006076431	R10939
Stow, John. <i>A Survey of London.</i> London, 1603.	British Library	006189243	S117889
Stow, John, and Edmond Howes. <i>The Annales or Generall Chronicle of England,</i> London, 1614.	British Library	006188950	S117596
Wheeler, John. <i>A Treatise of Commerce.</i> Middelburgh, 1601.	British Library	006191103	S119735

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