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**PERFORMANCE RHETORIC IN
SHAKESPEARE AND LAW**

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A thesis submitted in partial fulfilment of the requirement for the degree of Doctor
of Philosophy by Published Work

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Abstract

The published works submitted for this PhD demonstrate that attention to the practice of performative rhetoric can produce deep insights into the operation of persuasive arts in society, law courts and the Shakespearean playhouse. The main plank of my submission comprises chapters selected from my book *Shakespeare's Acts of Will: Law, Testament and Properties of Performance* (Bloomsbury Arden Shakespeare, 2016). In that book, I demonstrate that since Roman times legal testamentary processes have been theatrically performative and that then, as now, and as in Shakespeare's day, the testamentary process serves as a productive analogy for theatrical performance. This is because legal processes of testament, executorship and probate have their counterparts in the practices by which theatrical performance engages actors to execute the dramatist's will and playgoers to witness it, to test it, and hopefully to approve it. Words uttered at thresholds between states of being have a quality that is called in various contexts 'ceremonial', 'ritual', and even 'magical'. All liminal language is potent, but none more so than words spoken at the threshold between life and death. Shakespeare acknowledges that 'the tongues of dying men / Enforce attention like deep harmony' (*RII*, 2.1.5-6). In theatre, the language of the play performs a sort of magic as it passes from the world of the stage to the world of the playgoers. In law, so-called 'operative words' (such as 'I agree', 'I declare' and 'I swear') have a comparable capacity to move people from one state of social being to another. The words of a last will and testament have a distinctive liminal power to cross the threshold of death itself. Through words of will and the performance of the testamentary document, one acts now to express one's will over the properties of a future world.

Pursuing the testamentary trope through Shakespeare's Elizabethan plays, I argue that the performance of will can supply a definitional distinction between tragedy and comedy in human drama. Namely, that tragedy follows where the enactment of free will is frustrated or overborne and comedy flows where will breaks free of traditional hierarchical bonds only to resubmit itself voluntarily to new subjection in an endless cycle of unlearning.

I contend that Shakespeare's dramatic works are especially apt to shed light upon the theatricality of performing testamentary will. This is in part down to Shakespeare's dramatic genius, flourishing out of an intensely rhetorical school education and playhouse practice, and in part down to the peculiar socio-legal context in which Shakespeare worked as regards the emergence of modern free will. I demonstrate that Shakespeare was born into a new age of will, in which individual intent had the potential to overcome dynastic expectation. Special significance is attached to the 1540 Statute of Wills, which liberated testamentary disposition of land and thus marked a turning point from hierarchical feudal tradition to the modernity of horizontal free trade and democratic self-determination.

The other published chapters that complete my submission are taken from books written or co-edited by me. They focus on material aspects of rhetorical performance (synecdoche of material things in *The Merchant of Venice* and the relationship between dress and proof in *Twelfth Night* and *Othello*) they advance my thesis that the meaning and persuasive effects of the play text can only be appreciated in the context of performance, and that this requires us to attend to prosody (including the sound, metre and rhythm of speech) as well as to the performed relationship between words, silence, gesture and movement through space. Speech, silence and movement must also be appreciated in their physical context, which in the playhouse includes the material environment formed of stage structures, fixtures, costume and moveable props.

A. Supporting statement

Setting out the relationship between the Works presented and the significance of the Works as a contribution to original knowledge within the relevant field (9950 words)

My submission for a PhD by publications in the Department of English and Comparative Literary Studies is the culmination of many years of collaboration in The University of Warwick's interdisciplinary efforts at the intersection of law and literature, with a particular focus on Shakespeare and performance. In 2005, the CAPITAL Centre was launched as a partnership between the Royal Shakespeare Company ('RSC') and The University of Warwick. It was with support from the CAPITAL Centre colleagues, including Jonathan Bate, Susan Brock and Carol Rutter that in 2007 I convened, with my colleague Paul Raffield, the Warwick international conference on 'Shakespeare and the Law'. I began to teach my module 'Law and literature' in CAPITAL Centre spaces in 2009 and I continue to teach it today. In 2010, at the invitation of Peter Kirwan of the Department of English and Comparative Literature, I was the first ever speaker in the interdisciplinary series *Sidelights on Shakespeare*. From the outset of my interdisciplinary efforts, I have received generous encouragement and support from colleagues in the Department of English and Comparative Literature. Starting with Carol Rutter, Jonathan Bate, Susan Brock and Peter Kirwan and, more recently, Paul Prescott (who has kindly acted as the supervisor of this submission). I am grateful to them all for their invaluable comments on drafts of various publications and I take this chance to acknowledge and thank them for their support, as I also acknowledge and thank colleagues from further afield. I hope it is clear from the works submitted in this

application that I have benefitted from the generous input of these and other colleagues and have developed as a literary scholar over the years.

It was through the CAPITAL Centre that I was put in touch with the RSC and given the opportunity to deliver workshops in Shakespeare's rhetoric. These I have continued to develop and present in various forms over the years, including for the London Academy of Music and Dramatic Arts ('LAMDA'), for Australia's National Institute of Dramatic Arts ('NIDA') in Sydney, The Friends of the RSC, and for groups of RSC donors. I have occasionally led rhetoric workshops with RSC actors, including, most recently, the ensemble for *Julius Caesar* and *Antony and Cleopatra*. My latest monograph, *Shakespeare's Acts of Will: Law, Testament and Properties of Performance* (London, Bloomsbury Arden Shakespeare) ('*Acts of Will*'), chapters of which make up the bulk of this PhD submission, grows in large part out of those workshops. As it says in the blurb, the book seeks to demonstrate Shakespeare's appreciation of testamentary tensions and his ability to exploit the inherent drama of performing will. Focusing on Shakespeare's late Elizabethan plays, it shows that Shakespeare is playful with legal technicality rather than obedient to it, and it illustrates how Shakespeare transformed lawyers' manual book rhetoric into powerful drama through a stirring combination of word, metre, movement and physical stage material. 'Stirring' may be considered the essential aim of rhetoric for dramatists and lawyers alike, and for that reason the word appears in the title of my 2009 monograph on rhetoric *Equity Stirring: The Story of Justice Beyond Law*. ('Equity stirring' is a quote from Shakespeare's *Henry IV Part I*, although that monograph does not form part of the present submission.)

The relationship between the works presented

The publications in the present submission have been selected because they demonstrate the candidate's belief that attention to the rhetorical aspects of Shakespeare's works will deepen our appreciation of Shakespeare's language and stage-craft. Reference is made to rhetorical components of Shakespeare's education and reading, including his possible familiarity with popular rhetoric manuals and legal texts. My particular focus is upon the relationship between the linguistic rhetoric of the page and embodied and material aspects of performance on stage. Following in the tradition of the late Professor John Barton, co-founder of the Royal Shakespeare Company, I seek to enhance stage practice, and to enhance critical appreciation of stage practice, by attending to the ways in which Shakespeare's linguistic rhetoric can be combined with gestures, movements, props and staging to produce persuasive effects upon theatregoers. This requires attention to such factors as the embodied sound effects that Shakespeare's language engenders when spoken, and the wide range of subconscious influences that Shakespeare's word sounds and word senses engender when performed physically and through sensory stimulation of the playgoers' imagination.

The main plank of my submission comprises four chapters (1, 2, 4 and 6) from my 2016 monograph *Shakespeare's Acts of Will: Law, Testament and Properties of Performance* (London, Bloomsbury Arden Shakespeare). These chapters have been selected because of their particular focus on material aspects of rhetorical stage performance. Chapter 5 of that book, on *Hamlet*, extends to 24,000 words and for that reason is not included in the present submission. Nevertheless, brief reference to the contents of that chapter will be made in this statement by way of providing context for the submitted works. For instance, it is worth saying from the outset that despite Hamlet's bookish preoccupation with 'words, words, words'

(2.2.189), his advice to the travelling troupe of theatrical players who visit Elsinore comes straight out of the rhetoric manual: ‘suit the action to the word’ (3.2.17).¹ *Actio* originally described the gestural action of orators and ‘action’ described legal proceedings long before ‘acting’ became a byword for playing in the public playhouses.²

In addition to the four chapters from *Acts of Will*, two chapters from earlier works are included. One is a chapter from my 2013 monograph *Dress, Law and Naked Truth: A Cultural Study of Fashion and Form* (London, Bloomsbury) (*‘Dress, Law’*). The other is the chapter ‘The Law of Dramatic Properties in *The Merchant of Venice*’ from the 2008 collection *Shakespeare and the Law* (Oxford, Hart Publishing) which I co-edited with Paul Raffield and which carried the proceedings of the 2007 conference mentioned earlier.

The argument of each of the six submitted chapters is summarized next. Through this summary it is intended to outline the relationship between the works submitted in terms of their shared concern for performative rhetoric. Having a legal background, I first came to Shakespearean scholarship with an enthusiasm to explore some of the thematic concerns that the law shares with Shakespeare’s dramatic works, but I quickly found it more fruitful to focus upon the practical methodologies

¹ Ann Thomson and Neil Taylor (eds), *Hamlet* The Arden Shakespeare, third series (London: Bloomsbury, 2006). Quotations from Shakespeare’s works are from the most recent edition published by Bloomsbury Arden Shakespeare unless otherwise stated.

² The earliest theatrical usage cited in the *Oxford English Dictionary* is Robert Green’s *Green’s Neuer too Late* (1590): ‘Men greedie of gaines did fall to practise the acting of such Playes’ (ii. sig. B4v).

that legal performance and Shakespearean drama have in common. It is this focus on the craft of performance that leads me to attend to rhetorical performance as the tradition that connects argument, persuasion and critical judgment in both Shakespeare and the law. Accordingly, I hope it is evident from the development of my interdisciplinary writing from the earliest submitted work (2008) to the most recent (2016) that I have become increasingly attuned to the need to resist an overly technical law-centric approach to the appreciation of Shakespeare's works and to become increasingly circumspect in the claims that I make for Shakespeare's technical legal knowledge.

Before turning to my individual publications, it seems appropriate to commence this rhetorical study with a brief exordium on the significance to both Shakespeare and the law of attracting an attentive audience and a fair hearing. A significant part of my appreciation of Shakespeare's dramatic texts is the desire to appreciate the poetic and rhetorical sound effects that are produced when text is performed. I take seriously Harley Granville-Barker's observation in the Introduction to his *Prefaces to Shakespeare* that 'The text of a play is a score waiting performance'.³ The actor Kevin Kline might have had this in mind when he said that 'Shakespeare didn't write this stuff to be read. It's like sheet music. You don't just look at it; it's just a bunch of notes on a page. This was meant to be played'.⁴

To attend and to be attentive one must first be called to attention. In English courts, it was traditional to commence hearings with the call 'Oyez, oyez, oyez' ('hear ye, hear ye, hear ye') which is still used to open proceedings of the United States Supreme Court today. The three-fold call to hear might also have been

³ (London: Batsford, 1930, p.5

⁴ John Barton's *The Shakespeare Sessions* (Storyville Films, Dir: Jacoby, 2003).

familiar to Shakespeare from the sessions of the consistory court (the so-called ‘bawdy court’) that was convened in local churches in Early modern England, including in the parish church of Stratford-Upon-Avon.⁵ In *Shakespeare and the Bawdy Court of Stratford*, Brinkworth writes that ‘If the accused does not obey the summons (‘citation’) and appear in court on the specified date he was called three times in a loud voice’.⁶ There is an auditory and rhetorical counterpart here in the three trumpet blasts by which it is thought that the start of the play was signalled in early modern playhouses.⁷

In playhouse, as in court, the ear must be excited if it is to hear and to judge the fairness of the poetry and the pleadings that are to come. A clamour (the original sense of the legal word ‘claim’) awakens the ear as a prelude to attentive hearing. Rhetoricians have long appreciated this need to excite auditory engagement, thus the rhetorician Thomas Wilson lauded the ‘plaine beginning’ wherein ‘the hearer is made apt to giue good eare out of hande’.⁸ Shakespeare was probably familiar with Wilson’s work,⁹ and this passage from Wilson might have inspired Mark Antony’s famous plain beginning to his speech in Caesar’s funeral where he expressly invites

⁵ Jonathan Bate, ‘The Bawdy Court’ in P. Raffield and G. Watt (eds), *Shakespeare and the Law* (Oxford: Hart, 2008), 41-50.

⁶ E. R. C. Brinkworth, *Shakespeare and the Bawdy Court of Stratford* (London and Chichester: Phillimore, 1972), 16.

⁷ G. H. Cowling, *Music on the Shakespearian Stage* (Cambridge: CUP, 1913), 83.

⁸ Thomas Wilson, *Arte of Rhetorique* (1560), G. H. Mair (ed.) (Oxford: Clarendon Press, 1909), 99.

⁹ Hardin Craig, ‘Shakespeare and Wilson’s “Arte of Rhetorique,” an Inquiry into the Criteria for Determining Sources’ (1931) 28 (4) *Studies in Philology* 618-630.

his ‘Friends, Romans, countrymen’ to lend their ears. (3.2.74). That said, the call to give or to lend the ear had long been a staple of theatrical practice just as it had long been a staple of the rhetorical tradition. In fact, the earliest surviving play script in the canon of English theatrical drama – *The Castle of Perseverance* (c. 1420) – begins with a call to friends to lend their hearing (‘Farewel, fayre frendys, / That lofly wyl lystyn and lendys’)¹⁰ that closely resembles Mark Antony’s. In another example of the tradition, at the start of *Henry IV, Part II* Shakespeare has the Vice figure, Rumour, call upon the audience to engage their acoustic sense: ‘Open your ears; for which of you will stop / The vent of hearing when loud Rumour speaks?’ (*The Induction*). Thus the call to hear operates in a curiously oxymoronic way by calling a listener to listen. The effect of this, I would argue, is to make the audience reflexively self-aware of its own auditory engagement with the words of the script. It invites an acute and critical engagement with the sense of the words – thus hearing becomes *a* hearing. The Chorus’s invitation to the playgoers at the start of Shakespeare’s *Henry V* – the invitation ‘gently to hear, kindly to judge our play’ (1.prologue.34) – more expressly and directly than any other of Shakespeare’s plays invites the audience to engage in a critical hearing of the ensuing drama. *Hamlet* alludes to something like it, for Hamlet contrasts ‘judicious’ (3.2.26) playgoers with those ‘barren spectators’ (3.2.41) who neglect the ear and judge only by sight. The latter, he calls ‘the distracted multitude’ that ‘like not in their judgement but their eyes’ (*Hamlet* 4.3.4-5). With the ears of our mind engaged by this short exordium, I will turn now to a summary of the submitted works.

¹⁰ F. J. Furnivall and A.W. Pollard (eds), *The Macro Plays* (London: Oxford University Press, 1904), 75–188, lines 153–4.

‘Performance is a kind of will or testament’, Chapter 1 in *Shakespeare’s Acts of Will: Law, Testament and Properties of Performance* (London: Bloomsbury Arden Shakespeare, 2016)

My book *Shakespeare’s Acts of Will* is about the way words work. It is about words written and words spoken and how they relate to the speaker’s silence, gesture and movement through space. It is concerned with the metre and rhythm of spoken and written lines, which is a sort of movement through time. It is about the relation of words to their physical context, which in the playhouse includes the materials of stage structures, fixtures, costume and moveable props. Above all it is about the capacity of words to affect those who speak them and those who hear them. An appreciation of the audible quality of Shakespeare and law in performance will bring us closer to a sense of sound justice than can be achieved by a silent appreciation of the logic – the *logos* – of the written word alone.

Chapter one of ‘*Acts of Will*’ demonstrates that since Roman times legal testamentary processes have been theatrically performative and that then, as now, and as in Shakespeare’s day, the testamentary process serves as a productive analogy for theatrical performance. This is because, to put it briefly, theatrical performance engages actors to execute the dramatist’s will and playgoers to witness it, to test it and hopefully to approve it. The first thing we learn from the statement ‘performance is a kind of will or testament’ (the quote from *Timon of Athens* that supplies the title to the first chapter of the book) is that Shakespeare appreciated the drama inherent in the performance of a last will and the drama of legal testamentary language. Words uttered at thresholds between states of being have a quality that is called in various contexts ‘ceremonial’, ‘ritual’, and even ‘magical’. All liminal language is potent, but none more so than words spoken at the threshold between life and death. Shakespeare acknowledges elsewhere that ‘the tongues of dying men / Enforce

attention like deep harmony' (*RII*, 2.1.5-6).¹¹ In theatre, the language of the play performs a sort of magic as it passes from the world of the stage to the world of the playgoers. In law, so-called 'operative words' (such as 'I agree', 'I declare' and 'I swear') have a comparable capacity to move people from one state of social being to another. The words of a last will and testament have a distinctive liminal power to cross the threshold of death itself. Through words of will and the performance of the testamentary document, one acts now to express one's will over the properties of a future world. The performance of will is not complete in the form of the words alone, but requires the complicity of witnesses, the agency of executors and the confirmation of probate.

It is notable that John Austin's theory of the 'speech act' or 'performative utterance' – the theory that certain forms of words enact changes in the world – was premised on the example of legal language, and specifically upon testamentary language:

Lawyers when talking about legal instruments will distinguish between the preamble, which recites the circumstances in which a transaction is effected, and on the other hand the operative part – the part of it which actually performs the legal act which it is the purpose of the instrument to perform ... 'I give and bequeath my watch to my brother' would be an operative clause and is a performative utterance.¹²

¹¹ Compare *Pericles* 4.2.90-91.

¹² J. L. Austin, 'Performative Utterances', in *J L Austin: Philosophical Papers*, J.O. Urmson and G.J. Warnock eds, 3rd edn (Oxford: Clarendon Press, 1979), 233, 236.

The word ‘bequeath’ is perfectly suited to Austin’s argument. To bequeath connotes the sense of attempted authority over the material world that we still use when we say that something is ‘spoken for’. Staying with etymology, we find that the word ‘testament’ is a clue to the fact that since ancient, even prehistoric, times testaments have acquired their legitimacy as performances played out before witnesses. The English word derives from the Latin *testamentum*, which connotes a witness (*testa-*) to the mind (*mentum*). A great deal of the language of Roman Law was derived from very ancient roots,¹³ and the ‘testa-’ of testament is a case in point. The sense of ‘witness’ originates in the idea of a third person standing by, which in the reconstructed Proto-Indo-European lexicon approximates to **tri-st-* (‘third’-‘standing’). As a result of a ‘sound change’, this became *ters(t)* and *tes(t)*.¹⁴ In Roman law, witnesses gave the testament its ‘testamentary’ quality. They were the spectators and audience to a ceremonial performance that had a director, a script, props, and actors with allocated parts to play.

It is not a primary aim of this book, or my wider work on Shakespeare and the law, to establish that Shakespeare had knowledge of particular laws or that legal matters directly influenced his work. Causal inquiries of this kind are fascinating, but their results are always highly contestable. We can, however, occasionally identify similarities between Shakespeare’s texts and contemporary legal treatises. On the

¹³ Michael Weiss, ‘Indo-European Languages’ in M. Gagarin and E. Fantham eds *The Oxford Encyclopedia of Ancient Greece & Rome* (Oxford, OUP, 2010), 61-63, 63.

¹⁴ Benjamin W. Fortson, *Indo-European Language and Culture: An Introduction*, 2nd edn (Oxford: Wiley-Blackwell, 2010), 303.

subject of testaments, Henry Swinburne's *Treatise of Testaments and Last Willes*¹⁵ and William West's *Symbolæography*,¹⁶ both appearing as first editions in 1590, are especially noteworthy. Although whether, and in what ways, they might have contributed to the content of the plays is hard to say. There is also compelling correspondence between some of Shakespeare's lines and the content of the English language rhetoric manuals, including Thomas Wilson's *The Arte of Rhetorique*.¹⁷ As mentioned earlier, Shakespeare was almost certainly familiar with Wilson, and with other contemporary rhetoric manuals in English (such as George Puttenham's *The Arte of English Poesie*), but surface similarities between English expressions used in the manuals and the plays might obscure the possibility that Shakespeare was more deeply 'influenced' by the Latin originals that he had used during his Grammar School days?¹⁸

What can be said with some confidence is that Shakespeare was influenced by the legal and political conditions that produced, in the early modern period, a general historical move from medieval to modern modes of thought. Consider the words of Mark Antony which appear at the climax of the central (funeral or forum) scene of *Julius Caesar*: 'Let but the commons hear this testament...' (3.2.131). The phrase indicates a conflict that was central to early modern life: the conflict between

¹⁵ Henry Swinburne, *A Briefe Treatise of Testaments and Last Willes* (London: John Windet, 1590).

¹⁶ William West, *Symbolæography etc.* (London: Totthill, 1590).

¹⁷ Thomas Wilson, *Arte of Rhetorique* (1560), G. H. Mair ed (Oxford: Clarendon Press, 1909).

¹⁸ Peter Mack, *Elizabethan Rhetoric: Theory and Practice* (Cambridge: CUP, 2002), 80-95.

medieval society structured vertically according to the hierarchy of feudalism and modern society expressed horizontally by commoners through the performance of self-will. Shakespeare was born into a new age of will, in which individual intent and emerging democracy had the potential to overcome dynastic expectation and the traditional scheme. The vulnerability of the vertical order was writ large in contemporary uncertainty surrounding the succession of the English Crown. It was also undergoing a revolution in the lives of private citizens. The Statute of Wills 1540 (32 Hen. 8, c.1), by permitting unfettered testamentary disposition of freehold land, marked a turning point from the vertical structure of feudalism to the new horizontal plane of the democratic commons. Across his dramatic works, Shakespeare presents the act of making a formal will and other acts of testamentary intent as acts of self-determination that confront traditional, dynastic and hierarchical modes of social settlement.

**‘Handling Tradition: Testament as Trade in *Richard II* and *King John*’,
Chapter 2 in *Shakespeare’s Acts of Will: Law, Testament and Properties of
Performance* (London: Bloomsbury Arden Shakespeare, 2016)**

The sense just outlined, of the performance of self through the execution of will upon the material world, brings us to chapter two of the book. This chapter develops my study of the hand as the rhetorical ‘actor’ that connects law, stage and society through its performative role as ‘executor’ of will. Through talk of handling I demonstrate the power of the hand to engage and take hold of the mind of the audience as actors’ hands are seen or imagined to grapple with such ‘properties of performance’ as gages, crowns and dust. Also significant are the physical and social hierarchies of the early modern playhouse in which executions under hand and hand-to-hand (as well as feet treading dust) performed horizontal trading and enterprise in

contrast to royal and feudal hierarchies. In *Richard II* especially, and expressly, it is to the democratic common ground of the platea (Greek ‘street’) – identifiable with that part of the Early modern stage that was thrust out into the pit of groundlings – that the King descends to talk of testaments and wills (‘I’ll be buried in the king’s highway, / Some way of common trade’ (3.3.156)).

The participation of the playgoers as third-party witnesses gives the performance a testamentary quality, but their participation is not passive. They are encouraged to subject the performance, and the will expressed in it, to a process of trial or testing. In legal testamentary terms they are invited to subject the will to ‘probate’ or ‘probation’,¹⁹ which means that they are asked to approve what they have seen. To assist us in this task of sensing the full make-up of the play, Shakespeare presents on-stage witnesses, including manipulators and manual workers. They help the playgoers to handle the great questions raised by great events. In *King John*, the chief witness is Philip the Bastard; in *Richard II* it is the gardener.

Let us suppose, as Andrew Gurr supposes, that Bolingbroke ‘sees the crown as the title to a property which can be bequeathed by will like the property of an ordinary title-holder’;²⁰ still we never learn if Bolingbroke is right. The openness of such questions maintains the on-going life of the drama on the stage, and even in the study. We know that Bolingbroke took the crown into his own hands, but we are never sure if he stole it, or bargained for it, or merely picked up what had been dropped or thrown down. *Richard II* and *King John* can therefore be regarded as

¹⁹ West describes probate as ‘probation of the testament’ (William West, *Symbolæography etc.* (London: Totthill, 1590), s.684).

²⁰ A. Gurr, (ed), *King Richard II* (Cambridge: CUP, 2003), 20.

extended rhetorical arguments designed to persuade the playgoing witness, not to a particular verdict or point of view, but to an appreciation of what it feels like to handle the evidence and to participate in political discourse.

In this chapter, I concentrate on two key episodes: Richard's descent from the castle walls (3.3.178-182), followed by the narrated account of the citizens' ascent to the 'windows' tops' of London (5.2.1-6). (A comparable episode in *King John* is the scene where the citizens of Angiers, standing on their city wall, pass judgment down upon the competing kings of England and France). The gardener's reference to the high crown 'thrown down' is one of many dynamic instances of the vertical vector in *Richard II*. Indeed, the word 'thrown', by punning on 'throne', concentrates the antithesis of high and low in a single word. The fact that the throne (more properly 'the state') is a major stage property, but one that the actors cannot wield physically, means that it must be handled in the mind; as much by the playgoers as by the players. In contrast, the gages (gauntlets) are the hand prop *par excellence*. They move across the stage horizontally as well as moving up and down through the vertical axis. Gages are exchanged hand to hand by a kind of trade bargain that implies documentary performance made 'under hand'. That is, with the signature or handwriting of the parties, hence Aumerle refers to his gage as a 'manual seal' (4.1.26).²¹

Part of the appeal of Shakespeare's *Richard II* resides in references to the performative rituals of everyday life and death in early modern England, many of which required the hands-on participation of ordinary folk. The testamentary sense is especially strong in those communal performances alluded to, or incorporated, in

²¹ The word 'gage' continues to have commercial connotations to this day, notably in the form of real security that goes by the name of 'mortgage'.

Shakespeare's *Richard II* that specifically relate to death and burial. In this summary I will focus on a material correspondence between the documentary performance of a will and the physical performance of funeral rites. In Elizabethan times, both performances involved an express passing of the soul into the hands of God, and of the body to the earth.²² The words spoken at Shakespeare's funeral (and at the funeral of his son, Hamnet, which was roughly contemporary with *Richard II* and *King John*) would have been the words ordained to be spoken by the priest 'At the Burial of the Dead' according to the 1552 *Book of Common Prayer*. This text had been significantly reformed from that of the 1549 first edition. The original had left the priest in his traditional position as mediator between God above and people below. He had uttered in the first person 'I commende thy soule to God the father almighty, and thy body to the grounde' (emphasis added). The second edition talks instead of 'our dere brother here departed' and uses the communal 'we therefore commit his body to the ground' (emphases added). Ritual power was taken not only from the mouth of the priest but also from his hands. The words of committal in the first edition are preceded by the direction: 'Then the priest castyng earth upon the Corps, shall saye'. In the reformed (second) edition of 1552, that direction is altered in a small but important detail, for it is now the bystanders, not the priest, who perform the ritual act of casting dust upon the corpse: 'Then whyle the earth shal be cast upon the body by some standing by, / the priest shall saye.' The ritual of the Roman Catholic priest casting dust down from a position somewhere between man and God, with the hierarchy that implies, was replaced by the horizontal ritual of brothers, members of a common priesthood of believers, casting dust upon one of

²² See David Cressy, *Birth, Marriage, and Death: Ritual, Religion, and the Life Cycle in Tudor and Stuart England* (Oxford: OUP, 1997), ch.18.

their own. The dust becomes a prop in a protestant drama with protestant script and protestant stage directions. The bystanders in an Elizabethan burial service who threw dust upon the coffin had their counterparts in the commoners who cast dust on the head of Richard as he entered London trailing behind the triumphant Bolingbroke. The dust thrown down on Richard covers him in the shifting matter of the common highway and the platea that connects the low stage to the playgoers in the yard.

In *Richard II*, feudal tradition loses its grip and the realm itself is handled as an object of commercial trade. The reason we can never decide if Richard's hand gave or if Bolingbroke's hand took is because they were both complicit in transferring the Crown. In the moment of their trade, in the joining of their hands either side of the physical crown, they shake hands upon a bargain. And yet not so, for there can be no true bargain with a hollow crown, and no true bargain without consent, and Shakespeare embeds the sense (as must be common sense) that Richard is not a free and fully willing party to the deal. One of Shakespeare's most brilliant techniques for achieving this uncanny sense of unwilling volition is a method – a poetic sound effect – that I call 'fractional inference'. What I mean by this is that Shakespeare omits a key word but amplifies our sense of its absence by scattering fractions of the word throughout the text. In the following passage, for example, he omits the word 'will', but the sound elements of 'will' are included in such words as 'well' and 'fill' and 'whilst' and through the repeated sound of 'w'. Shakespeare's technique, which might have been subconsciously employed, prompts in the audience a subconscious search for the word 'will' which makes them feel its absence all the more:

Now is this golden crown like a deep well
That owes two buckets, filling one another,
The emptier ever dancing in the air,
The other down, unseen and full of water.
That bucket down and full of tears am I,
Drinking my griefs, whilst you mount up on high. (4.1.184-189)

Bolingbroke's very next line – 'I thought you had been willing to resign' – by expressly using the word 'will', joins together the elements of 'will' that had been present in fractured parts in Richard's speech. We now sense more strongly than ever, if only subconsciously, that the word 'will' was absent from Richard's speech and we perhaps begin to feel deep down that Richard could not bring himself to say the word 'will' because his mind was fundamentally unwilling.

**“Shall I descend?”: Rhetorical Stasis and Moving Will in *Julius Caesar*,
Chapter 4 in *Shakespeare's Acts of Will: Law, Testament and Properties of
Performance* (London: Bloomsbury Arden Shakespeare, 2016)**

In this chapter, I demonstrate the centrality of 'stasis' as a theme and word-set in law, rhetoric and in Shakespeare's *Julius Caesar*. I seek to show how Shakespeare's Mark Antony succeeds in moving popular will by employing the props of Caesar's bloodied corpse and Caesar's red-sealed testament, and also by his clever physical and psychological inversion of the usual rhetorical rule that higher is superior. In addition to these physical persuasions that suit action to word, I offer another example of 'fractional inference' to demonstrate the way in which Shakespeare embeds the rhetorically powerful will to move by secreting or amplifying a sound sense of the word 'stir' at precisely that moment that Mark Antony is rhetorically

and disingenuously denying his rhetorical project of stirring hearts and minds. Moving and stirring has always been a central ambition of rhetorical art in the face of static and stubborn opposition. Thomas Wilson described rhetoric as the art of ‘movyng pitie, and stirring men to mercie’ (*The Art of Rhetoric*, 1553).²³ Thus in the following passage the reader (or hearer) will note that sound fragments of the word ‘stir’ are scattered through the four lines and that on two occasions the sound sense (but not the dictionary sense) of the word appears homophonically in ‘ye-ster-day’ and ‘ma-ster-s’, thus the culminating appearance of the word ‘stir’ is the rhetorically satisfying third iteration in the tricolon ‘ster’ – ‘ster’ – ‘stir’. I have underlined and bracketed the relevant sound fragments to show how Shakespeare sometimes encloses one fractional version of the word within another to produce a layering or amplification of the sound effect:

But yesterday the word of Caesar might
 Have [stood again {st the wor}rld. Now lies he there],
 And none [so poor to do him reverer]ence.
 O masters! If I were disposed to stir
 Your hearts and minds to mutiny and rage. (*Julius Caesar* 3.2.119-124)

Brutus presents two key justifications for the assassination of Caesar. First, that Caesar was ambitious and for that reason deserved to die. Second, that he (Brutus) is honourable and for that reason deserves to be respected. The opening line of Antony’s forum speech contains his initial effort to undermine the first of Brutus’s claims. The line swells physically as ambition does – one syllable, two syllables,

²³ Wilson, *Rhetorique*, 133.

three syllables; and it swells conceptually as ambition does – from friends, to Rome, to the whole Country. An atmosphere of ambition having been thus established, it is swiftly undone by the two short pairs of syllables that express the friendly intimacy of ‘lend me your ears’. What gestural action might suit Antony’s words? Is there anything more fitting than for the actor to start with their hands held close to their chest; then to open them out a little on the monosyllabic ‘friends’; to open them still wider on the two syllables of ‘Romans’; to open them to their full lateral extent on the three syllables of ‘Countrymen’; and, finally, to draw the hands in again to the heart with the words ‘lend me your ears’? As the ambit of Antony’s arms and the sense of his words swell wider and wider, his initial gesture might seem to lend support to Brutus’s argument that Caesar was ambitious, but when Antony’s arms are drawn in again to the heart, the sense of ambition is replaced by a sense of humility and intimacy. The cumulative gestural effect of the outward expanse of the first six syllables and the inward gathering of the last four is to produce the action of an embrace. Thus Antony’s opening line preemptively answers with a subconscious ‘no’ a question that he will pose later in his speech: ‘Was this ambition?’ (3.2.98). I go on to demonstrate in this chapter that Shakespeare’s ingenious use of short (that is ‘unambitious’) lines every time the word ‘ambitious’ appears throughout the opening passage of Antony’s forum speech produces an embodied effect that will confirm the playgoers’ subconscious rejection of the charge of ambition.

Of course, although Mark Antony wins his rhetorical contest with Brutus, the tragedy is that as ‘Antony wins...Rome loses’.²⁴ He stirred up the hearts and minds

²⁴ Jennifer Richards, *Rhetoric, The New Critical Idiom* (Routledge, Abingdon 2008), 93.

of the mob into a frenzy and the result was a riot and violent bloodshed. Even a poet is killed by mistake – a warning, from Shakespeare perhaps, that nobody is safe when rhetoric goes rogue.

‘From dust to dust and sealing wax: the materials of testamentary performance’, Chapter 6 in *Shakespeare’s Acts of Will: Law, Testament and Properties of Performance* (London: Bloomsbury Arden Shakespeare, 2016)

In Chapter Two, we considered some of the methods employed in *Richard II*, *King John* and the prologues of *Henry V* by which Shakespeare sought to engage the hands of the playgoers’ minds to touch the play and to make the play more touching. One such technique was to place characters on stage to narrate first-hand witness accounts of materials being handled. All witness narratives turn sights into sounds and therefore have the merit of appealing to playgoers as spectators and as audience. Witness accounts of materials being handled are especially potent because they excite the playgoers’ senses of sight and sound and touch at the same time. Having been thus engaged to a more complete sensory imagination of the play, the playgoers are better able to get a feel for it and to weigh it up and to probe its forms and test its substance.

This chapter includes a reading of two episodes of documentary performance that are narrated to an on-stage hearer, and thereby to the theatre audience. The first is Hamlet’s forgery of the warrant for the execution of Rosencrantz and Guildenstern; the second is Lady Macbeth’s somnambulant letter writing. These two documentary episodes have a special relevance to my thesis that ‘performance is a kind of will or testament’, for both episodes resemble the legal process of ‘attestation’, whereby a witness affirms the veracity of writing, signature and seal. The signal potency of a red seal on white paper or parchment evokes the sign of

blood and as such is arguably the original performative sign of changing states – from alive to dead, from boy to man, from girl to woman, from maid to married, from married to mother, from innocent to murderer. Anthropologists acknowledge the social significance of the mark of red on white,²⁵ and the early modern period saw a particularly rich renaissance of the classical tragedian’s resort to the bloody sign.²⁶ In this chapter I give a new account of the stage history of this semiotic current. I suggest, in particular, that Shakespeare uses rings to perform the seasonal and unlearning circles of comedy (especially marital comedy) and that he uses seals to perform the tragic downwards trajectory of tragedy, so that the material metaphor of the signet ring can be imagined to represent both sides of the drama of life. In the *Macbeth* episode, the doctor describes Lady Macbeth’s nocturnal writing as ‘actual performances’. The sealing of her letter is no less a performance to be witnessed than the bloody staining of her hand.

Some wordless sights and objects have the quality that Shakespeare calls ‘a prone and speechless dialect / Such as move men’ (*MM*, 1.2.173-4). The word ‘object’ denotes something that is conceptually ‘thrown against’ the senses, and I demonstrate through the course of *Acts of Will* that some of the most striking and significant stage objects are not only thrown conceptually, but are also thrown physically (including dust, gloves, warder, skulls). When an object is thrown against another thing it will move it, all other things being equal. As Newton’s laws explain

²⁵ Victor W. Turner, *The Forest of Symbols: Aspects of Ndembu Ritual* (Ithaca: Cornell University Press, 1967), 74.

²⁶ Gary Watt, ‘Le symbole du sang dans la performance légale et théâtrale de l’Angleterre du début de l’époque moderne’ in C. Biet and M.-M. Fragonard (eds.), *Théâtre, Arts, Violence* (2010) 73 *Littératures Classiques* 311-323.

material encounters in the physical world, so we can talk of dramatic laws through which stage properties have a metaphysical power to move people. There is something proto-Newtonian in the hope expressed by Claudius that a visit to England will move Hamlet to change: ‘Haply the seas and countries different / With variable objects shall expel / This something-settled matter in his heart’ (*Ham*, 3.1.170-72). Newton’s language of ‘force’ and ‘gravity’ and ‘motion’ would not have existed without a rhetorical tradition that understood the matter of the mind to be moved by emotional force. Consider, for example, the proto-Newtonian quality of Thomas Wilson’s observation that ‘Affections therefore (called Passions) are none other thing, but a stirring or forsing of the minde’.²⁷

‘Shakespeare on Proof and Fabricated Truth’, Chapter 3 in *Dress, Law and Naked Truth: A Cultural Study of Fashion and Form* (London: WISH list, Bloomsbury Academic, 2013)

This chapter, like those of *Acts of Will*, arises out of my concern for the rhetorical performance of meaning through metaphor and physical material (what I call ‘performative properties’, developing Austin’s idea of the ‘performative utterance’ or ‘speech act’). The chapter concerns the rhetorical fabrication of truth and what we learn about truth manufacture in law from Shakespeare’s use of ‘proof’ language in relation to both trial and dress in *Othello* and *Twelfth Night*. I argue against the usual discourse that describes legal trial as a process that aims at the discovery of underlying or ‘naked’ truth, arguing to the contrary that legal trial process is a process of fabrication that aims to cover the case with an appearance of proof that

²⁷ Thomas Wilson, *Arte of Rhetorique* (1560) G. H. Mair ed, (Oxford: Clarendon Press, 1909), 130.

will be sufficient to deflect reasonable doubt. The chapter demonstrates that the current common law culture of evidentiary probation developed out of an early modern culture of suspicion about external (including clothed and fabricated) appearance and in which the technical language of proof in law was closely related to that employed in the proof of armour.²⁸ Focusing on Shakespeare's *Othello* and *Twelfth Night*, the chapter demonstrates the close connection between legal and rhetorical modes of proof by trial and material cultures of dress, in particular military dress.

In *Othello*, we find what is surely the most famous of Shakespeare's references to proof. It occurs when Othello challenges Iago to provide incontrovertible evidence of Desdemona's marital infidelity: 'Be sure of it: give me the ocular proof... / Make me to see't, or at the least so prove it / That the probation bear no hinge nor loop / To hang a doubt on, or woe upon thy life!' (3.3.398, 403-405). In the notes to his 2001 Arden edition of *Othello*, E A J Honigmann relies on the Oxford English Dictionary entries for 'hinge' and 'hang' to support the view that Othello is referring to something that swings or pivots, so that Othello is demanding proof so secure 'that doubts will not move it'.²⁹ As an explanation, this is insufficiently precise. In the 1958 Arden edition of the play, M R Ridley had observed that Othello's metaphor of 'hinge' and 'loop' is very unusual in Shakespeare's works, and that 'we have therefore to start from scratch' in discerning its meaning. Ridley continues: 'it is not easy to see what the force of the figure is',

²⁸ Consider, for example, the close linguistic correspondence between legal proof of the grade '*semiplena probatio*' and armorial proof of the grade '*à demi épreuve*'.

²⁹ William Shakespeare, *Othello* (E A J Honigmann ed) (London: Arden Shakespeare, 2001) 232.

observing that it is not like Shakespeare ‘to combine in one picture incongruous specific concrete details’, and, significantly:

This may all seem to be making a fuss about nothing, since the ‘general sense’ is clear; but with an artist of Shakespeare’s vivid pictorial imagination we should never, I think, be easily satisfied with ‘general sense’ and a consequently woolly apprehension when he himself is being concretely specific.³⁰

In this chapter I submit that the hitherto mysterious signification of Shakespeare’s supposedly mixed metaphor of ‘probation’, ‘hinge’ and ‘loop’ is to be found in the technical terminology of military dress. ‘Probation’ is an allusion to the process by which medieval and early modern armourers tested or ‘proved’ their finished work for weaknesses, a process which required the armour to be, quite literally, ‘probed’ by a range of weaponry. The ‘hinge’ and ‘loop’ in Othello’s quote refer to the weak points in a suit of armour – these are, as Othello puts it, the main sites of ‘doubt’. No suit of armour could function without the loops or buckles by which it was strapped together, and in certain places sections of armour were joined by metal hinges.³¹

Thus Othello’s image of ‘probation’, ‘hinge’ and ‘loop’ is not an inconsistent mix of metaphors, but a single extended metaphor, and one that he, as a military general, would naturally employ. Armour that passed the process of probation (the process of being proved) was said to qualify as ‘proof’. This sequential process is

³⁰ William Shakespeare, *Othello* (M R Ridley ed) (London: Arden Shakespeare, 1965), 115.

³¹ Charles Ffoulkes, *The Armourer and His Craft* (London: Methuen, 1912), 54–5.

paralleled in an earlier part of Othello's narrative, where he says: 'I'll see before I doubt; when I doubt, prove; /And on the proof, there is no more but this: / Away at once with love or jealousy' (3.3.213-215).

Twelfth Night, or What You Will is the other play treated in this chapter. In *Twelfth Night*, Shakespeare makes express reference to proof by catechism and to the related legal notion of proof by constant question. On both occasions the process of producing proof appears, as my thesis anticipates, in the context of a related concern to probe through the external coverings of dress. It is significant that legal suspicion of mere words and legal insistence upon proper documentary form (that is, 'covering' or 'proof') reached a peak (though by no means its only peak) at precisely the time that Shakespeare was writing and first staging *Twelfth Night*. The first known performance occurred on 2 February 1602 in the Hall of the Middle Temple (one of the 'Inns of Court'), and the important litigation in *Slade's Case*, which had been running since 1596, finally concluded in November 1602.³² The essential question in *Slade's Case* was whether an action for debt had to be pursued by a formal documentary writ of debt in the Court of Common Pleas, or whether a claim in debt might be expedited by the less formal action of *indebitatus assumpsit* in the court of King's Bench under which the plaintiff would put it to a jury that the debtor's oral promise to pay amounted to a binding assumption of liability. The case concerned basic questions about the enforceability of contracts and it therefore became famous beyond the walls of the lawyers' world.³³ Eventually the judges decided that debt could be pursued on an oral *assumpsit* as an alternative to the old

³² *Slade's Case* (1602) 4 Co Rep 91 (Court of Exchequer Chamber).

³³ William J. Jones, *Politics and the Bench: The Judges and the Origins of The English Civil War* (London: Allen and Unwin, 1971) 49-50.

form of action in debt, and thereby opened the way to a modern flexible law of contract. *Twelfth Night* was written during the period in which (as Professor Ibbetson notes) there was a ‘significant shift away from *assumpsit*’, so we should expect to find that if the play alludes to *Slade’s Case*, it will do so by casting doubt upon the reliability of mere words. We do indeed find such doubts expressed in the play, notably when Feste laments that ‘words are grown so false, I am loath to prove reason with them’ (3.1.17-18). For the lawyers in Middle Temple Hall who constituted the first known audience for the play, there could hardly have been an issue of greater topical interest than that of doubtful words. The historical evidence for the first performance on 2 February 1602 is an entry in the diary of John Manningham, a student barrister at the Middle Temple. It is notable that in Manningham’s brief review of the play he fixes foremost upon the counterfeit document by which Malvolio was gulled.³⁴

There is a lively academic debate concerning the nature of the early modern origins of the concept of ‘proof beyond reasonable doubt’.³⁵ To that debate I have added an original and material layer. Barbara Shapiro has convincingly argued that the process of proof beyond reasonable doubt aimed to establish practical satisfaction or moral comfort as inquirers found it increasingly hard to discover the absolute truth

³⁴ ‘A good practice in it to make the steward beleue his lady widdowe was in Love with him by counterfaiting a letter, as from his lady in general terms’ (Robert P. Sorlien (ed), *The Diary of John Manningham of the Middle Temple 1602-1603* (Hanover, NH: UP of New England, 1976).

³⁵ See, for example, Barbara J. Shapiro, ‘The Beyond Reasonable Doubt Doctrine: ‘Moral Comfort’ or Standard of Proof?’ (2008) 2.2 *Law and Humanities* 149-173; James Q Whitman, *Response to Shapiro* (2008) 2.2 *Law and Humanities* 175-189.

of facts within the complexities of the early modern world.³⁶ In this chapter, I demonstrate how closely this parallels early modern notions of proving armour. Armour was never required to be absolutely impenetrable. Proof of armour was not proof as an absolute truth; it was merely proof to the point of practical satisfaction. The same was true, and is true, of legal proof.

‘The Law of Dramatic Properties in *The Merchant of Venice*’, Chapter Fifteen in P. Raffield and G. Watt (eds), *Shakespeare and the Law* (Oxford: Hart Publishing, 2008), page 237-251.

In this chapter on *The Merchant of Venice*, the rhetorical figure of synecdoche – the representation of a whole by means of a part – is offered as a material bridge to connect legal and theatrical performance through the medium of stage properties. At the start of Shakespeare’s *Henry V*, the chorus invites the audience to imagine that the small stage and the small band of actors and the small span of the play can convey the full time and space and properties of France: ‘Into a thousand parts divide one man / ... Turning th’ accomplishment of many years / into an hourglass’. (Prologue 24–31). Parallel language (right down to the duplication of ‘hourglass’) is employed with parallel purpose at the very beginning of *The Merchant of Venice*. Salerio, imagining himself in Antonio’s place, muses:

³⁶ Barbara J. Shapiro: *A Culture of Fact: England, 1550-1720* (Ithaca, NY: Cornell University Press, 2000); *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships Between Natural Science, Religion, History, Law, and Literature* (Princeton, NJ: Princeton University Press, 1983); *Beyond Reasonable Doubt’ and ‘Probable Cause’: Historical Perspectives on the Anglo-American Law of Evidence* (Berkeley: University of California Press, 1991).

I should not see the sandy hour-glass run,
But I should think of shallows and of flats,
And see my wealthy Andrew, docked in sand,
Vailing her high-top lower than her ribs
To kiss her burial ... (1.1.26–30)

Salerio's musings imply an invitation to the audience to join him in imagining that a great matter, a shipwreck, may be figured in a thing as small as sands in an hourglass. They also introduce the significant metaphoric and allegorical use of the wrecked ship to indicate Antonio's wrecked body (the wooden 'ribs' of the ship's hull presage the ribs from which Shylock threatens to take the pound of flesh). As *The Merchant of Venice* begins with the warning that a small thing can portend the ruin of a man, so the play ends with the same warning. The final lines are Gratiano's: 'while I live I'll fear no other thing / So sore as keeping safe Nerissa's ring' (5.1.324). The final word is a prop, and its physicality serves to bring the play full circle. Portia's ring also exemplifies the principle *partem pro toto*. Portia's ring is nothing less than the symbolic representation of her whole person and of all of her property too. Portia expresses as much when she declares to Bassanio: 'This house, these servants and this same myself / Are yours, my lord. I give them with this ring' (3.2.173–4). The name Portia is loaded with playful signification, much of it etymological, but the most direct signification, and the most pertinent for present purposes, are the senses 'portion' and 'porter' which are evoked by the very sound of her name. These senses are pertinent because Portia is a whole transported as a part or 'portion' of the whole. The word-play culminates in the fact that Portia is represented as a 'portrait', and there may even be an oblique reference to the

financial ‘marriage portion’ that a wife brought to an Elizabethan marriage by way of dowry.

Portia’s line, ‘[t]his house, these servants and this same myself / Are yours, my lord. I give them with this ring’ (3.2.173–4) appears in a passage containing the terms ‘in gross’ and ‘converted’, both of which carry technical significance in the law of property. It is from a legal perspective that Portia’s giving of the ring achieves its triumph over her father’s capricious casket test. When Shakespeare was writing, the public giving of a ring was a well-known method of transferring title to freehold land. It was a symbolic method, a piece of legal theatre, but its effect was real. It is, of course, physically impossible to transfer legal title to land or even to transport the land itself (even if all the soil were moved, the physical space that is the land would remain), so a ritual was devised (known as ‘livery of seisin’) by which title to land could be transferred by the public, symbolic delivery of a physical part: *partem pro toto*. Frequently the part was a sod or turf cut from the land with a knife (as one might cut a pound of flesh) or a twig was cut from a tree growing on the land. In the first part of his *Institutes*, Sir Edward Coke says that the feoffor may go on the land and take ‘the ring of the doore or turfe or twigge of the land and deliver the same upon the land to the feoffee in name of seisin of the land’.³⁷ A concern for on-stage equivalents to off-stage performance of dispositive will connects this chapter to those submitted from *Acts of Will*.

³⁷ Sir Edward Coke, *The First Part of the Institutes of the Lawes of England* (1628) 59, 60.

Significance of each of the works submitted as a contribution to original knowledge.

This section is offered by way of conclusion to this covering statement.

A number of specific points of original contribution have been noted in the course of the preceding commentary. In relation to the proof chapter, for example, I have outlined how my reading of Othello's concern with proof has solved the long-standing challenge to know the image Shakespeare has in mind when Othello demands proof that will 'bear no hinge nor loop / To hang a doubt on' (3.3.404–5). The chapter on *The Merchant of Venice* likewise makes some original contributions of a quite narrow and technical nature – for example a new candidate for the type of bond (the bottomry bond) that might have inspired elements of the Shylock-Antonio bond – in the course of offering broader insights into the material relations between legal and literary rhetoric in performance.

In the remainder of this section I will demonstrate the original contribution made by *Acts of Will*. I will do this in two stages. The first stage of the demonstration is to contrast my approach to a book published by a distinguished scholar in 2014 that adopts a rather different way of approaching the role of rhetoric in Shakespearean drama. Of course, I did not have the benefit of certain books that were published the same year as mine or subsequently that would certainly also have warranted engagement in *Acts of Will*, including John Kerrigan, *Shakespeare's Binding Language* (Oxford: OUP, 2016), Farah Karim Cooper, *The Hand on the Shakespearean Stage* (Bloomsbury Arden Shakespeare, 2016) and Kevin Curran (ed) *Shakespeare and Judgment* (Edinburgh University Press, 2016). The second stage of the demonstration is to set out extracts from a number of reviews of *Acts of Will* published by Shakespearean scholars worldwide.

As to the first stage, Quentin Skinner's *Forensic Shakespeare* (Oxford: OUP, 2014), which I reviewed for *The Renaissance Quarterly* ((2016) 69 (2) 812-814), will serve to illustrate the difference between my approach and other perfectly legitimate approaches to the role of rhetoric in Shakespeare's plays. The book is a brilliant example of its kind and the contrast it provides to my approach is all the more bold for it. Professor Skinner's main innovation is to argue that, within Shakespeare's broad appreciation of rhetoric, he was 'principally concerned with judicial rhetoric, and thus with the question of how to develop an argument in accusation or defence before a judge' (48). He states that he does not intend to deny the significance of the plays as works on stage, but he nevertheless relegates voice and gesture to a side note on the ground that they do not figure prominently in the rhetorical treatises of Cicero and Quintilian (12, 13). I urge a quite different emphasis by contending that Shakespeare was not primarily concerned with rhetoric (even judicial rhetoric, even in the 'forensic' plays) as a structuring device to elucidate the interactions of his characters, but with rhetoric as a set of performance techniques for moving and persuading playgoers. Professor Skinner makes the important point that 'Shakespeare is less interested in legal than in juridical issues' (220), but the judgment that was of principal concern to Shakespeare was, I would suggest, that of his audience. In my argument, judgment does not rest solely upon the conceptual sense of words. Rather, the audience is invited to reach for a felt sense of justice. Accordingly, they are invited to weigh up the sensory merits of alternative words ('Sound them, it doth become the mouth as well. / Weigh them, it is as heavy' (*Julius Caesar*, 1.2.144-145)). Sound judgment of that sort helps us to appreciate when words are poetically 'just'. Clothes and other material properties of stage performance are significant too. Despite Professor Skinner's focus on the linguistic elements of classical rhetoric, it should be recalled that Cicero famously employed

the device of wearing the pure white toga candida, and Quintilian advised that passion might be demonstrated by vigorous gestures that cause the toga to fall off the shoulder. Cicero's rhetoric, delivered in the court room and in the public forum, was intensely performative and theatrical. The distinctive argument of my work might be summarised in the claim that Shakespeare's plays move us because they excite practices of critical judgment that playgoers exercise in the courts of everyday life. My works submitted here all seek, in evolving ways, to support that claim.

Turning to the second stage of my demonstration of the original contribution made by the submitted works, I set out next a number of reviews of my monograph *Shakespeare's Acts of Will* that make the case for its originality more persuasively than my own testimony ever could. With these reviews I conclude this statement in support of my submission.

(2018) 21(1) *Early Theatre: A Journal associated with the Records of Early English Drama* 173-176, 173 (reviewer Dr Subha Mukherji, University of Cambridge)

Probing the analogy between the conditions of performance and the structure of testamentary action, Gary Watt's book offers an original, minutely researched, and provocative thesis. Tracing 'testament' to its Latin etymology – suggesting the presence of a witness to the mind – Watt offers a new way of understanding the exchange between performers and audience that defines the theatrical event. What is more, he suggests that exchange leads to change — transformations of abiding social significance. In the process, Watt steers us into thinking about the affinity between law and theatre in a novel way: in terms of an expression of will that amounts to a

social contract. While readers and viewers of Shakespeare's plays have affectively registered the notion of audience as witness for some time – often through meditations on the epilogues inviting audience judgement, approval or pardon, or on self-reflexive inset plays – Watt's work is the first to connect this notion with such sustained rigour to theatre's engagement of the imaginative work of law, and to the 'understood' nature of this relation in early modern English culture which made the intimacy and impact of this dialogue possible. Watt delves deep into the rhetoricity of the law, at the heart of what he calls the 'creative construct' (2) of English common law – at once expressing and moving wills.

(2017) 57(2) *SEL Studies in English Literature 1500-1900* 427-474, 445 (reviewer Professor Kevin Curran, University of Lausanne in Switzerland.)

Gary Watt's *Shakespeare's Acts of Will: Law, Testament, and Properties of Performance* shows how will – both the legal document and the volitional force – allows us to think about the conceptual and experiential links among theater, law, and public life. It's a fiercely intelligent but nimbly written book that maintains a spirit of intellectual generosity throughout....

(2017) 70(4) *Renaissance Quarterly* 2017 1661-1662 (reviewer Dr Elise Denbo, Assistant Professor, Queensborough Community College, CUNY)

Given current trends in cognitive studies and literature, a book that explores testamentary 'acts of will' in Shakespeare's Elizabethan plays is at once compelling and noteworthy – and I might add, surprisingly so. Through a strong analysis of six plays – *Richard II*, *King John*, *As You Like It*, *The Merchant of Venice*, *Julius Caesar*, and *Hamlet* — Watt extends the definition of legal terms ('will,' 'testament,' 'executor,' 'probate,' 'witness') to highlight the rhetorical and

performative crossover between law and theater, or the ways in which words
'express' and 'move' will. ... Watt, a professor of law at the University of Warwick,
presents a careful and caring study of will in Shakespeare's plays. Watt's thorough
rendering of rhetoric and performance is provocative and fully worth study.

B Submitted publication

1.

Shakespeare's Acts of Will: Law, Testament and Properties of Performance

(London: Bloomsbury Arden Shakespeare, 2016)

Chapter One

'Performance is a kind of will or testament'

This book is about the way words work. It is about words written and words spoken and how they relate to the speaker's silence, gesture and movement through space. We are concerned with the metre and rhythm of spoken and written lines, which is a sort of movement through time. It is about the relation of words to their physical context, which in the playhouse includes the materials of stage structures, fixtures, costume and moveable props. Above all it is about the capacity of words to affect those who speak them and those who hear them. The words of Shakespeare's dramatic works exemplify this capacity and it will be our happy task to unfold them and to get a feel for them and to find some of their hidden ways of working. To be concerned with the ways that words touch people, move people and change people is to be concerned with the art of rhetoric. The Greek adjective *rhetorikos* denoted the profession of the *rhetor* or orator.¹ These were the public speakers and legal advocates of ancient Greece. The word ultimately derives from Proto-Indo-European

¹ Etymologies are from *Chambers Dictionary of Etymology*, R K Barnhart, ed (London: H Wilson and Company, 1988) unless otherwise stated.

for the spoken word (**wretor*). The related Greek word *rhetra*, which over time denoted a ceremonial or authoritative utterance, an agreement, a contract or a legal resolution, reminds us that rhetoric is especially concerned with the power of words to express will to bring about changes of social state. This brings us to the word ‘will’ appearing in the title to this book. The pun on Shakespeare’s name is fortunate (or unfortunate),² but the word figures in this study for the more substantial reason that we are concerned with the way words express will and move wills. We will see that the related idea of ‘testament’ denotes the expression of will before witnesses and for this reason can reveal a great deal about the nature of dramatic performance in law, theatre and the rest of social life. Testament performs the work of will in the world and in the world we leave behind.

This is not, primarily, a book about the technical minutiae of testamentary law; although we will occasionally find it helpful to consider the details of statutes, case reports and legal treatises. This book is more concerned with the cultural practices, and specifically the creative practices, that connect theatre to law and connect both theatre and law to the wider world of the witnessing public. It might seem strange to an outsider to think of the law as a creative practice. If so, this might be due in part to the fact that insiders seem dead-set in their denial of law’s imaginative dimension. Since the enlightenment lawyers have looked to the new professional paradigms of empirical and medical science to dignify the common law with a doctrinal sense of schematic structure and a reputation for laboratory predictability from case to case. Anybody with intimate familiarity with the progress of the common law at its cutting edge in the highest courts will see that this scientist

² An internet search will quickly reveal that the pun is a common one in the titles to books about Shakespeare.

fiction is a myth.³ It is a creative construct, and an example of the most ancient rhetorical profession playing with language in the creative way that it has always done best. Part of the lawyers' rhetorical pretence is to deny that rhetoric or creative fiction is at work in their professional practices. Even legal scholars routinely contrast rhetoric with reality with no acknowledgment that rhetoric is what lawyers really do.⁴ In one recent case heard in the highest court in the land, one of the Justices of the United Kingdom Supreme Court went out of his way to say that there is no place for 'fairy tales' in the law.⁵ My own opinion is that the law is deeply committed to the fairy-tale business of moving property and people from one state to another by means of magic words. The irony is that the same senior judge in the very same case had opened his speech with a line of exemplary rhetoric in which he likened the tension between the legal and equitable aspects of the common law to a

³ I discuss the 'science fiction' of law in *Equity Stirring: The Story of Justice Beyond Law* (Oxford: Hart, 2009), 10-14.

⁴ Almost one third of academic articles on the legal database *Westlaw UK* that contain 'rhetoric' in their title also contain the word 'reality' (31 of the 100 most recent articles as at 26 April 2015). Disjunction between the words is always implied, and is usually expressed - as in the phrases 'rhetoric or reality?' and 'from rhetoric to reality'.

⁵ 'There is something wrong with a state of the law which makes it necessary to create fairy tales' (*AIB Group (UK) plc v. Mark Redler and Co Solicitors* [2014] UKSC 58, [2014] 3 WLR 1367, per Lord Toulson at para [69]).

garment being pulled apart at the seams.⁶ The ubiquitous and necessary presence of metaphoric language ensures that the law continues to spin a good yarn.⁷

The major part of this book is focused upon a group of Shakespeare's Elizabethan plays that can be dated (with all the usual caveats) to the period 1595-1603. In fact, three of them fall in 1599 (*As You Like It*, *Julius Caesar* and *Henry V*), and *Hamlet* was probably substantially complete a year or two thereafter. This is not to suggest that the testamentary theme is irrelevant to the Jacobean plays. On the contrary, I hope to show that all theatrical drama is in a deep sense testamentary. Nevertheless, the themes and language of testament, inheritance and succession are more prevalent in Shakespeare's Elizabethan works. Some of the Jacobean plays engage with the broadly testamentary concern that an aging father would naturally have for his daughter (think *Lear*, *Prospero* and Shakespeare himself), but in the Elizabethan plays a legal last will and testament appears as a plotting device and even as a physical prop, and it is only in the Elizabethan plays that the word 'testament' is ever repeated and (with the exception of that very late, and seemingly valedictory, work *The Tempest*) it is only in the Elizabethan plays that the testamentary word 'executor' ever appears. If Shakespeare was particularly engaged with testamentary concerns in the Elizabethan period this might have been down to

⁶ Ibid., para [1].

⁷ For further insight into the rhetorical nature of legal language the reader is directed to Marianne Constable, *Our Word is Our Bond: How Legal Speech Acts* (Stanford, Ca: Stanford University Press, 2014) and to the writings of James Boyd White (see J Etxabe and G Watt (eds), *Living in a Law Transformed: Encounters with the Works of James Boyd White* (Michigan: Michigan University Press, 2014)) and Peter Goodrich.

public concern over matters of royal succession (we consider this below, but suffice to say here that such tensions might be more tactfully touched upon through talk of testaments than by direct handling). It might, by the same token, have been down to Shakespeare's literary 'sources' or 'precedents' (many of which, we will see, were concerned with issues of testament and succession). Shakespeare's interest in issues of testament in the Elizabethan period might also be attributable to more personal factors. His only son died on 9 August 1596 and his father died on 7 September 1601.

The title of this chapter quotes the painter in *Timon of Athens*.⁸ Given that the main focus of this book is upon Shakespeare's Elizabethan dramas, the Jacobean play *Timon of Athens* might seem an unlikely starting point. We start with it because Timon's painter spoke more wisely than he knew. In that one line (with a little licence of interpretation) he has conveniently indicated a number of premises for the present study. Before we consider the merits of the quote, we should briefly attend to its context. On the way to seeking a commission from Timon, the painter asserts that it is 'most courtly and fashionable' to promise to act without actually doing the deed spoken of ('the deed of saying'), and that people who actually perform are 'the plainer and simpler kind of people' (*Tim*, 5.1.24-25). These are amusingly self-deprecating lines for an actor to utter in the very act of performing a play. The painter implies that anyone who performs today what they might put off until tomorrow must lack a future, or lack imagination to foresee a future. They might as well be on their deathbed, for 'performance is a kind of will or testament which argues a great sickness in his judgment that makes it' (*Tim*, 5.1.27-28). In early

⁸ Quotations from Shakespeare's works are from the most recent edition published by Bloomsbury Arden Shakespeare unless otherwise stated.

modern England it was rare to make a will unless illness or violent threat gave cause to fear impending death (see *Per*, 1.1.42).⁹ Shakespeare himself wrote his will shortly before he died. It was drafted in January, amended and executed in March, and he died on 23 April 1616.¹⁰

The first thing we learn from the statement ‘performance is a kind of will or testament’, is that Shakespeare appreciated the drama inherent in the performance of a last will and the drama of legal testamentary language. Words uttered at thresholds between states of being have a quality that is called in various contexts ‘ceremonial’, ‘ritual’, and even ‘magical’. All liminal language is potent, but none more so than words spoken at the threshold between life and death. Shakespeare acknowledges elsewhere that ‘the tongues of dying men / Enforce attention like deep harmony’ (*RII*, 2.1.5-6).¹¹ In theatre, the language of the play performs a sort of magic as it passes from the world of the stage to the world of the playgoers. In law, so-called ‘operative words’ (such as ‘I agree’, ‘I declare’ and ‘I swear’) have a comparable

⁹ This was in large part a matter of superstition (see E. A. J. Honigmann and Susan Brock, *Playhouse wills, 1558–1642* (Manchester: Manchester University Press, 1993), 17. The authors note that in their sample, the average time between the making of the will and burial is just two weeks). A short gap between will and death was also practically advantageous because early modern wills were not effective to dispose of lands acquired by the testator after the date of the will (Joseph Chitty ed, *William Blackstone’s Commentaries on the Laws of England*, (1765–69), (London: William Walker, 1826), II.23, 378.

¹⁰ Jane Cox, ‘Shakespeare’s Will and Signatures’, in *Shakespeare in the Public Records* (London: Public Records Office, 1985), 25.

¹¹ Compare *Per*, 4.2.90-91.

capacity to move people from one state of social being to another. When Shakespeare was writing, legal forms of words had power to marry, adopt, bastardize and kill. The words of a last will and testament have a distinctive liminal power to cross the threshold of death itself. Through words of will and the performance of the testamentary document, one acts now to express one's will over the properties of a future world. (It has been said that all 'law is the attempt to build future worlds').¹² The performance of will is not complete in the form of the words alone, but requires the complicity of witnesses, the agency of executors and the confirmation of probate.¹³ Legal and theatrical modes of performance are in many respects vastly different, of course, but one way in which theatre is 'testamentary' is the way it engages actors to execute the dramatist's will and playgoers to witness it, test it and hopefully approve it. The judgment that a play calls for is not passive, but participatory: '[t]he art of the drama makes a primary demand on us: to leave our armchair throne of judgment and descend into the mellay of contradictory passions – which the action of a play is'.¹⁴

¹² Robert Cover, 'Violence and the Word', 95 *Yale Law Journal* 1603 (1985-1986) 1602 fn.2. I am grateful to Angela Luk Fan, a student on the joint degree in law and literary studies at The University of Hong, for bringing this quotation to my attention.

¹³ These are the general rules. In the case of emergencies, as also in the case of soldiers on active duty, exceptions have been made since ancient times.

¹⁴ Harley Granville-Barker, 'Shakespeare's Dramatic Art', in *A Companion to Shakespeare Studies*, H. Granville-Barker and G. B. Harrison eds (Cambridge: CUP, 1934), 45-87, 86. On the participation of playgoer as judge see Julen Etxabe, *The Experience of Tragic Judgment* (Abingdon: Routledge, 2012).

The second thing we learn from Timon's painter is that performance was a concern of early modern culture that pervaded and connected such seemingly disparate practices as law, theatre and painting. Lorna Hutson advises that we should be cautious in resorting to the performance trope in literary studies, including studies in law and literature. She does not deny the metaphor's 'explanatory power', but suggests that its dominance might obscure the merits of other analyses, including one based on 'narrative'.¹⁵ It is an excellent point, but 'performance' still seems the best metaphor to describe the central concerns of the present study. This book aims to appreciate the practices by which will is expressed in the form of words, and specifically to appreciate how words produce physical forms in the mind and how the materiality of the playhouse contributes to this process. Of course, it is necessary to take narrative seriously even within the wider trope of performance. The sense that narrative produces material forms in the mind is so strong that Shakespeare frequently writes of narratives that 'break' off (e.g. *CE*, 1.4.96; *R2*, 5.2.2; *KJ*, 4.2.235; *Ham*, 1.1.40). In Chapters Two and Six we will examine how Shakespeare sometimes employs on-stage witnesses to narrate accounts of events involving the handling of material stuff. We will see that this device is especially effective in conveying a felt experience of the drama.

A third thing we learn from Timon's painter is that Shakespeare employed legal notions of performance playfully and without undue respect for thresholds between technical categories. The painter blithely borrows the language of

¹⁵ Lorna Hutson, "'Lively Evidence': Legal Inquiry and the *Evidentia* of Shakespearean Drama", in *Shakespeare and the Law*, B. Cormack, M. Nussbaum and R. Strier eds (Chicago: University of Chicago Press, 2013), 72-97, 73.

testamentary law to make a point about contractual performance.¹⁶ Shakespeare enjoyed the protean possibilities of legal language and was adept at moving lawyers' terminology from one technical category to another, thereby diverting the power of legal language to his own dramatic use while simultaneously subverting law's authority to restrict legal subjects to its own terms. In the special context of testaments, the law itself was capable of imaginative indulgence and looked to the intent rather than the form of words, on the presumption that the testator 'has not time to settle every thing according to the rules of law, and wills are most commonly made on a sudden, and in the testator's last moments'.¹⁷ Without neglecting technical boundaries between legal categories, my main focus will be upon the interplay of words between legal categories and upon the interplay of linguistic cultures and practices between drama and the law. This requires us to attend to cultural appreciation of 'word play', and above all to the arts of rhetoric that informed legal practice and practice on the Shakespearean stage.¹⁸

¹⁶ On the significance to the painter's lines of the equitable doctrine of 'specific performance' of a contract, see Luke Wilson, *Theaters of Intention: Drama and the Law in Early Modern England* (Palo Alto, Ca: Stanford University Press, 2000), 178-182; and Gary Watt, *Equity Stirring: The Story of Justice Beyond Law* (Oxford: Hart, 2009), 114-116.

¹⁷ *Throckmerton v. Tracy* (1555) 1 Plow 145, 159, 162-3, per Sir Robert Broke, Chief Justice of the Common Pleas.

¹⁸ On the rhetorical cultures that connected early modern theatre and law, see, for example, Quentin Skinner, *Forensic Shakespeare* (Oxford: OUP, 2014) and Lorna Hutson and Victoria Kahn eds, *Rhetoric and Law in Early Modern Europe* (New Haven, CT: Yale University Press, 2001).

A fourth thing we learn from the painter is that performance in all its forms has the capacity to perfect what is otherwise imperfect and incomplete. (A legal testament, for example, is not finally fulfilled until the testator's death and due execution of the terms of his will.) It is in this sense that 'the text of a play' can be considered, in Granville-Barker's phrase, to be 'a score waiting performance'.¹⁹ Fifth, and related to the previous point, we learn that the 'deed of saying' (assuming that it goes beyond the deed of *merely* saying) can perfect the performance of words by enacting them through appropriate deeds. There is something of this sense in Hamlet's suggestion that theatrical performance should 'suit the action to the word' (*Ham*, 3.2.17). In *King John*, Constance talks of actions as signs that confirm words. Her rhetorical questions (addressed to Salisbury, whom she fears has come to confirm bad news concerning her son's prospects of attaining the English throne) have the effect of inviting the playgoers to witness with her, and to join her in forming a judgment:

What dost thou mean by shaking of thy head?

Why dost thou look so sadly on my son?

What means that hand upon that breast of thine?

Why holds thine eye that lamentable rheum,

...

Be these sad signs confirmers of thy words? (2.2.19-24)²⁰

¹⁹ Harley Granville-Barker, *Prefaces to Shakespeare* (London: Batsford, 1930), 5.

²⁰ Compare *KJ*, 4.2.231-37. On signs and deeds in *King John*, see Chapters Two and Six.

The performative process of word confirmed by act is even observable at the governmental level when an ‘Act’ of Parliament confirms the speech (*‘parlement’*) of the legislative body. In this example the speech is to a great extent the very essence of the authoritative Act (see the discussion of ‘speech acts’ below). While we are discussing ‘acts’, it should be noted that *actio* originally described the gestural action of orators and that ‘action’ described legal proceedings long before ‘acting’ became a byword for playing in the public playhouses.²¹ If we extend our retrospective to prehistory, we will conclude that forms of words were originally the perfection of gesture, as gesture was the perfection of word. Thus Dietrich Stout and Thierry Chaminade see similar ‘cognitive control processes’ in the ‘hierarchically complex, multi-stage action sequences’ of prehistoric handaxe production to ‘those involved in modern human discourse-level language processing’.²² Or, as Elias Canetti wrote more than half a century earlier: ‘Words and *objects* are...emanations and products of a single unified experience: *representation by means of the hands*.’²³ To handle language well, one must develop one’s embodied sensitivity to the feel of words. Accordingly, one of the rehearsal strategies recommended by Cicely Berry,

²¹ The earliest theatrical usage cited in the *Oxford English Dictionary* is Robert Green’s *Green’s Neuer too Late* (1590): ‘Men greedie of gaines did fall to practise the acting of such Playes’. (ii. sig. B4v). On the terminology of ‘acting’, see, generally, Andrew Gurr, *The Shakespearean Stage, 1574-1642*, 4th edn (Cambridge: Cambridge University Press, 2009), 118.

²² ‘Stone tools, language and the brain in human evolution’, *Phil. Trans. R. Soc. B* (2012), 367, 75–87, 81.

²³ Elias Canetti, *Crowds and Power*, Carol Stewart trans (New York: Continuum, 1973), 217.

the founding Voice Director of the Royal Shakespeare Company (hereafter 'RSC'), is to encourage the actors to speak their lines whilst simultaneously finding physical objects, handling them and building them into structures.²⁴

A sixth, and for present purposes final, thing we learn from Timon's painter is that the expression of 'will' is a prime objective of performance. According to the Oxford English Dictionary, amongst the earliest records of the Anglo-Norman word 'performance' are those in the twelfth century in which it was 'frequently in legal use' in connection with the object 'will'. Shakespeare himself refers to the performance of 'will' (*AWW*, 2.1.204) or 'desire' (*2H4*, 2.4. 262-3; *Mac*, 2.3.29-30) or 'purpose' (*H8*, 4.2.41-2) more often than the performance of plays (*H5*, 3.prologue.35). Frequently, as in *Timon*, he writes of the performance of a 'promise'. 'Performance' did not acquire its distinctive theatrical sense until during Shakespeare's lifetime. For the purpose of this book, I take it that 'performance' is the expression of will in and through artificial forms, or through artistic engagement with natural forms, and that performance is perfected not only by the people who are the principal actors in the performance but by the community of people who interact with the performance and approve it.

As intimated earlier, it is not a primary aim of this book to establish that Shakespeare had knowledge of particular laws or that legal matters directly influenced his work. Causal inquiries of this kind are fascinating, but their results are always highly contestable. We will occasionally identify similarities between Shakespeare's texts and contemporary legal treatises. On the subject of testaments,

²⁴ Cicely Berry, *From Word to Play: A Handbook For Directors* (London: Oberon Books, 2008), 127.

Henry Swinburne's *Treatise of Testaments and Last Willes*²⁵ and William West's *Symbolæography*,²⁶ both appearing as first editions in 1590, are especially noteworthy. It is likely that Shakespeare knew both of these works, but whether, and in what ways, they might have contributed to the content of his plays is hard to say. There is also significant correspondence between Shakespeare's plays and the English law reports of Edmund Plowden that were published in French during Shakespeare's lifetime, but we can only speculate as to how Shakespeare encountered them.²⁷ There is equally compelling correspondence between some of Shakespeare's lines and the content of the English language rhetoric manuals, including Thomas Wilson's *The Arte of Rhetorique*.²⁸ Shakespeare was almost certainly familiar with Wilson, and with other contemporary rhetoric manuals in English (such as George Puttenham's *The Arte of English Poesie*), but surface similarities between English expressions used in the manuals and the plays might obscure the possibility that Shakespeare was more deeply 'influenced' by the Latin originals that he had used during his Grammar School days?²⁹ What does 'influence'

²⁵ Henry Swinburne, *A Briefe Treatise of Testaments and Last Willes* (London: John Windet, 1590).

²⁶ William West, *Symbolæography* etc. (London: Totthill, 1590).

²⁷ Edmund Plowden, *Les Commentaries, ou les Reportes* (London: Tottyl, 1571).

²⁸ Thomas Wilson, *Arte of Rhetorique* (1560), G. H. Mair ed (Oxford: Clarendon Press, 1909).

²⁹ Peter Mack, *Elizabethan Rhetoric: Theory and Practice* (Cambridge: CUP, 2002), 80-95. Classical originals that Shakespeare would probably have encountered include Cicero's *De officiis* and *De inventione*, Quintilian's *Institutio oratoria* and

mean anyway? More interesting, and more provocative to thinking about how we might be 'influenced' by Shakespeare today, is to see Shakespeare as a lively mind writing and working in a highly productive creative culture that was both collaborative and acquisitive. Connections between 'early modern theatrical, legal, historiographical, and political modes of authorization...speak less to a rich network of mutual influences and interconnections...than to a pervasive cultural preoccupation that found expression in various areas of life'.³⁰

Early modern culture was a culture of performance of every sort: including performance of law, dress, architecture, music and plays, and in tension with all these was the overriding sense that this was a culture in which a life was performed not merely in the expression of self in an (emerging) modern sense, but performed also in furtherance of the forms of social order. This called for service to one's social superiors and, lest we forget it, service to Church and to God. There is no more extensive and direct textual influence on Shakespeare than the words of the Geneva Bible. At the heart of early modern Christianity was belief in the Divine performance, wherein 'Word was made flesh' in the figure of Christ.³¹ The central ceremonial performance of the age, the Christian Eucharist, was at the heart of the Protestant schism concerning the capacity of sacramental words to transform bread into Christ's flesh. This was an age in which the spoken performance of words was deeply material. It has been said that theatrical performance is in several senses

the anonymous *Rhetorica ad Herennium*. The latter was frequently and erroneously attributed to Cicero.

³⁰ Holger Schott Syme, *Theatre and Testimony in Shakespeare's England: A Culture of Mediation* (Cambridge: CUP, 2012), 19.

³¹ John 1:14 (Geneva Bible, 1599).

‘material’, and that the most important is the sense in which ‘theatrical performance has real social and physical consequences’.³² The same was true of performance in religion and law during Shakespeare’s lifetime. Like the theologians, the common lawyers appreciated materiality in the microscopic minutiae of forms of words. Sir Edward Coke, Shakespeare’s contemporary and the preeminent common lawyer of his age, once contemplated a single short statement of law (the maxim ‘*possessio fratris de feodo simplici facit sororem esse haeredem*’),³³ and concluded that almost ‘everie word’ should be considered ‘operative and materiall’.³⁴ Appreciating the performative and rhetorical culture that law shares with theatre will help us to appreciate in Shakespeare’s lines what Coke appreciated in legal lines, which is nothing less than the power of words to wield matter and to do the work of performing will in the world. It will also help us to appreciate the pliability and playfulness of words. Most important of all, an understanding of the capacity of real rhetoric to touch and move us through words and action will yield appreciation for a type of performance that has the capacity to transform lives and reform society. This is the sort of performance we can hope for in the law and it is the sort of performance that continues to be the promise of Shakespeare’s plays.

An initial spur for this book was the observation that many of Shakespeare’s plays recognize the dramatic power inherent in testamentary wills. We can observe

³² Erika T. Lin, *Shakespeare and the Materiality of Performance* (New York: Palgrave Macmillan, 2012), 9.

³³ ‘The brother’s possession of the fee simple makes the sister the heir’.

³⁴ Sir Edward Coke, *Institutes of the Laws of England* (London: Society of Stationers, 1628), I.15b (note).

by way of overview (with representative examples in parenthesis) that in some plays the opening scene presents a point of legal testamentary contention (*AYL, H5, 3H6, KJ*) that another deploys the physical form of a testamentary will at the dramatic climax of the play (*JC*) and that another employs a testamentary provision as a significant sub-plot (*MV*). Even where the performance of an individual's will does not take a form that the law would consider to be testamentary, it might nevertheless exhibit a testamentary power to disrupt default schemes of succession and inheritance (*R2, KJ, Ham, KL*). Or an individual's will might be enforced in life with such stubborn finality that it feels as inflexible as the testamentary wishes of the dead. Where the performance of stubborn will is aligned with such sources of authority as the regal or ducal (*AWW, CE, KL, MM*), the contractual (*MV*) or the marital (*TS, WT*) its dramatic power is all the more pronounced. Most common of all is alignment with parental authority. A father's will ruling over a daughter's will appears frequently in ways that are not technically 'testamentary' in the legal sense of the word (*KL, MND, MA, RJ, TGV*). Then there are plays in which an individual's will and performance, which should be conjoined, are, instead, alienated from each other. This can be effective in comedy (*AYL, LLL*), but in cases of radical alienation the effect is tragic (*Ham, R2*). Not only does Shakespeare make extensive use of will as a plot or premise for his plays, but his use of testamentary language is impressive in its diversity and extent. So much so that a barrister working in Victorian Liverpool devoted a short book exclusively to the topic.³⁵

It is notable that John Austin's theory of the 'speech act' or 'performative utterance' – the theory that certain forms of words enact changes in the world – was

³⁵ William Lowes Rushton, *Shakespeare's Testamentary Language* (London: Longmans, Green and Co, 1869).

premised on the example of legal language, and specifically upon testamentary language. He appreciated that testamentary terminology is deeply imbued with the sense that spoken and written words have the capacity to perform powerfully upon the world of ‘real’ things:

Lawyers when talking about legal instruments will distinguish between the preamble, which recites the circumstances in which a transaction is effected, and on the other hand the operative part – the part of it which actually performs the legal act which it is the purpose of the instrument to perform...‘I give and bequeath my watch to my brother’ would be an operative clause and is a performative utterance.³⁶

The word ‘bequeath’ is perfectly suited to Austin’s argument. According to the Oxford English Dictionary it was originally ‘a strong verb’ in the Anglo-Saxon. It is not merely the ‘quote’ or ‘quoth’ of saying, but an emphatic sense of saying with binding power. The difference between the spoken ‘quoth’ and the binding ‘bequeath’ might be compared to the difference between the regular Anglo-Saxon sense of speech as ‘spiel’ and the sense that some speech has a potency and power to bind that makes it ‘gospel’ or magical ‘spell’. To bequeath connotes the sense of

³⁶ J. L. Austin, ‘Performative Utterances’, in *J L Austin: Philosophical Papers*, J.O. Urmson and G.J. Warnock eds, 3rd edn (Oxford: Clarendon Press, 1979), 233, 236. Austin developed this idea of ‘performative utterance’ into his theory of the ‘speech act’: J. L. Austin, *How to do things with Words: The William James Lectures delivered at Harvard University in 1955*, J. O. Urmson ed (Oxford: Clarendon Press, 1962).

attempted authority over the material world that we still use when we say that something is ‘spoken for’.

The etymology of ‘testament’ is a clue to the fact that since ancient, even prehistoric, times testaments have acquired their legitimacy as performances played out before witnesses. The English word derives from the Latin *testamentum*, which connotes a witness (*testa-*) to the mind (*-mentum*). A great deal of the language of Roman Law was derived from very ancient roots,³⁷ and the ‘testa-’ of testament is a case in point. The sense of ‘witness’ originates in the idea of a third person standing by, which in the reconstructed Proto-Indo-European lexicon approximates to **tri-st-* (‘third’-‘standing’). As a result of a ‘sound change’, this became *ters(t)* and *tes(t)*.³⁸ In Roman law, witnesses gave the testament its ‘testamentary’ quality. They were the spectators and audience to a ceremonial performance that had a director, a script, props, and actors with allocated parts to play. As ‘performance is a kind of will or testament’; so in Roman Law testament is a kind of performance. Leaving aside the testament made before the army in anticipation of war (*testamentum in procinctu*), Roman law originally recognized two main methods for making wills. By the most ancient method, the will was made or confirmed in a committee (the *comitia calata*)

³⁷ See Michael Weiss, ‘Indo-European Languages’ in M. Gagarin and E. Fantham eds *The Oxford Encyclopedia of Ancient Greece & Rome* (Oxford, OUP, 2010), 61-63, 63.

³⁸ Benjamin W. Fortson, *Indo-European Language and Culture: An Introduction*, 2nd edn (Oxford: Wiley-Blackwell, 2010), 303.

which was called together twice yearly for the purpose,³⁹ but '[t]he comitial will was obsolete before real history begins'.⁴⁰ It was succeeded by, and in due course superseded by, the mancipatory testament 'performed by bronze and balance' ('*per aes et libram agitur*'), which was 'the will of the classical age'.⁴¹ The mancipatory testament was an ancient ceremonial mode of sale (*mancipatio*) performed before witnesses which had been adopted for use in testamentary transfer. The word 'mancipatio' indicates that the subject matter of the transfer was physically handed over (literally 'captured in the hand'). The *aes* ('bronze') was ancient currency in the form of crudely cast pieces of the metal, later superseded by coinage of the same name. According to Gaius, the heir was represented by a person playing the part of the 'purchaser' and 'the testator directed him with reference to what he desired to be given to anyone after his death'.⁴² The heir in this ceremony was more closely akin to the executor of an English testament (that is, the one who carries out or 'executes' the will according to its terms) than to the beneficiary of an English testament (the one who benefits from the assets passed on by the will). The 'purchaser' (playing the part of the heir) had this scripted line to speak: 'Let your family and money pass into my charge and custody, and, in order that you may make your will properly in

³⁹ *The Institutes of Gaius*, II.101-104. See George Willis Botsford, *The Roman Assemblies: From Their Origin to the End of the Republic* (New York: Macmillan, 1909), 159.

⁴⁰ Buckland, *Manual of Roman Law* (Cambridge: CUP, 1928), 174, §65.

⁴¹ *Ibid.*, 174, §64.

⁴² *Gaius*, II.103.

accordance with the public law, let them be purchased by me with this bronze'.⁴³ Having said these words, the 'purchaser' struck the balance with the bronze, and delivered it to the testator as symbolic purchase money.⁴⁴ Then the testator spoke his part while holding the will in his hands: 'As is written in these tablets of wax, so I give, so I bequeath, so I declare my will, and so do you, citizens, bear witness'.⁴⁵ In course of time the ceremony of mancipatory testament continued as a matter of form, but the person performing the ceremonial role of purchaser no longer played the part of heir. Instead, a different person was 'appointed heir under the will' and 'charged with the distribution of legacies'. This later form of will, was not published until after the testator's death.⁴⁶ Even later, the Romans introduced a third form of will called the 'Praetorian Testament', 'by which the praetor accepted the seals of seven witnesses instead of mancipatory performance, and other forms of will followed that, but this sketch will suffice to show that the idea of testament was intensely performative in its origins and that the performance was 'testamentary' because it required the participation of witnesses.

In the early modern playhouses, witnesses to the performance included 'the vnderstanding men in the yard'⁴⁷ and those sitting in the higher-priced 'stands' or

⁴³ *Gaius*, II.104. Francis de Zulueta trans, *The Institutes of Gaius* (Oxford: Clarendon Press, 1946).

⁴⁴ *Gaius*, II.104.

⁴⁵ *Ibid.*, (R. W. Lee, *The Elements of Roman Law*, 4th edn (London: Sweet and Maxwell, 1956), 188).

⁴⁶ Lee, *ibid.*, 187.

⁴⁷ *Vox Graculi, or Iacke Dawes Prognostication for the Elevation of All Vanity, etc.* (1623), cited in Glynne Wickham et al., *English Professional Theatre, 1530-1660*

‘galleries’, including those sitting in the ‘lords’ rooms’.⁴⁸ Had Prince Hamlet visited the playhouses of late Elizabethan England, ‘Th’ observed of all observers’ (*Ham*, 3.1.153) would certainly have had a seat in the lords’ room, or even (depending upon how one interprets the debatable evidence) a seat on the edge of the stage itself.⁴⁹ In the Elizabethan playhouse, the playgoer in the gallery seats ‘not only sees everything well, but can also be seen’.⁵⁰ The popular metaphor of *theatrum mundi* (‘all the world’s a stage’) implied ‘a showing and seeing place or a showing off and being seen place’.⁵¹ Today, as then, playgoers have a ‘creative role as imaginers of the drama’,⁵² and the playing of this role can be assisted by material efforts to

(Cambridge: CUP, 2000), 416.

⁴⁸ Which are conjectured to have been situated in the elevated galleries immediately adjacent to, or at the rear of, the stage. See Gabriel Egan, ‘The Situation of the ‘Lords Room’: A Revaluation’, *Review of English Studies* 48 (1997), 297-309; Derek Peat, ‘Looking Back to Front: The View from the Lords’ Room’, in *Shakespeare and the Sense of Performance: Essays in the Tradition of Performance Criticism in Honor of Bernard Beckerman*, Marvin Thompson and Ruth Thompson eds (Newark: University of Delaware Press, 1989), 182, 185; E. K. Chambers, *The Elizabethan Stage* (Oxford: Clarendon, 1923), III.118.

⁴⁹ Egan, *ibid.*

⁵⁰ Thomas Platter’s report of his visit to the Globe on the afternoon of 21 September 1599. Quoted in Jean Wilson, *The Shakespeare Legacy: The Material Legacy of Shakespeare’s Theatre* (Godalming: Bramley Books, 1995), 62.

⁵¹ C. W. R. D. Moseley, ‘Judicious, Sharp Spectators? Form, Pattern and Audience in Early Modern Theatre’, *Cahiers Élisabéthains* 85 (2014), 16.

⁵² Mark Rylance, ‘Playing the Globe: Artistic Policy and Practice’ in *Shakespeare’s*

incorporate playgoers into the action. The most obvious assistance provided by the physical structure of the Elizabethan playhouse was to use a thrust stage to place the downstage action in the very midst of the throng of playgoers.

Playgoing witnesses play their part, but actors of a more active sort take centre-stage. In the case of an Elizabethan testament, it was the executors who performed the testator's wishes 'by arranging probate and the distribution of the estate'.⁵³ In a simple case, the executors produced the testament to the clerical judge in the ecclesiastical court (this official was known as 'Ordinary', for reasons we will consider in Chapter Six) and swore an oath to affirm or 'prove' that it represents the testator's last will and testament and to undertake to administer the estate according to its terms.⁵⁴ All that was required was that the will be made in writing, but in the event of any doubt regarding the testament, witnesses might be called to prove the testament *per testes* in solemn form of law.⁵⁵ It was therefore standard practice to have witnesses attest the will when the testator made it. Henry Swinburne recommended at least two witnesses.⁵⁶ Swinburne distinguishes testamentary wills from non-testamentary wills on the technical basis that the former name executors, but is content to use 'testament' in the general sense to cover wills with or without

Globe Rebuilt, J. R. Mulryne and M. Shewring eds (Cambridge: CUP, 1997), 169-176, 171.

⁵³ Honigmann and Brock, *Playhouse wills*, 12 (citing West, 'Symbolæography', sect. 639); Cox, 'Shakespeare's Will', 24.

⁵⁴ See Clarkson and Warren, *Law of Property*, 269.

⁵⁵ Clarkson and Warren, *ibid.*, 270.

⁵⁶ Swinburne, 'Testaments', 18.

executors.⁵⁷ William West calls the testator and executor the ‘principall persons’, distinguishing them from the witnesses and ‘legatories’ (persons taking benefits under the will), whom he calls ‘lesse principall’. For West, only the testator is involved in the ‘active makynge of a Testament’, whereas the executor, witnesses and beneficiaries are involved in the ‘passive makynge of a Testament’.⁵⁸

What is critical for present purposes is that West acknowledges all parties to be participants with some part to play in constituting the efficacy of the will. He also acknowledges the constitutive effect of the testamentary speech act. We saw earlier that John Austin was impressed by the performative power of bequeathing, which is a sort of speaking or ‘quoting’ into being. William West seems to have been similarly impressed. He calls a testament a ‘iust sentence, or declaration of our minde, concerning that which wee would have done after our deathes, with the ordaying of an executor thereof’.⁵⁹ If the testator’s words in the will supply the script of the testamentary play, then the executor must be considered its principal actor. The executor’s role is metaphysically sublime. The executor is a mediator between the living and the dead, and it has long been the rule that when the testator dies, and even before probate, ‘the property of the goods which was in the testator, is

⁵⁷ Swinburne, ‘*Testaments*’, 3. West takes a similar view, ‘*Symbolæography*’, sect 680. Technically speaking the term ‘testament’ should also have been reserved for will not including land, but this was a rule more honored in the breach than the observance. A devise of land by will was commonly referred to and for most purposes treated as if it were a testament.

⁵⁸ West, *ibid.*

⁵⁹ *Ibid.*

cast upon and vested in the executors'.⁶⁰ In Elizabethan England the testator's debts would also be passed on to the executors.⁶¹ In fact, the real 'actor', or active instrument that connects the work of the executor to the work of the stage actor, is the 'hand'. An early modern treatise on palm reading states that 'our Hands are the most Noble Members in perfecting of al manner of Actions; they are the executors of our Primary Conceptions'.⁶² A treatise on the art of gesture states in similar vein that 'the hand ... by gesture makes the inward motions of the minde most evident'.⁶³ The idea goes back to Aristotle, for whom the hand was 'the instrument of instruments'.⁶⁴

Shakespeare flourished in a particular historical period in which significant legal reforms were transforming the social power of individual will. The Statute of Wills (32 Hen 8 c.1), which came into force on 20 July 1540, had empowered feudal tenants to devise two-thirds of their land by will, but, most significantly, it went even further in the case of tenants holding under the most common form of feudal tenure ('socage' tenure). On them it conferred freedom to dispose of their entire interest in the land by will. In the words of the statute, it conferred a new:

⁶⁰ *Alvared Graysbrook, Executor of the Testament of Thomas Kene v. Robert Fox* (1564) 1 Plowden 275, 280; 75 E.R. 419, 428.

⁶¹ See the discussion near the end of Chapter Five [of *Acts of Will*].

⁶² Johannes Rothmann, *Cheiromantia...etc.*, George Wharton (trans) (1595) (London: Nathaniel Brooke, 1652), 175-6, 183.

⁶³ John Bulwer, *Chironomia* (London: Thomas Harper, 1644). On the hand as legal instrument, see Peter Goodrich, 'The Missing Hand of the Law', in *Legal Emblems and the Art of Law: Obiter Depicta as the Vision of Governance* (Cambridge: CUP, 2013), ch.6.

⁶⁴ Aristotle, *Peri psyches* ('on the soul'), III.432a.

full and free liberty, power and authority to give, dispose, will and devise, as well by his last will and testament in writing, or otherwise by any act or acts lawfully executed in his life, all his said manors, lands, tenements or hereditaments, or any of them, at his free will and pleasure⁶⁵

The pronoun ‘his’ was intended to be discriminatory. The 1540 Statute was supplemented in 1542 by *An Act for the Explanation of the Statute of Wills*, which confirmed that a married woman (‘woman covert’) had no power to leave land by will.⁶⁶ Neither was The Statute of Wills concerned with the non-freeholding masses, including those many outside London and at the labouring level of society, who held their land by customary copyhold tenure (a form of ‘tenancy at will’ held from the lord of their local manor).⁶⁷ The Statute of Wills conferred testamentary freedom, but it was not free for all. (It should be noted in passing that many landholders in the City of London did not need the assistance of the statute, for in matters of testament, as in matters of trade, the City of London had always been something of a law unto

⁶⁵ Section 1.

⁶⁶ 34 Hen. 8 c.5, s.14.

⁶⁷ Sir Edward Coke, *Institutes of the Laws of England* Volume I: ‘Coke’s Littleton’ (London: Society of Stationers, 1628), 59 b. The surrender of copyholds to uses specified in testaments was part of the custom by Shakespeare’s day. See, for example, the 1559 will of Robert Brown (*Ward v. Downing* (1592) Pop. 10; 79 E.R. 1132, Court of King’s Bench).

itself.)⁶⁸ The main beneficiaries of the statute were the landed nobility and gentry. It liberated their land-holdings from the feudal scheme of inheritance and represented, for them, a triumph of individual will over the prerogative will of the monarch. The statute can therefore be seen as an incident, and an instigator, of what Stephen Greenblatt identified as the tension in the early modern period between ‘a new stress on the executive power of the will’ and ‘the most sustained and relentless assault upon the will’.⁶⁹ By legitimating land owners’ testamentary control over their estates, the Statute of Wills incidentally promoted progress from the social scheme of the Middle Ages, which in its feudal aspect was committed to a hierarchy of ‘fixed and traditional’ social status,⁷⁰ to a society in which wealth and opportunity had some genuine potential to pass horizontally between people regardless of their social rank. S. B. Liljegren observed that:

⁶⁸ In ‘Pelham’s Case’ the impanelled jurors testified as follows: ‘the City of London is an ancient city, and ... all lands and tenements within the said city are, and from the time whereof the memory of man is not to the contrary, were devisable and bequeathable by testament in writing’ (*Page deceased, Bowes v. Griffin* (1588) 1 Co.Rep.3a, 4a). That might have been overstating the point, but land held by the custom of ‘tenure in burgage’, which was rare outside London, could certainly be devised by will instead of passing by feudal inheritance (Sir Edward Coke, *Institutes of the Laws of England* Volume I: ‘Coke’s Littleton’ (London: Society of Stationers, 1628), 109).

⁶⁹ Stephen Greenblatt, *Renaissance Self-Fashioning: From More to Shakespeare* (Chicago: The University of Chicago Press, 1980), 1.

⁷⁰ L. C. Knights, *Drama and Society in The Age of Jonson* (1937) (Harmondsworth: Penguin Books, 1962), 27.

from the reign of Henry VIII down to the last days of James I, by far the better part of English landed estate changed owners, and in most cases went from the old nobility by birth and the clergy into the hands of those who possessed money in the period of the Tudors, *i.e.* principally the merchants and industrialists or the newly created nobility and gentry...⁷¹

The Statute of Wills was literally crucial. It marked, in the most important field of property rights, a crossing point between medieval and modern views of the world. The traditional default scheme (which preferred lineal descendants to collateral descendants, males to females, and first-born males to all others) was still in the background, and still applied to estates not disposed of by will, but individual testamentary will now had the power to oust the traditional feudal order. It is no exaggeration to say that ‘since the Statute of Wills in 1540 the personal will as a legal instrument had become associated with the subject’s rights in the face of the monarch’s privilege’.⁷² It cannot be denied that the early modern world view was still heavily influenced by the medieval concept of the ‘Chain of Being’ by which all Creation was understood to descend by fixed degrees downwards from the

⁷¹ S. B. Liljegren, *The Fall of the Monasteries and the Social Changes in England leading up to the Great Revolution* (Lund / Leipzig: Gleerup / Harrassowitz, 1924) 130-31. Cited in Knights, *ibid.*, 90.

⁷² Andrew Zurcher, *Shakespeare and the Law*, Arden Shakespeare (London: Bloomsbury, 2010), 185.

Godhead,⁷³ but the early modern mind was increasingly looking outwards along the horizontal plane to new horizons of place, politics and individual personhood. Richard Wilson provides a pithy summary when he observes that the 1540 Act ‘installed the capitalist notion of the sovereign individual’.⁷⁴ By allowing individuals to substitute a testamentary scheme for the feudal scheme, the 1540 statute effectively established the individual landholder as monarch over his own private domain. He could leave land (or more accurately ‘devise’ land – which is etymologically to ‘divide’ it up) as he willed and the terms of his will were respected almost like a royal decree. By 1590, around the time that Shakespeare was embarking upon his career as a playwright, Henry Swinburne cited it as a maxim ‘that the will or meaning of the testator is the Queene or Emprise of the testament’.⁷⁵

Elizabeth I was a sort of Queene or Emprise of a testament. She had succeeded to the throne in accordance with the terms of the last will and testament executed by her father Henry VIII in 1547. The Third Act of Succession (1544) had authorized Henry, in the absence of a lawful successor by blood, to determine his successor by ‘letters patents under the great seal, or by his last will in writing signed with his most gracious hand’.⁷⁶ Whether Elizabeth’s accession was attributable to the operative power of Henry’s testamentary will or to the power of parliamentary will

⁷³ E. M. W. Tillyard, *The Elizabethan World Picture* (1943) (Harmondsworth: Penguin, 1966).

⁷⁴ Richard Wilson, *Will Power: Essays on Shakespearean Authority* (Hemel Hempstead: Harvester Wheatsheaf, 1993), 203.

⁷⁵ Swinburne, ‘*Testaments*’, 9.

⁷⁶ 35 Henry 8 c.1 (1544).

expressed in the Act of Succession remains moot. Edmund Plowden and other leading common lawyers agreed with the orthodox opinion that '[t]he king as king had no power to determine the succession by testament'.⁷⁷ The provision in the Third Act of Succession that had empowered Henry to determine the succession by his testament followed a similar provision in The Second Act of Succession.⁷⁸ The close proximity of the Second Act of Succession (June 1536) to the Statute of Uses⁷⁹ (April 1536) is curious, for the Statute of Uses had purported to close down a conveyancing procedure (the 'enfeoffment to use' or simply the 'use')⁸⁰ which had successfully conferred a large degree of testamentary freedom on private landholders, whereas the Second Act of Succession conferred testamentary freedom on the king in relation to no less a thing than title to the Crown itself. The aims and principles of the statutes were inconsistent to the point of hypocrisy. As things turned out, clever conveyancers discovered a loophole in the Statute of Uses and

⁷⁷ Marie Axton, 'The Influence of Edmund Plowden's Succession Treatise', *Huntington Library Quarterly* 37(3) (1974), 209-226, 220.

⁷⁸ 28 Henry 8 c.7 (1536), s.18.

⁷⁹ 27 Hen 8 c.10.

⁸⁰ See A. W. B. Simpson, *An Introduction to the History of the Land Law* 2nd ed (Oxford: Clarendon Press, 1986), ch.8; Neil Jones, 'Uses, Trusts and a Path to Privity', *Cambridge Law Journal* 56(1) (1997), 175-200; Neil Jones, 'Trusts in England after the Statute of Uses', in *Itinera Fiducia: Trust and Treuhand in Historical Perspective*, Richard Helmholz and Reinhold Zimmermann eds (Berlin: Duncker and Humblot, 1998), 173-205, 173. (The church had a long-standing interest in assisting landholders to give lands to the church by deathbed gifts, see *H5*, 1.1.9-10.)

found ways to create uses that could operate despite the statute. Just a few years after the Statute of Uses, the king relented in the face of demands for testamentary freedom and parliament passed the Statute of Wills. Thus the 1540 Statute of Wills did not so much cause as re-confirm, and formally approve, an epochal shift from feudalism to ‘free will and pleasure’ (to quote the first section of the statute) in relation to the supremely important issue of transfers and testaments of land. What had previously been achieved indirectly by means of the equitable ‘use’ could now be achieved directly in law. The Statute of Wills was a development for which Henry (who by his various parliamentary ‘acts of will’ had authorized a statutory trend in favour of testament over tradition) had only himself to blame. It has been said that aristocracies are in principle ‘opposed to wills as the means of conveying estates’ because of their ‘scope for whims and passions of all sorts’ and in particular because they allow ‘large scope for paternal affection’,⁸¹ but the traditional order of succession cannot stand when the monarch at the head of the aristocracy is the very embodiment of whim and passion.

Shakespeare’s parents were born in the pre-1540 world of feudalism. Shakespeare was born into the post-1540 world of ‘free will and pleasure’. There is always a danger of attributing a special unique historical context to the unique genius of Shakespeare, but there is an opposite danger of underestimating the scale of the social transformation that occurred during his lifetime. Shakespeare lived between the moment of the English monarchy’s supreme sovereignty and the moment of its most profound subjection. Thirty-three-years before Shakespeare’s birth, Henry VIII had been newly installed as supreme head of the Church in England following the break

⁸¹ Eileen Spring, *Law, Land, and Family: Aristocratic Inheritance in England, 1300 to 1800* (Chapel Hill: The University of North Carolina Press, 1993), 72, 33.

from Rome.⁸² Thirty-three years after the poet's death a commonwealth of citizens had been newly installed at the country's head in place of the recently decapitated Charles I.⁸³ The dramatic rise and fall of the monarchy in such a short span is attributable to innumerable historical factors, but significant amongst them is the factor of individual will and in broad terms a shift from monarchical to popular will. The short span in which royal sovereignty fell from its greatest height to its greatest depth contained within it the golden age of early modern English theatre. That golden age ended when Cromwell's parliament closed the theatres in 1642, having begun (as is often supposed) with the appearance in 1561 of *Gorboduc*, the first English play in blank verse. *Gorboduc* was written by two common lawyers (Thomas Norton and Thomas Sackville) and first performed by lawyers before an audience of lawyers at Inner Temple. The play was on themes of royal succession and the wilful (albeit lifetime) disposition of a realm by its king.⁸⁴ *Gorboduc* was written early in the reign of Elizabeth I (1558-1603) and she is known to have attended a performance on 18 January 1562 (1561 Old Style). The young queen could hardly have failed to hear a lesson on succession in the lines of the final speech: 'No ruler rests within the regal seat; / The heir, to whom the sceptre 'longs, unknown'.⁸⁵ The question of succession to the English throne continued to be a vexed and vital one throughout the early years of Shakespeare's theatrical career, and his Elizabethan plays frequently connect

⁸² 11 February 1531.

⁸³ 30 January 1649 (1648 Old Style).

⁸⁴ Renamed *The Tragedy of Ferrex and Porrex* when it was revised in 1570, it is best known as a possible inspiration for elements of Shakespeare's *King Lear*.

⁸⁵ E. M. W. Tillyard, *Shakespeare's History Plays* (1944) (London: Chatto & Windus, 1956), 95.

testamentary concerns to concerns of traditional, especially royal, succession. For example, *Richard II* and *King John*, which are the focus of Chapter Two, exploit the dramatic conflict between royal and testamentary succession. (William West divides succession neatly into ‘royal’ and ‘civil’; and civil into two sorts – the ‘immediate or lawfull’, which we call inheritance or intestacy, and the ‘mediate or testamentarie’, which is inheritance by will.)⁸⁶

One way to express the distinctive quality of Shakespeare’s historical moment is to talk in terms of transition from the medieval world of feudal tradition to the modern world of free trade. The transition can be conceived as a move from a social scheme arranged along the vertical axis according to hierarchies of status to a social scheme in which people deal with each other on-the-level in the lateral plane. The testamentary freedom established by the 1540 Statute of Wills is a feature of this trend because testament can be understood as a form of trade in the way that it enables individuals to depart at their own ‘free will’ from the default rules of inheritance and succession (we return to the idea of testament as trade in Chapter Two). None of this is to suggest that the distinction between feudal tradition and free trade was a clear one at any historical point, or to suppose that the move to free trade represents unambiguously positive progress,⁸⁷ still less to say that Shakespeare plotted his plays along two rigid axes. It is to claim, rather, that in the tension between feudal tradition and free trade Shakespeare found scope for infinite playfulness.

⁸⁶ West, ‘*Symbolæography*’, s.680.

⁸⁷ Nowadays, we are keenly aware of the potential downsides of excessively liberal trade. See, generally, Ian Ward, *Shakespeare and the Legal Imagination* (London: Butterworths, 1999), ch.5.

In modern usage the word ‘trade’ is resonant of hand-to-hand dealing and it has carried that sense for centuries. Bracton wrote in the thirteenth century that ‘*traditione*’, or handing-over, of an asset was one of the ‘five garments’ ‘necessary for the cloathing of contracts’,⁸⁸ and even in Shakespeare’s lifetime it was noted that the hand-to-hand business of free trade had produced a world in which a few people found themselves holding the lot.⁸⁹ In fact, the word ‘trade’ is etymologically more akin to the tread of feet than to dealing between hands (the word comes from the Old English verb *tredan*). What both senses – the ‘hand-to-hand’ and the treading foot – seem to agree on is that trade operates on the level, in the lateral plane. Tradition, in contrast, is generally associated with handing down from generation to generation. Tradition need not imply hierarchy, but in many traditions, including the ‘feudal’, the hierarchy of handing down from social superior to social inferior is a defining feature of the scheme.

This dramatic tension between tradition along the vertical or hierarchical axis and trade in the lateral or horizontal plane was built into the physical fabric of the Elizabethan playhouse. The thrust stage was physically elevated above the yard by some four or five feet, but as the actors treaded the boards downstage they were very much walking in the midst of the playgoers. Socially speaking the downstage area was especially representative of street-level and as such it was conceptually of one level with the groundlings treading in the playhouse yard. Sometimes, the stage was

⁸⁸ Cited in *Throckmerton v. Tracy* (1555) 1 Plow. 145, 161; 75 Eng. Rep. 222, 250 (Brook, C.J.).

⁸⁹ A statistic of 1604 records that ‘[t]he masse of the whole trade of the realme is in the hands of some 200 persons’ (*Orig. Jrnls. House of Commons* (21 May 3 f. 251v)).

even used as a sort of village green or public highway for displaying thieves ‘taken pilfring’ at a play.⁹⁰ Robert Weimann’s argument that the yard and the main downstage plane of the stage were united by a sense of communally shared space is important here. Weimann borrows the terminology of medieval theatre to suggest that the players on the foremost thrust part of the stage share with the groundlings the area of the ‘platea’. Downstage is, as it were, ‘down with the people’. The vertical structures of the stage (pillars, balcony, heavens and so forth) in the upstage area form the distinct area of the ‘locus’.⁹¹ In terms of social hierarchy, descent is from locus to platea and not from the downstage area to the yard. The exchange or trade that takes place in the platea (the word means ‘street’)⁹² between the players and the playgoers is a trade of treading or walking together. It symbolizes shared economic enterprise and social mobility even as the vertical structures in the background stand for the unmoving hierarchies of feudal tradition.

As the dramatic tension between the vertical order of feudal tradition and the horizontal freedom of trade was played out in the physical structure of the playhouse, so it played out in the careers of the players themselves. It is only a slight oversimplification to observe that the course of Shakespeare’s professional life mirrored the economic evolution of England from feudal tradition to free trade, for it

⁹⁰ William Kempe, *Kempe’s Nine Daies Wonder* (1600), G.B. Harrison ed (London: the Bodley Head, 1923), 9. Cited in M. C. Bradbrook, *The Rise of the Common Player* (London: Chatto & Windus, 1962), 105.

⁹¹ Robert Weimann, *Shakespeare and the Popular Tradition in the Theater: Studies in the Social Dimension of Dramatic Form and Function* (Baltimore and London: The Johns Hopkins University Press, 1978), 222.

⁹² The Latin ‘platea’ derives from Ancient Greek πλατεῖα (plateîa), meaning ‘street’.

was broadly one of progress from being a servant and dependent subject within a hierarchy of noble patronage to being (whilst still in official form a servant) a much more free agent operating within a horizontally-ordered community of venturers.

It is unfashionable nowadays to talk in terms of such simple binaries as tradition and trade, heaven and hell, interior and exterior, male and female, true and false, but the early moderns used such simple pairings as a 'binary code' through which a mesh of great complexity could be fabricated and contemplated and played out. The moderns forgot the complexity. The postmoderns are in danger of forgetting the play. We will see in the chapters that follow that it is through their spirit of playfulness that Shakespeare's dramatic works continue to open more questions than can ever be closed. It is also through their playful spirit that they bear testament, even today, to the ongoing human struggle to perform individual will against the backdrop of status-entrenching social frames.

Shakespeare's Acts of Will: Law, Testament and Properties of Performance

(London: Bloomsbury Arden Shakespeare, 2016)

Chapter Two

Handling Tradition: Testament as Trade in *Richard II* and *King John*

*Richard II*¹ and *King John* exemplify Shakespeare's method of engaging the materiality of the playhouse to assist playgoers to handle the questions and dramatic conflicts of a play. The vertical and lateral planes of the architecture, the movement and gesture of the actors, the performance of costume and hand props are all artfully suited to the logical and embodied sense that is produced by silences and words. Voice, movement and stage stuff combine to produce a totality of dramatic tension, and in these plays the tension is palpably that which arises from interactions between the vertical, hierarchical order of tradition and the lateral, horizontal potential of

¹ In all five quarto editions of the play published before the first folio of 1623, the play is called *The Tragedie of King Richard the Second*, but in the first folio it appears with the Histories as *The Life and Death of King Richard the Second*. The compositors might have borrowed the type-set already prepared for the preceding play in the collection, *The Life and Death of King John* (Charles R. Forker, *Richard II*, The Arden Shakespeare, third series (London: Bloomsbury, 2002), 179 n). In this chapter, all references to *Richard II* are to Forker's edition unless otherwise stated. References to *King John* are to E. A. J. Honigmann, *King John*, The Arden Shakespeare, second series (London: Methuen, 1954).

trade. In Chapter One, where I outlined the etymological and stage significance of ‘tradition’ and ‘trade’, I stressed that Shakespeare does not assert a strict distinction between these ideas, but seeks to explore their playful and dramatic interaction. In *Richard II* and *King John*, Shakespeare presents worlds of traditional order in decline or under threat and invites playgoers to witness will expressed in these worlds in the language and actions of testament and trade. The participation of the playgoers as third party witnesses gives the performance a testamentary quality, but their participation is not passive. They are encouraged to subject the performance, and the will expressed in it, to a process of trial or testing. In legal testamentary terms they are invited to subject the will to ‘probate’ or ‘probation’,² which means that they are asked to approve what they have seen. I should stress again that as we think in testamentary terms, our focus should not be upon legal technicalities for their own sake but upon the ways in which the rhetorical, material and communal practices and effects of law are broadly akin to those of theatre. It has been said that modern playgoers approaching *Richard II* (and the same is true of *King John*), ‘are a bit like anthropologists dropped into a village just as a ritual begins; our task is to make sense of what we see’.³ The sense we are looking for ‘lies in the gesture, the object, the act, the person’ and ‘not in any secondary explanations, or reasons, or justifications’.⁴ To assist us in this task of sensing the full make-up of the play,

² West describes probate as ‘probation of the testament’ (William West, *Symbolæography etc.* (London: Totthill, 1590), s.684).

³ James Boyd White, ‘Shakespeare’s *Richard II*: Imagining The Modern World’, in *Acts of Hope: Creating Authority in Literature, Law and Politics* (Chicago: University of Chicago Press, 1994), ch.2, 51.

⁴ *Ibid.*, 57.

Shakespeare presents on-stage witnesses, including manipulators and manual workers. They help the playgoers to handle the great questions raised by great events. In *King John*, the chief witness is Philip the Bastard; in *Richard II* it is the gardener.

When the gardener observes that the crown has been ‘quite thrown down’ by Richard’s ‘waste of idle hours’ (3.4.66), he plants a question in the minds of the playgoers.⁵ The question is whether Richard’s ‘waste’ is of the active or the passive sort. The word ‘idle’ suggests the former. The word ‘thrown’ suggests the latter. This question presents choices for the scene in which the physical crown changes hands from Richard to Bolingbroke. Should Richard cast it aside, or willingly hand it over, or willingly let it fall, or should he involuntarily lose his grip? If the latter, is it because of his own weakness or because of Bolingbroke’s force? There is talk of Richard’s ‘willing soul’ adopting Bolingbroke as his heir (4.1.109-10), but at the crux of the dramatic action Richard equivocates: ‘What you will have, I’ll give, and willing too; / For do we must what force will have us do’ (3.3.206-207). To the great advantage of the play, the text does not close the question of free will and possession of the crown, but leaves it to the playgoers to test the issues and reach conclusions. They might conclude that Richard’s neglect of the crown justified Bolingbroke’s

⁵ On the play’s capacity to constitute the playgoers as self-aware witnesses of the spectacle, see Bridget Escolme, *Talking to the Audience: Shakespeare, Performance, Self* (Abingdon: Routledge, 2005). Phyllis Rackin argues that *Richard II* casts the playgoers in ‘a carefully calculated role’ (‘The Role of the Audience in Shakespeare’s *Richard II*’, *Shakespeare Quarterly* 36(3) (1985), 262–81, 263). See, also, Jeffrey S. Doty, ‘Shakespeare’s *Richard II*, ‘Popularity,’ and the Early Modern Public Sphere’, *Shakespeare Quarterly* 61(2) (2010), 183-205, 185.

possession of it, but however that question is settled on the surface it will merely disturb this deeper question: ‘can the destination of the crown be determined by individual will?’ That question had been revived by Henry VIII’s attempt to devolve the crown by his last will and testament and ‘was never settled’.⁶ Shakespeare declines to resolve the debate and instead exploits its dramatic tension. The debate is a deep one. It calls for nothing less than to ask whether the right to govern can pass by human handling or must be allocated by the lottery of birth and blood. Deeper still is the challenge to divine on which side of these possibilities the will of God is at work. For early modern playgoers, informed by such schools of thought as Richard Hooker’s ‘latitudinarian’ Anglicanism (which regarded individual piety as more important to God than traditional ecclesiastical structures), such issues translated into nascent political questions of democracy and personal election.⁷ Adam the gardener, representative of the Biblical Adam,⁸ was inviting the playgoers to question the power of individual agency to control events and to speculate with him that the high affairs of State might be better handled by common folk.

Let us suppose, as Andrew Gurr supposes, that Bolingbroke ‘sees the crown as the title to a property which can be bequeathed by will like the property of an

⁶ Andrew Gurr ed, *King Richard II* (Cambridge: CUP, 2003), 20. On Henry VIII’s will, see Chapter One.

⁷ On Hooker’s influence, see Paul Raffield, *Shakespeare’s Imaginary Constitution: Late-Elizabethan Politics and the Theatre of Law* (Oxford: Hart, 2010), 23-33; and, White, *Acts of Hope*, ch.3.

⁸ He is ‘old Adam’s likeness, / Set to dress this garden’ of England’s ‘other Eden’ (3.4.72-3; 2.1.42), echoing Genesis 2:15. (Compare ‘Adam was a gardener’, *2H6*, 4.2.124.)

ordinary title-holder’;⁹ still we never learn if Bolingbroke is right. The openness of such questions maintains the on-going life of the drama on the stage, and even in the study. We know that Bolingbroke took the crown into his own hands, but we are never sure if he stole it, or bargained for it, or merely picked up what had been dropped or thrown down. In *Richard II*, Richard calls Bolingbroke a thief (3.2.47), but it is not clear that Bolingbroke accepts the charge. Later in the tetralogy Henry admits that he ‘stole all courtesy from heaven’ (*IH4*, 3.2.50) and confesses on his deathbed that he ‘purchas’d’ (*2H4*, 4.5.199) the crown. At worst the word ‘purchase’ indicates theft, for Shakespeare sometimes uses it as a synonym for ‘steal’ (*IH4*, 2.1.91; *H5*, 3.2.42) as he does ‘convey’ (*R2*, 4.1.317), and at best it makes Bolingbroke an enterprising businessman. His language is financially loaded even when he talks of friendship (*R2*, 2.3.60-62). ‘Enterprise’ means ‘to take in hand’, and from Bolingbroke’s own mouth we learn, when he is king, that his ‘hands are full of business’ (*IH4*, 3.2.179). According to the gardener, even Richard himself ‘is in the mighty hold / Of Bolingbroke’ (*R2*, 3.4.83-84). In *1 Henry IV*, Worcester regards Henry as an opportunist and alleges to his face ‘You took occasion... / To grip the general sway into your hand’ (*IH4*, 5.1.56-57). Whether this was enterprise or theft remains unclear. The dying Henry acknowledges that the crown ‘seem’d in me / But as an honour snatch’d with boist’rous hand’ (*2H4*, 4.5.190-191), but to say it ‘seem’d’ so is not to say it was. The question remains open.

The passing of the crown is not just a question of having or taking laterally within the horizons of opportunity. It is also necessarily a question of traditional descent. The question of descent is central to the play’s grand theme of Richard’s fall and Bolingbroke’s rise and it is amplified through the physical structures of the

⁹ Gurr, *Richard II*, 20.

Elizabethan playhouse and stage. We consider two key episodes later in this chapter: Richard's descent from the castle walls (3.3.178-182), followed by the narrated account of the citizens' ascent to the 'windows' tops' of London (5.2.1-6). Considered as a connected pair of scenes, these episodes have the effect of staging a democratic displacement of the king from his elevated position. Spatial inversion on stage mirrors upheaval in the State. The vertical vectors of the play and the antithetical association of high to low is rendered dynamic by movement, props and such gestural points as the courteous bending of knees and the throwing down and picking up of gages.¹⁰ In the very first scene, in the quarrel between Bolingbroke and The Duke of Norfolk (Thomas Mowbray), we have in quick succession John of Gaunt's 'Throw down, my son, the Duke of Norfolk's gage' (1.1.161) and King Richard's 'Norfolk, throw down his. / ... / Norfolk, throw down, we bid' (1.1.162, 164). A kinaesthetic effect induced by the continuous ups and downs of the stage action amplifies the conceptual contrast between the highs and lows of the characters' fortunes and status.¹¹ The gardener's reference to the high crown 'thrown down' is one of many dynamic instances of the vertical vector of the play. Indeed the word 'thrown', by punning on 'throne', concentrates the antithesis in itself. The fact that the throne (more properly 'the state')¹² is a major stage property, but one that the

¹⁰ See, generally, P. A. Jorgensen, 'Vertical Patterns in *Richard II*', *The Shakespeare Association Bulletin* 23(3) (1948), 119-134.

¹¹ *Ibid.*, 119.

¹² 'Chairs of state on the Elizabethan stage...were not just centrally positioned on the horizontal axis...they were also raised on a 'halpace' or low dias', thus '[t]he monarch physically climbed up the steps to take his or her seat on the state' (Janette

actors cannot wield physically, means that it must be handled in the mind; as much by the playgoers as by the players. In contrast, the gages (gauntlets) are the hand prop par excellence. We will pick them up again before the end of this chapter. For now it is important to stress that they move across the stage horizontally as well as moving up and down through the vertical axis. Gages are exchanged hand to hand by a kind of trade bargain that implies documentary performance made ‘under hand’. That is, with the signature or handwriting of the parties, hence Aumerle refers to his gage as a ‘manual seal’ (4.1.26).¹³ The legal and trade sense of the gage is clear in Mowbray’s declaration: ‘I... /... interchangeably hurl down my gage’ (1.1.145-6). In Shakespearean usage, the word ‘interchangeably’ is inseparable from the legal performance of trade bonds and other deeds. It is used later in the play to describe the setting down of ‘hands’ in sealing a document (5.2.98), as it is elsewhere (*IH4*, 3.1.77; *TC*, 3.2.56-7).

There is, of course, another puzzle posed by the gardener’s reference to the crown ‘thrown down’, beyond the immediate question of royal succession, and that is to know whose will is at work in the world and whose hand performs it. Intriguing here is the gardener’s observation that Richard has insufficient weight on his side of the balance: ‘In your lord’s scale is nothing but himself / And some few vanities that make him light’ (3.4.85-6). This may be an allusion to the supernatural, disembodied hand that wrote on the wall to warn King Belshazzar of his imminent downfall in the biblical *Book of Daniel*. The writing recorded the judgment that the king had been

Dillon, *Shakespeare and the Staging of English History*, Oxford Shakespeare Topics (Oxford: OUP, 2012), 40).

¹³ The word ‘gage’ continues to have commercial connotations to this day, notably in the form of real security that goes by the name of ‘mortgage’.

‘weighed in the scale and found wanting’ (Daniel 5:27).¹⁴ However that may be, it is clear that the gardener, the manual worker, is inviting the playgoers to join with him in holding matters in the hands of the mind: grasping, wrestling, reshaping them, and weighing them in judgment. Shakespeare sometimes makes this invitation express, as when the chorus to *Henry V* concludes the first prologue by urging the playgoers ‘Gently to hear, kindly to judge our play’ (1.prologue.34). The chorus animates the playgoers to imaginative engagement of a hands-on sort: ‘deck our kings’ (1.prologue.28); ‘Grapple your minds to sternage of this navy’ (3.prologue.18); and, finally, he invites them to be conveyers of the king – to ‘Heave him away upon your winged thoughts’ and ‘fetch’ him in (5.prologue.8, 28). The invitation is expressly to ‘behold / In the quick forge and working-house of thought’ (5. prologue.22-23). Shakespeare would have his playgoers grapple like sailors, work like smiths and graft like gardeners. They are constituted hands-on participants in the play.

As the gardener is a biblical type of everyman, so he is a political everyman who works at the level of the ground and of the groundlings. We might be tempted to call him a ‘levelling’ type, but although his policy of humbling the haughty (he cuts the heads off ‘too fast-growing sprays’ (3.4.34)) might sound to modern ears like a policy of social equality (‘All must be even in our government.’ (3.4.36)), we should not ascribe twentieth-century individualistic notions of equality to the Elizabethans. They would have been quite as likely to hear the cutting off of heads as a caution against social climbing and excessive ambition. The notion of ‘even’ government

¹⁴ Psalm 62:9 contains the words ‘weights’ and ‘vanitie’ and might therefore be an even stronger analogy. See, generally, Naseeb Shaheen *Biblical References in Shakespeare’s Plays* (1989) (Newark: University of Delaware, 2011), 377. Biblical quotes are from the Geneva Bible unless otherwise stated.

promoted by Shakespeare's gardener was unlikely to have been our modern idea of uniformity across all strata of social status, but something more akin to a just and unbiased ordering of the social scheme: 'Concord, not equality.'¹⁵ The sense of even ground is enhanced when the Queen, just prior to her encounter with the gardener, employs the metaphor of the sport of bowls (3.4.3-5). (Compare *King John*, discussed below, where the corrupting effect of 'commodity' on the 'world' is represented as a biased bowling ball.) The gardener's policy is one of balancing the constituents of society as a conscientious cultivator balances the elements of his garden. His desire for harmonious balance between justice of a horizontal sort and order of a hierarchical sort is confirmed by his image of the scales, and that image is supported in the stage action through the balanced choreography of two parties: the queen and her two attendants on one side, the gardener and his two workers on the other. There is no modern sense of social equality here, at least not in the crude form 'equality is uniformity', but there is a sense of common human dignity regardless of social status. This is confirmed by the fact that the gardener speaks verse, as do the citizens of Angiers in *King John* (see below). It is true that *Richard II* contains no prose lines, which is true also of *King John*, *1 Henry VI* and *3 Henry VI*, but if Shakespeare had wanted to denigrate the gardener he could have given him prose despite the predominance of verse, as he did with Jack Cade and the rebels in *2 Henry VI*.

Shakespeare's history plays can be regarded as extended rhetorical arguments designed to persuade the playgoing witness, not to a particular verdict or point of view, but to an appreciation of what it feels like to handle the evidence and to

¹⁵ L. C. Knights, *Drama and Society in the Age of Jonson* (London: Chatto & Windus, 1968), 144.

participate in political discourse. The weight and ‘feel’ of the dramatic dispute is handled as matter in the mind, and occasionally a conceptual question is enlivened by a sensory conundrum. For instance, what weight should we associate with a king who is lighter than Bolingbroke in the gardener’s image of the scales but heavier than Bolingbroke in Richard’s own image of the buckets in the well? (4.1.184-189).¹⁶ We are not compelled to resolve this apparent contradiction, but if the gardener’s scales are indeed the Biblical scales of the Divine assessor, we can perhaps understand Richard to be thrown down in the affairs of men, even to death, and at the same time to be taken up in the hands of God. This approximates to Richard’s own understanding. Addressing his wife en route to the Tower he tells her: ‘Our holy lives must win a new world’s crown, / Which our profane hours here have thrown down’ (5.1.24-25). At a (perhaps unwise) distance from the stage we might see Richard’s complete trajectory as down and then up, forming as it were the ‘V’ that makes the top half of a saltire. Bolingbroke’s corresponding trajectory of rise and demise throughout the tetralogy would supply the lower half, with each half touching at the crossover point. Certainly there is a substantial crossing over of the characters’ fortunes within *Richard II* and this is frequently emphasised through the rhetorical figure of *chiasmus*, which is a ‘criss-cross’ figure.¹⁷ A sub-species of *chiasmus* (‘*antimetabole*’, in which words are exactly repeated and reversed in the form A-B-B-A) is pithily employed at the moment of formal transfer of the crown when Richard equivocates his consent: ‘Ay, no. No, ay’ (4.1.201). At the moment of his death, Richard confirms a crossroad even in his own divided being: ‘Mount, mount, my soul! Thy seat is up on high, / Whilst my gross flesh sinks downward

¹⁶ Jorgensen, ‘Vertical Patterns’, 129.

¹⁷ Forker, *Richard II*, 88.

here to die' (5.5.111-12). The same sentiment is expressed in Shakespeare's *The Rape of Lucrece* (1594) which was written closely contemporary with *Richard II*: 'This brief abridgment of my will I make: / My soul and body to the skies and ground' (1198-9).¹⁸ This antithetical treatment of soul and body is specifically the standard wording of an Elizabethan testament.¹⁹

Part of the appeal of Shakespeare's *Richard II* resides in references to the performative rituals of everyday life and death in early modern England, many of which required the hands-on participation of ordinary folk. For example, when King Richard's laments that imprisonment divorces him from his wife 'hand from hand' (5.1.82) Shakespeare's playgoers would have recognised a reference to, and reversal of, the joining of hands in marriage and, more specifically, a reference to the ritual handfasting that sealed a betrothal.²⁰ Shakespeare himself might have been bound to

¹⁸ Katherine Duncan-Jones and H. R. Woudhuysen, *Shakespeare's Poems*, The Arden Shakespeare (London: Bloomsbury, 2007), 333.

¹⁹ E.A.J. Honigmann and Susan Brock, *Playhouse Wills, 1558–1642* (Manchester, Manchester University Press, 1993), 19. For a template see West's 'verie perfect forme of a Will' (*Symbolæography*, s.689).

²⁰ David Cressy notes that '[t]he word 'handfasting', which called attention to the ritual action, was more commonly used in the north'. It involved 'holding and releasing of hands, the plighting of troths, kissing, drinking, and the ritual exchange of betrothal rings' (*Birth, Marriage, and Death: Ritual, Religion, and the Life Cycle in Tudor and Stuart England* (Oxford: OUP, 1997), 269, 273). The word 'gage' (with its associations to the hand) survives in the modern betrothal language of 'engagement'.

Anne Hathaway by handfasting prior to marriage,²¹ and it is likely that he acted as witness to this rite in 1604 when he ‘made sure’ the betrothal of Stephen Bellott to Mary Mountjoy at the moment of their ‘*giving each other’s hand to the hand*’.²² An effect of Richard’s performative reversal of handfasting is to remind the playgoers of the preceding Act of the play in which they had seen the seriatim reversal of the elements of Richard’s coronation rite. As the un-fasting of the matrimonial hands implies Richard’s separation from his wife, it also implies his imminent separation from life, since marriage lasts only until death.

The testamentary sense is even stronger in those communal performances alluded to, or incorporated, in Shakespeare’s *Richard II* that specifically relate to death and burial. Amongst these we must include the documentary performance of the last will and testament, which we will consider in more depth when we consider Richard’s ‘talk of wills’ (3.2.148). At this point we will concentrate on a material correspondence between the documentary performance of a will and the physical performance of funeral rites. In Elizabethan times, both performances involved an express passing of the soul into the hands of God, and of the body to the earth.²³ (We shall shortly see that there is significance in the fact that earth itself was passed from

²¹ Germaine Greer, *Shakespeare’s Wife*, (London: Bloomsbury, 2007), 87.

²² Daniel Nicholas, deposition of 19 June 1612 (*Bellott–Mountjoy*, Court of Requests). The italicized words are scored through in the original, which perhaps raises a doubt as to the veracity of this part. See, generally, Charles Nicholl, *The Lodger: Shakespeare on Silver Street* (London: Allen Lane, 2007), ch.27.

²³ See Cressy, *Birth, Marriage, and Death*, ch.18.

human hands as part of the Elizabethan burial rite.) The preamble to Shakespeare's last will and testament was in a form standard for the time:²⁴

In the name of god Amen I William Shackspeare of Stratford vpon Avon in the countie of warr[*wick*] gent[*leman*] in p[*er*]fect health & memorie god be prayسد doe make & Ordayne this my last will and testam[*en*]t in mann[*er*] and forme followeing That ys to saye ffirst I Comend my Soule into the hand[*es*] of god my Creator hoping & assuredlie beleeving through thonelic merit[*es*] of Iesus Christe my Saviour to be made p[*ar*]taker of lyfe everlastinge And my bodye to the Earth whereof yt ys made²⁵

This documentary form had a post-mortem counterpart in the dramatic performance of the funeral rite. The words spoken at Shakespeare's funeral (and at the funeral of his son, Hamnet, which was roughly contemporary with *Richard II* and *King John*) would have been the words ordained to be spoken by the priest 'At the Burial of the Dead' according to the 1552 *Book of Common Prayer*. That ritual form of words, which was adopted without amendment by Queen Elizabeth in her edition of 1559, was as follows:

FORASMUCHE as it hathe pleased almightie God of his great mercy to take unto himselfe the soule of our dere brother here departed: we therefore commit his body to the ground, earth to earth, ashes to ashes, dust to dust, in sure and certayne hope of resurreccion to eternal lyfe, through our Lord Iesus Christ, who shal change our vyle bodye, that it maye bee lyke to his

²⁴ Honigmann and Brock, *Playhouse Wills*, 19.

²⁵ Transcription based on Honigmann and Brock, *Playhouse Wills*, 105. Italic additions in square parentheses indicate characters not appear in the original will.

glorious bodye, according to the mightie working wherby he is hable to subdue all thinges to himselfe.²⁶

This text had been significantly reformed from that of the 1549 first edition. The original wording had left the priest in his traditional position as mediator between God above and people below. The priest had uttered in the first person ‘*I commend thy soule to God the father almighty, and thy body to the grounde*’ (emphasis added). The second edition talks instead of ‘*our* dere brother here departed’ and uses the communal ‘*we* therefore commit his body to the ground’ (emphases added).

Ritual power was taken not only from the mouth of the priest but also from his hands. The words of committal in the first edition are preceded by the direction: ‘*Then the priest castyng earth upon the Corps, shall saye.*’ In the reformed (second) edition of 1552, that direction is altered in a small but important detail, for it is now the bystanders, not the priest, who perform the ritual act of casting dust upon the corpse: ‘*Then whyle the earth shal be cast upon the body by some standing by, / the priest shall saye.*’ This exemplifies that genre of participatory public performance that I call ‘testamentary’, for the third party bystander (the ‘tri-st’ or ‘testa’) is not a passive observer but a participant without whom the performance would be incomplete.²⁷

The ritual of the Roman Catholic priest casting dust down from a position somewhere between man and God, with the hierarchy that implies, was replaced by the horizontal ritual of brothers, members of a common priesthood of believers, casting dust upon one of their own.²⁸ The dust becomes a prop in a protestant drama

²⁶ Compare Ecclesiastes 3:20.

²⁷ See Chapter One.

²⁸ For a Derridean appreciation of the dust in *Richard II* as a sign of the ‘crumbling

with protestant script and protestant stage directions. The performative power of ordinary people taking matters into their own hands is an enduring one. Ben Whishaw, who played Richard II in *The Hollow Crown* production (BBC, 2012) and who based his portrayal partly upon the dictator Colonel Gaddafi, notes that in footage of Gaddafi's capture 'people are throwing things at him'.²⁹ The footage shows shoes being wielded by his captors, and presumably the deposed dictator was struck by these in accordance with the Arab notion that the shoe is ceremonially unclean and to be struck by it is symbolically to be trodden down in the dust. In a famous incident at a news conference in 2008, the same insult was quite literally hurled at President George Bush Jnr by an Arab journalist. Bush managed to dodge the flying shoe, but his father had been forced to take a similar insult lying down. In 1991, President George Bush Snr had suffered the discomfiture of having a huge mosaic portrait of his face set into the floor at the entrance to one of Baghdad's major hotels. This cultural understanding of the shoe might be a reason why the celebrated Arab theatre designer Farrah (Abd'Elkader Farrah) employed a portrait of King Richard as a backdrop and lowered it to form a sloped stage for Bolingbroke to tread upon in Terry Hands' *Richard II* (RSC 1980).³⁰

The character of Northumberland, whom Richard labels 'thou ladder wherewithal / The mounting Bolingbroke ascends' (5.1.55-56), is a self-willing agent and an early modern protestant before his time. This is apparent from such

of the principle of sovereignty', see *Geoffrey Bennington*, 'Dust', *Oxford Literary Review* 34(1) (2012), 25-49, 42.

²⁹ John Preston, 'Ben Whishaw on his new role as Richard II', *The Telegraph* (online), 30 Jun 2012.

³⁰ Cited in Forker, *Richard II*, 106.

lines as ‘My guilt be on my head, and there an end’ (5.1.69). He excises the priest from the proceedings. Again, when Richard is deposed, there is no bishop to preside over the reversal of the coronation rites. Richard asks, ‘Am I both priest and clerk?’ (4.1.174). He answers his own question when he washes away the balm of his anointing with his own tears and gives away his crown with his own hands, thereby reversing the sacramental actions of the priest in the coronation ceremony. Richard is reduced to acting as his own agent, but the play’s exemplar of the modern, self-determining agent is Bolingbroke. The Victorian critic Frederick Boas conceived him in typically Victorian terms, to be an ‘iron-willed man of affairs’.³¹ That may be overstating the efficacy of Bolingbroke’s will, for there is truth in John Dover Wilson’s suggestion that Bolingbroke is to some extent ‘borne upward by a power beyond his volition’,³² but even if fate placed the ladder of opportunity at Bolingbroke’s feet it is clear that he scaled it voluntarily: ‘In God’s name I’ll ascend the regal throne’ (4.1.114). From the opening scene of the play, he declares his will to enact what he speaks: ‘what I speak / My body shall make good upon this earth’ (1.1.36-37). This is the very manifesto of modernity, even post-modernity. He is a self-willing actor setting out to perform his individual identity on the political and theatrical stage. The historical Richard II has been described as ‘the last king ruling by hereditary right, direct and undisputed, from the Conqueror’,³³ and therefore as

³¹ Frederick S. Boas, *Shakspeare and his Predecessors* (1896) (London: John Murray, 1940), 250.

³² John Dover Wilson ed, *Richard II* (Cambridge: CUP, 1939), xx.

³³ A. B. Steel, *Richard II* (Cambridge: CUP, 1941), 1.

‘the last king of the old medieval order’.³⁴ The medieval nature of Shakespeare’s Richard and his faction can be emphasized through costume, for example by adopting Tillyard’s suggestion that Bushy, Green and Bagot were ‘very plainly Morality figures and were probably marked in some way by their dress as abstract vices’.³⁵ If Shakespeare’s Richard is mediaeval, he is nevertheless confronted with emerging modernity and ultimately his world is ‘superseded by the more familiar world of the present’.³⁶ Again, the mode of costume can be employed to represent tension between the old order and the new. For example, in Michael Bogdanov’s *Richard II* (English Shakespeare Company, 1989), epochal change was demonstrated by contrasting Richard’s ‘languid Regency dandy’ with Bolingbroke’s ‘sombre Edwardian civil servant’.³⁷

The bystanders in an Elizabethan burial service who threw dust upon the coffin had their counterparts in the commoners who cast dust on the head of Richard as he entered London trailing behind the triumphant Bolingbroke. The scene of Bolingbroke’s entry is reported by the eyewitness account of the Duke of York speaking privately to his wife. The Duke had broken off his tale, so the Duchess urges him to continue from ‘that sad stop, my lord, / Where rude misgoverned hands from windows’ tops / Threw dust and rubbish on King Richard’s head’ (5.2.1-6). The Duke continues:

³⁴ E. M. W. Tillyard, *Shakespeare’s History Plays* (1944) (London: Penguin Books, 1991), 259, citing Steel *ibid.*

³⁵ *Ibid.*, 268.

³⁶ *Ibid.*, 265.

³⁷ Jack Tinker, *Daily Mail*, 28 January 1989.

As in a theatre the eyes of men,
After a well-graced actor leaves the stage,
Are idly bent on him that enters next,
Thinking his prattle to be tedious,
Even so, or with much more contempt, men's eyes
Did scowl on gentle Richard. No man cried God save him!
No joyful tongue gave him his welcome home,
But dust was thrown upon his sacred head.
Which with such gentle sorrow he shook off. (5.2.23–30)

The episode has a counterpart in the Old Testament. Not long after King David lost his throne to the rebellion of his son Absalom, we read that a Hebrew by the name of Shimei 'threw stones against him, and cast dust' (2 Samuel 16:13).³⁸ When Shakespeare's Richard 'shook off' (5.2.31) the dust, he was returning a Biblical curse upon the London citizens.³⁹ A stage director might choose to represent the casting of dust on Richard by means of a confetti shower, shadow show, video projection or some other such device, but it might be better to leave the falling dust to York's narrative account and to omit any peripheral physical representation of the actual matter. The power of the scene may be heightened if the playgoers are required to hold the dust in the hands of their minds, there to weigh it up and grasp its significance. Imagined stage properties can sometimes have a more powerful hold upon playgoers' minds than physical props presented on stage. (The pound of flesh

³⁸ Shaheen, *Biblical References*, 386.

³⁹ Matthew 10:4-5.

in *The Merchant of Venice* is a case in point.)⁴⁰ Held in the hand of the mind, the significance of the dust is something like the significance of the ‘gage’ considered earlier. Both things are taken up and thrown down in the vertical plane but they also have strong connotation of movement in the horizontal plane. We saw that the dust of the burial rite was taken up and thrown down in the horizontal plane of protestant brotherhood. The dust thrown down on Richard covers him in the shifting matter of the common highway and the *platea* (Greek ‘street’) that connects the low stage to the playgoers in the yard. ‘Dust’ would have a number of material implications for the Elizabethan playgoer. One playgoer would have thought of ashes scraped from the hearth, another of food scraps, and another of the contents of a chamber pot or ‘jordan’ (*2H4*, 2.4.32-33).⁴¹ Encouraged by the players’ repeated contact (by means of hands, knees and words) with the imagined stage soil of England, some playgoers, perhaps the groundlings especially, would have thought of the dust of the ground. For some, the reference to dust might have brought to mind the dust of the burial rite or (less likely) the dust of the Biblical encounter between Shimei and King David. Whatever idea of ‘dust’ it brought to mind, York’s description of commoners’ wielding dust would have encouraged mental grappling with material such as the chorus urges in *Henry V*. Through mental engagement, the London playgoer was turned from witness to actor even as the actor playing the Duke of York played

⁴⁰ Gary Watt, ‘The Law of Dramatic Properties in *The Merchant of Venice*’, in *Shakespeare and the Law*, P. Raffield and G. Watt eds (Oxford: Hart, 2008), 237-251.

⁴¹ The production of *Richard II* for the series *The Hollow Crown* (BBC, 2012) presents this scene in flashback and shows dung landing on Ben Whishaw’s King Richard. The act of throwing this ‘dust’ is not shown.

witness to the actions of commoners in the London streets. The dust of the burial rite, which moved from the priest to the people and endowed them with performative agency, here moves from the theatrical players to the playgoers and endows them with the power of participation in affairs of State.

The drama of commoners casting dust upon the captive King Richard seems to have had an uncommon hold on Shakespeare's imagination. He even refers back to it from *2 Henry IV*, where the Archbishop of York condemns the commoners who 'threw'st dust upon [King Richard's] goodly head' and with 'loud applause' blessed Bolingbroke (1.3.103; 91). The word 'applause' here echoes the Duke of York's use of theatrical metaphor to describe the same event in *Richard II*.⁴² The hold that the scene had upon Shakespeare's imagination was specifically a theatrical hold.

On King Richard's return to England from Ireland, his first act had been to touch the ground. He blessed it, communed with it and pleaded with it to 'Throw death upon thy sovereign's enemies' (3.2.22). Yet in the event of Bolingbroke's triumphal entry into London, Richard's subjects become his enemies and they throw death upon him in the form of dust. In this expressly theatrical scene, the dramatic prop of the burial rite is thrown on Richard's head as if he were already dead. The kingship lives in Henry Bolingbroke and that which trails behind him in the form of Richard is the mere corpse of a king. It is perverse and paradoxical that the fleshy form of a king should outlive the sacred substance of his kingship, but here, as elsewhere (most profoundly in *King Lear*), Shakespeare exploits the drama inherent in the paradox. Richard presumes that 'The worst is death' (3.2.103.), but worse than

⁴² Hands clap in the parallel episode in one of Shakespeare's 'sources': Samuel Daniel, *The First Fowre Bookes of the Civile Wars* (registered 1594, printed 1595), stanzas 67-69.

death is living death and worse for a king is to be treated in life and death as if he were no more exalted than any corpse laid low in the earth. When Bolingbroke's fellow subjects – the common bystanders who witnessed and participated in his triumph – cast dust upon Richard, they effectively buried their king in the road of the merchant metropolis of London. Shakespeare had earlier caused Richard to anticipate this fate:

Or I'll be buried in the King's highway,
Some way of common trade, where subjects' feet
May hourly trample on their sovereign's head;
For on my heart they tread now whilst I live,
And, buried once, why not upon my head? (3.3.155-159)

This passage begins with the antithetical pairing of 'buried' and 'the king's highway', but the antithesis is more nuanced than a commonplace contrast between high and low, for the way of the king in Shakespeare's play is not as high as it should be; it is imagined as a low road of 'common trade'.⁴³ The substantial contrast being made here is not between high and low along the vertical axis, but between the vertical order of tradition and the horizontal plane of trade.

Richard confesses that his 'coffers... / ...are grown somewhat light' and that he is 'enforced to farm our royal realm' (1.4.43-47) (Compare (*H5*, 5.2.124-7). This confirms that he has turned from tradition to trade. This word 'farm', which derives from the French *ferme* ('lease') and ultimately from the Latin *firma* ('fixed sum')

⁴³ On 'trade' and 'tread' see the discussion below, and Chapter One.

indicates that Richard is landlord of a lease.⁴⁴ Gaunt establishes this with his complaint that England had been ‘leased out... / Like to a tenement or pelting farm’ and his indictment of Richard: ‘Landlord of England art thou now, not king’ (2.1.59-60; 113).⁴⁵ Shakespeare is here presenting landlord and king as incompatible offices. The well-known labels ‘landlord’ and ‘tenant’, which even today attach to the parties to a lease, might suggest that the arrangement was akin to the feudal relationship between lord and tenant. The basic scheme of the feudal system was that all land in the realm was owned by the Crown and every land holder (tenant) held his estate from his superior (his lord) and so on all the way up the chain to the monarch as supreme overlord. In fact, the farm lease ‘had...nothing...feudal in its nature, and was, consequently, exempt from the feudal rule of descent to the eldest son as heir at

⁴⁴ See, further, William O. Scott, ‘Landholding, Leasing, and Inheritance in *Richard II*’, *Studies in English Literature*, 42 (2002), 275–92; Dennis R. Klinck, ‘Shakespeare’s *Richard II* as Landlord and Wasting Tenant’, 25(1) *College Literature* Law, Literature, and Interdisciplinarity (1998), 21-34. The Wilton Diptych represents Richard’s connection to the land in the form of his insignia, the White Hart, tethered to the land by a chain (see Raffield, ‘*Imaginary Constitution*’, ch.3. 51-73). At the end of Gregory Doran’s production of *Richard II* (RSC, 2012) the stage floor was raised to reveal David Tennant’s Richard chained to the dungeon floor. Thus Richard, who began at the top of the social ‘chain of being’ under God, is shown sunk to its lowest level.

⁴⁵ These lines have close counterparts in the anonymously authored play *Thomas of Woodstock* (c.1591-1595). See P. Corbin and D. Sedge ed, *Thomas of Woodstock* (Manchester: Manchester University Press, 2002), 4.1.147-8; 5.3.106-7.

law'.⁴⁶ The lease was essentially contractual in its origins and the feudal terminology of tenant and lord was adopted out of familiarity or as a rhetorical pretence. England 'leased out' is for Gaunt an England in legal and commercial bondage (2.1.63-64, 114). Feudal land holding was understood in terms of 'tenure', which described the terms on which a tenant held the land from his superior lord. The species of 'tenure' denoted the sort of duties that accompanied the holding. For example, tenants holding under the tenure of 'Knight-service' had the very onerous obligation of supplying military service to the Crown, or (as it evolved) a substantial cash equivalent. The relational nature of feudal land holding meant that it was a sort of 'hand-holding' between the tenant and his lord.⁴⁷ In *Richard II*, feudal tradition loses its grip and the realm itself is handled as an object of commercial trade. In Gregory Doran's production (RSC, 2012), the throne of state took the form of a movable platform that reached its elevated position above the stage by descending from the fly loft. The 'state' should be stable and static. (Shakespeare consciously juxtaposes 'state' and 'change' (3.4.29-30)⁴⁸.) Its descent in this production signals that the political State itself was unstable and set on a tragic downwards trajectory. Richard abandons tradition for the low road of trade in other actions too, the most significant

⁴⁶ Joshua Williams, *Principles of the Law of Real Property* (London: S. Sweet, 1845), 9-10. F. H. Lawson agrees that the landlord-tenant relationship was not feudal, but an 'alien commercial element' (*Introduction to the Law of Property* (Oxford: Clarendon Press, 1958)).

⁴⁷ Bradin Cormack, 'Shakespeare Possessed: Legal Affect and the Time of Holding', in *Shakespeare and the Law*, P. Raffield and G. Watt eds (Oxford: Hart, 2008), 83-100.

⁴⁸ On 'stasis', see Chapter Four [of *Acts of Will*].

being the seizure of the inheritance that should have been handed down to Bolingbroke from John of Gaunt. This act, discussed further below, was the one by which Bolingbroke was, in his own words, ‘trode down’ (2.3.126).

In the context of land transfer, legal inheritance by ‘heirs’ under traditional default rules of descent can be displaced by lifetime sales and other legal ‘acts of trade’ but also by the legal ‘act of will’ we call the testament. It follows that testament and trade both effect lateral hand-to-hand transfer in opposition to vertical hand-down by tradition. A lifetime purchaser of a fee simple was said to be an ‘assign’, and in early modern England the same label properly applied to the recipient of a fee simple under a testamentary will.⁴⁹ It is fitting, then, that David Tennant’s Richard crawled along the ground – effectively representing the king as a downtrodden subject of trade, and one who treads or trades horizontally – as he spoke the play’s most obviously testamentary line ‘Let’s choose executors and talk of wills’ (3.2.148) (Gregory Doran, RSC, 2012). When Lepidus contrasts ‘hereditary’ to ‘purchased’ (1.4.13-14) in *Antony and Cleopatra*, Shakespeare is accurately alluding to the legal distinction between acquisition as an heir and acquisition as an assign by testament or trade. A testament produces succession but it does not produce ‘inheritance’ properly so called. When a testator writes his will he cannot name his heir because nobody can know who will be their heir at the future date of their death (for one thing, the present ‘heir apparent’ might predecease the testator). Hence the doctrine, recited by Sir Edward Coke, that heirs ‘in the legall understanding of the Common Law, implyeth...he to whom lands, tenements, or hereditaments by the act of God, and right of blood doe descend of some estate of

⁴⁹ J. H. Baker, *An Introduction to English Legal History* (London: Butterworths, 1990), 298.

inheritance, for *Solus Deus haeredem facere potest non homo* ('Only God has the power to make an heir, not man').⁵⁰

King Richard's reference to 'common trade' comes immediately after the 'list of exchanges'⁵¹ that Richard 'must' (a most unprincely word)⁵² perform as a result of his having traded places with Bolingbroke. The lengthy, itemised list is rendered in the form of rhetorical anaphora and reads like a trader's ledger of bargains. It starts 'I'll give my jewels for a set of beads' and concludes 'And my large kingdom for a little grave' (3.3.147-53). Charles Forker notes that the word 'tread' in Richard's 'Some way of common trade... / ... / ... on my heart they tread' (3.3.156, 158) is 'quibbling on *trade*'.⁵³ Both words share the same etymology and in some Elizabethan dialects were very likely pronounced the same.⁵⁴ Even modern ears can hear the sound of 'tread' amplified through the consonance of its elements in the adjacent words 'trade' and 'head', but why does Shakespeare emphasise the

⁵⁰ Coke, *Littleton*, 191a.

⁵¹ Ivor B. John ed, *The Tragedy of King Richard II*, The Arden Shakespeare (1912) 3rd rev. edn. (London: Methuen and Co, 1934), xxv.

⁵² It is said that shortly before her death Queen Elizabeth was told by Robert Cecil that she 'must' go to bed, to which her indignant response was '*Must!* Is *must* a word to be addressed to princes?'

⁵³ Forker, *Richard II*, 354 n. This would accord with the shared English etymology of 'trade' and 'tread'.

⁵⁴ In Elizabethan pronunciation, 'tread' rhymed with 'head' (*LLL*, 4.3.274-77) and 'red' (*MND*, 3.2.390-91) as it does today, but it is likely the Elizabethan 'trade' did too. See Fausto Cercignani, *Shakespeare's Works and Elizabethan Pronunciation* (Oxford: Clarendon, 1981), 78.

word 'tread' in connection with dust and a King's demise? It seems likely that Shakespeare is recalling the Psalms of King David, and in particular the lines: 'Then let the enemy persecute my soul and take it: yea, let him tread my life down upon the earth, and lay mine honour in the dust' (Psalm 7:5).

The words of King David begin with a personal prayer in the style of a rhetorical apostrophe to God in which he calls upon the Lord to be his defender against his enemies or else, *if* He judges David to be wicked, *then* to let his enemies triumph and tread him in the dust. According to the *The Book of Common Prayer's* 'Order how the Psalter is appointed to be read' every Psalm was required to be recited every month in every parish in England. Shakespeare would have heard many of those readings and he would also have been familiar with Miles Coverdale's English translation of the Psalms from their appearance in the *Geneva Bible*.⁵⁵ On the evidence of *Richard II*, we can speculate that Shakespeare was impressed by the inherent drama of King David's high-stakes wager with God. Quite certain is the fact that the same biblical drama would make a significant impression a generation after Shakespeare's death on opposing sides in the debate surrounding the deposing of Charles I. King David's wager figured in polemics pleading the Royalist cause on the one side and the Parliamentary cause on the other. The Royalist polemic was the *Eikon basilike*, a tract attributed (somewhat dubiously) to Charles I during his time in prison awaiting trial. In the section entitled, 'Upon His Majesties going to the

⁵⁵ See, generally, Steven Marx, *Shakespeare and the Bible* (Oxford: OUP, 2000); John W. Velz, 'Shakespeare and the Geneva Bible: The Circumstances', in *Shakespeare, Marlowe, Jonson: New Directions in Biography*, T. Kozuka and J. R. Mulryne eds (Aldershot: Ashgate, 2006), 113-118; and Shaheen, 'Biblical References'.

House of Commons’,⁵⁶ Charles calls God to be his Witness: ‘But thou, O Lord, art my witnesse in heaven, and in my Heart: If I have purposed any violence or oppression against the Innocent: or if there were any such wickednesse in my thoughts’, and, continuing, makes the wager that King David had made in Psalm 7:5: ‘Then let the enemy persecute my soule, and tread my life to the ground, and lay mine Honour in the dust’. If the Psalm was at the front of Charles’s mind, so Shakespeare’s play might have been in the rear of it. Charles is known to have personally annotated his own copy of the 1632 second folio of Shakespeare’s *Complete Works*.⁵⁷ (The evidence is even stronger to suggest that Shakespeare’s play featured in high-stakes political drama in February 1601. Supporters of the Earl of Essex had paid for a performance at the Globe of a play by the Lord Chamberlain’s Men called the ‘kyllyng of Kyng Richard the Second’,⁵⁸ which was presumably Shakespeare’s play.⁵⁹ It was performed on the 7th of February and the very next day the Earl led the so-called ‘Essex rebellion’ for which he was later executed.) In response to the *Eikon basilike*, Parliament commissioned John Milton’s *Eikonoklastes*, which was published following the trial and execution of Charles I.

⁵⁶ *Eikon basilike, The pourtraicture of His Sacred Majestie in his solitudes and sufferings* (9 February 1649) sec. 3, 15-16.

⁵⁷ Lukas Erne, *Shakespeare and the Book Trade* (Cambridge: CUP, 2013), 206.

⁵⁸ National Archives, SP 12/278, no. 78, fol. 130r.

⁵⁹ See Paul E. J. Hammer, ‘Shakespeare’s *Richard II*, the Play of 7 February 1601, and the Essex Rising’, *Shakespeare Quarterly* 59(1) (2008), 1-35; and, Jonathan Bate, *Soul of the Age: the Life, Mind and World of William Shakespeare* (London: Penguin, 2008), 249–86; but see Blair Worden, ‘Which play was performed at the Globe Theatre on 7 February 1601?’, *London Review of Books*, 10 July 2003.

Milton cleverly quotes Charles's own words as evidence of God's judgment against the king: 'What need then more disputing? He appeal'd to Gods Tribunal, and behold God hath judg'd, and don to him in the sight of all men according to the verdict of his own mouth.'⁶⁰ *Milton inevitably had the last word, but had Charles lived he might have cited another Psalm in which the downtrodden King David attributes his fallen state, not to Divine judgment, but to betrayal by the people. David is confident that in the eyes of God he 'shall stand fast for evermore as the moon, and as the faithful witness in heaven', but of the people he hears God complain: 'Thou hast broken the Covenant of thy servant, and profaned his crown, casting it on the ground... Thou hast caused his dignity to decay, and cast his throne to the ground' (Psalm 89:39, 44). This Psalm perhaps inspired Shakespeare's 'crown...quite thrown down' (3.4.66).*

When Shakespeare's King Richard utters those plaintive lines: 'For God's sake let us sit upon the ground / And tell sad stories of the death of kings' (3.2.155-6), it will have called to playgoers' minds *The Mirror for Magistrates*, which was popular in various editions from 1559 to 1610. Thomas Sackville, one of the co-authors of *Gorboduc* (see Chapter One), was a key contributor. Richard's lines might also have evoked John Lydgate's *Fall of Princes* (c. 1431-38) to which *The Mirror*, according to its Preface, was a sequel. Both works were collections of didactic tales, mostly metrical, on the *de casibus* theme of the fall of (or of that which befell) great historical figures. The earliest royal life reflected upon in *The Mirror* is that of Richard II and it is now trite to say that Richard's troubles as portrayed in Shakespeare's play were popularly considered to be a cautionary tale on the dangers

⁶⁰ *Eikonoklestes in answer to a book intitl'd Eikon basilike etc* (London: Matthew Simmons, 1649), 28.

of uncertain royal succession. It therefore held up a mirror to the aged and childless Elizabeth. There is even an oft-repeated legend that Elizabeth once remarked to the jurist William Lambarde, 'I am Richard II, know ye not that?'⁶¹

Scene 3.2, in which we find Richard on the ground talking of graves, is the first of the two central scenes of the play. Together the pair of central scenes form the fulcrum on which the fortunes of the characters turn. Referring to the play's dominant image of a set of scales, Andrew Gurr summarizes the structure of *Richard II* in the single word 'balance'.⁶² Mark Rose suggests that the 'play pivots' in Scene 3.3.⁶³ The deposition scene that follows (4.1) is not so much a substantial shift in the status of Richard and Bolingbroke as a formal confirmation of the substantial changes that have already occurred in Act 3. The deposition scene was nevertheless symbolically potent enough to prompt its tactful (or perhaps tactical or compulsory) omission from all printed forms of the play during Elizabeth's reign.⁶⁴ The first of the two central scenes of the play, Scene 3.2, places the action on the coast of Wales where King Richard has just returned from Ireland. His first action is to salute the earth with his 'hand', and (presumably) to stoop down to do it 'favours' with his

⁶¹ The story is historically doubtful, see Bate, *Soul*, ch.14.

⁶² Gurr, *Richard II*, 16.

⁶³ Mark Rose, *Shakespearean Design* (Cambridge, MA: The Belknap Press, 1972)), 142. Doty favours the garden scene (3.4) where 'the commoners finally appear onstage to discuss the shifting fortunes of Richard and Bolingbroke' ('Popularity', 200).

⁶⁴ The deposition scene did not appear in print until Q4 (1608). See, generally, Cyndia Susan Clegg, "By the choise and inuitation of al the realme': *Richard II* and Elizabethan press censorship', *Shakespeare Quarterly* 48 (1997), 432–48.

‘royal hands’ (3.2.6; 10-11). In the BBC’s *Hollow Crown* production, Ben Wishaw paws at the sand, hollows out a handful and scoops it up. This was an inspired choice. Richard will shortly ‘talk of graves’ and specifically of a ‘little grave’ and here he grabs burial dust in his hand and engraves a little grave in the earth.⁶⁵ Richard’s stoop to the ground represents his declining status. The supreme overlord of all land is reduced to manual holding of the earth’s base matter.⁶⁶ In feudal terms he becomes the lowliest form of land-holder. A related image of decline appears near the end of the play where the queen likens Richard to the king of beasts and cautions him against passivity. She advises that ‘The lion, dying, thrusteth forth his paw / And wounds the earth, if nothing else, with rage’ (5.1.29-30).

On the coast, hand-on-ground, King Richard feels the threat of ‘the treacherous feet / Which with usurping steps do trample’ (3.2.16-17) on his land. This is the threat of those levelling subjects who would tread down tradition and the threat of Bolingbroke in particular who would trade places with his king. A sense of trade is present again when the Bishop of Carlisle counsels Richard to have respect for the Divine power that made him King. Speaking in terms of Richard’s ‘will’ to accept the divine ‘offer’ (3.2.29-31) is more appropriate to describe a contractual deal than a divine gift. Richard attempts to reassert his traditional hierarchical status when he urges his followers to raise their sights: ‘Look not to the ground, / Ye favourites of a king. Are we not high? / High be our thoughts’ (3.2.87-89). His fortunes and his mood fluctuate with each fresh piece of news and are finally downcast by Sir Stephen Scroop’s report of general rebellion amongst the King’s

⁶⁵ ‘Grab’ and ‘grave’ share the same etymology.

⁶⁶ The land is Richard’s *demesne*, which indicates his possession ‘in hand’ (Cormack, ‘Shakespeare Possessed’, 86).

subjects: men and women, young and old. Without the prop of popular support, the King's mind now plummets to thoughts of death: 'Revolt our subjects? That we cannot mend. / They break their faith to God as well as us. / Cry woe, destruction, ruin and decay. / The worst is death, and death will have his day' (3.2.100-103). Richard's reference to 'subjects' and 'God' invokes the settled hierarchy in which the King is situated above his subjects and below his Divine Lord, but the words 'revolt' and 'decay' acknowledge that the traditional social settlement is being overturned and is falling away. The play's grand motif of Bolingbroke's rise and Richard's fall is immediately reiterated by Sir Stephen Scroop's report that Richard's closest confidants, Bagot, Bushy and Green, have been executed by Bolingbroke and now 'lie full low, graved in the hollow ground' (3.2.140). It is these burial words that finally throw Richard down into the dust: 'For God's sake let us sit upon the ground' (3.2.155).⁶⁷ To emphasise their continuing hold on the King's mind, Shakespeare plots the words 'grave', 'hollow' and 'ground' throughout Richard's next speech. It is the famous speech in which Richard, confronted with the immediacy of death and his own mortal state, turns testamentary:

...Of comfort no man speak!

Let's talk of graves, of worms and epitaphs;

Make dust our paper and with rainy eyes

Write sorrow on the bosom of the earth.

Let's choose executors and talk of wills.

⁶⁷ If the 'let us sit' is played as an invitation, the king's attendants are bound to join him on the ground, but see Forker, *Richard II*, 329, for performative alternatives.

And yet not so, for what can we bequeath
Save our deposed bodies to the ground?
Our lands, our lives and all are Bolingbroke's,
And nothing can we call our own but death
 ...For within the hollow crown
That rounds the mortal temples of a king
Keeps Death his court; and there the antic sits,
Scoffing his state and grinning at his pomp,
Allowing him a breath, a little scene,
To monarchize, be feared and kill with looks... (3.2.144-152, 160-165)

The combination of performance and introspection in this scene is typical of many in which Richard appears to sit in witness to the execution of his own will. Palmer suggests that he may be 'the only appreciative witness of his tragedy',⁶⁸ echoing Chambers' suggestion that he 'becomes an interested spectator of his own ruin'.⁶⁹ Richard is his own audience too.⁷⁰ He witnesses events, but he has so lost his grip on them that he cannot even think to hold a writing instrument in his hand. Dust is his

⁶⁸ John Palmer, *Political Characters of Shakespeare* (Basingstoke: Palgrave Macmillan, 1945), 159. Cited in Forker, *Richard II*, 32 n.

⁶⁹ E. K. Chambers, *Shakespeare: A Survey* (Oxford: Oxford University Press, 1926), 91. Cited in Forker, *ibid.*

⁷⁰ Harry Berger, 'Richard II 3.2: An Exercise in Imaginary Audition', *ELH* 55:4 (1988), 755-96, 756.

paper and his writing rains down in tears.⁷¹ Richard's hand grows weak as Bolingbroke's hand is strengthened.

There is something shocking in King Richard's overt 'talk of wills' and executors. It has long been standard practice for monarchs of England to write wills, but in the matter of succession of the Crown the individual monarch's will can only be a hollow performance. Richard's question 'for what can we bequeath / Save our deposed bodies to the ground?' was very much a live one for the monarchy when Shakespeare wrote the play, and the orthodoxy then, as now, is that the Crown passes by traditional rules of succession which cannot be altered by the testamentary will of the particular king or queen. (See the discussion in Chapter One.) The reason for this is that the incumbent ruler may die, but the monarch never will. The monarchy is a corporation perpetual.⁷² The doctrine of the 'king's two bodies' provides that when a king dies his 'body natural' perishes but his 'body public' does not.⁷³ This means that when a monarch dies (the principle applies to a queen as well

⁷¹ On the use of 'dust' in Elizabethan writing, see Chapter Six [of *Acts of Will*].

⁷² F. W. Maitland, 'The Crown as Corporation' in *Collected Papers*, H. A. L. Fisher ed (Cambridge: CUP, 1911), III.251.

⁷³ Ernst Kantorowicz based his famous reading of Richard II's deposition (*The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton: Princeton University Press, 1957)) on *The Case of the Duchy of Lancaster*: 'the King has in him two bodies, viz. a body natural, and a body politic. His body natural (if it be considered in itself) is a body mortal...his body politic is a body that cannot be seen or handled' (Mich. Term. 4 Eliz (1561) 1 Plow. 212, 213; 75 English Reports 325, 326). This case confirmed that Henry IV had successfully separated his Lancastrian inheritance from the Crown estate. It remains part of the monarch's privy purse to

as to a king), the crown passes immediately to the new monarch and the deceased monarch's last will and testament, even if it purports to pass the crown, has no crown to give. It is a basic principle of logic and law that people cannot give what they do not have (*'nemo dat quod non habet'*). Richard perceives that he will not have to wait for death to take his crown, for it is already slipping from his grip. The concluding call of Richard's speech is inevitably a call to dispense with tradition. Shakespeare has just placed in Richard's mouth the theatrical image of his reign as a 'little scene' and now he has him speak a stage direction to his followers who, as etiquette demanded, are bareheaded in their sovereign's presence: 'Cover your heads, and mock not flesh and blood / With solemn reverence. Throw away respect, / Tradition, form and ceremonious duty' (3.2.171-3). With these words, the actor playing Richard might choose to throw away the crown.⁷⁴

The second of the pair of pivotal scenes at the centre of *Richard II* is Scene 3.3. It is the one in which Richard for the first time encounters Bolingbroke face-to-face since Bolingbroke's illegal return to England. The scene is loaded with the antithetical motif of rise and fall and therefore presents an image of the play in microcosm. It begins when Northumberland reports the news that 'Richard', refuged in Flint Castle, has 'hid his head' (3.3.6). Northumberland's omission of the title 'King' lowers Richard as surely as if his head had been physically removed from his shoulders. Richard is a master of ceremonial courtly display, as will soon be apparent from his celestial appearance high on the castle walls, but Bolingbroke

this day; inheritable, but not alienable by sale. Shakespeare's Bolingbroke begins to draft the legal theory of the two bodies when he claims that he was banished as Hereford, but returns as Lancaster (*R2*, 2.3.113-4).

⁷⁴ As David Tennant did (Gregory Doran, RSC, 2012).

knows better how to stage-manage political theatre for common consumption. One of his favourite performative points is the courteous kneel, sometimes accompanied by the courteous kissing of an offered hand. Bolingbroke was required, as a vassal lord, to kneel and kiss the hand of his liege lord during the feudal ceremony of homage and would have done likewise out of courtesy on other courtly occasions, but Shakespeare has him turn the obligation into a performative opportunity. It has been observed that '[e]ach time after his exile that Bolingbrook kneels...he rises with his powers enlarged', whereas each time 'Richard sinks to, kneels, or sits upon the ground after his return from Ireland, he rises weaker than before'.⁷⁵ Before the trial by combat that preceded his banishment, Bolingbroke had requested permission of the Lord Marshal to 'kiss my sovereign's hand / And bow my knee before his majesty' (1.3.46-47). King Richard's response – 'We will descend and fold him in our arms' (1.3.54) – anticipates his future descent from king to subject.

Bolingbroke did not reserve his courtesies for the king. On at least one occasion he doffed his hat to an oyster-wench, and we are told that a 'brace of draymen... / ...had the tribute of his supple knee / With 'Thanks, my countrymen, my loving friends'' (1.4.32-4). Bolingbroke knew the trick of bending low to pick up the favour of the people, and the king is actor enough to know that he is being upstaged by him. Richard complains that Bolingbroke is acting 'As were our England in reversion his, / And he our subjects' next degree in hope' (1.4.35-6). In the scene of Bolingbroke's illegal return to English soil, Shakespeare employs Bolingbroke's uncle, The Duke of York, to alert the playgoers to the hypocrisy in

⁷⁵ Philip C. McGuire, 'Choreography and language in *Richard II*', in *Shakespeare the Theatrical Dimension*, P. C. McGuire and D. A. Samuelson eds (New York: AMS Press, 1979), 61-84, 75-6.

Bolingbroke's genuflection (2.3.83-4), but Bolingbroke is undeterred. He performs his gestural trick even as late as Scene 3.3 in which he offers to kiss Richard's hand and bend *both* his knees in obsequence to the King (3.3.35-37; 48). In this scene, Shakespeare causes Bolingbroke to fall into a trap of metaphor and paronomasia (pun). Bolingbroke identifies himself with water and the King with fire: 'Be he the fire, I'll be the yielding water; / The rage be his, whilst on the earth I rain' (3.3.58-9). At first sight these metaphors seem a wise choice if Bolingbroke wishes to communicate his humility (flames rise up ambitiously and water tends humbly downwards to the lowest level), but Bolingbroke is betrayed by the metre of a line that leaves him hanging on the damning consonance of 'rain' and 'reign'. Hence the hasty enjambment: 'My waters – on the earth and not on him' (3.3.60). The actor has the choice to pause at the end of the verse line or continue to the end of the clause. The former will betray Bolingbroke's subliminal treachery; the latter will suggest loyalty.

When Richard appears resplendent on the castle walls, his first words indicate his readiness still to believe the physical formalities of deference: 'long have we stood / To watch the fearful bending of thy knee' (3.3.72-73). He berates Northumberland for his failure to perform: 'how dare thy joints forget / To pay their awful duty to our presence?' (3.3.75-76). The king from the upper stage makes an optimistic apostrophe to the Divinely ordered hierarchy – the 'chain of being' – in which God is the lord over kings, kings the lords over men, and men mere 'vassal' subjects (3.3.85-90). Confirmation that the 'chain of being' is undone comes when Richard descends into the base court of the castle: 'Down, down I come, like glist'ring Phaëthon, / ... / In the base court? Base court where kings grow base / ... /

In the base court? Come down? Down court, down king!’ (3.3.178-182).⁷⁶ When Richard reaches the level ground of the stage, he finally sees the insincerity of Bolingbroke’s genuflectory posturing: ‘Fair cousin, you debase your princely knee / To make the base earth proud with kissing it. / ... / Up cousin, up. Your heart is up, I know, / Thus high at least, ... although your knee be low’ (3.3.190-195). (The actor may choose to lower the register of their voice on the word ‘low’, which can serve to intensify both the king’s gravity and the sense of his downwards trajectory.)⁷⁷

Shakespeare places a scene late in the play (5.3) in which Bolingbroke is made to arbitrate a contest of supplicatory kneeling that verges on the comic. Bolingbroke urges throughout that all parties – the Duke of York on the one side and York’s wife and son on the other – should rise to their feet, but Shakespeare obliges him to witness a mockery of his own genuflectory excess. The points of his own performance are played against him, and the playgoers enjoy seeing him pricked by it. Played one way they will laugh with him; played another they will laugh at him.

Just before his descent from the castle walls, Richard remarks that Bolingbroke ‘is come to open / The purple testament of bleeding war’ (3.3.93-94). George Steevens made the common sense observation that ‘purple’ indicates the effusion of blood and that ‘testament’ is used in its legal sense: ‘Bolingbroke is come to open the testament of war so that he may peruse what is decreed there in his

⁷⁶ Charles Moseley identifies impressive similarities between Richard’s fate and Ovid’s account of the Phaëthon myth (*Shakespeare’s History Plays* (London: Penguin, 1988), 122).

⁷⁷ David Tennant employed this technique (Gregory Doran, RSC 2012).

favour'.⁷⁸ Instead of submitting to succession by lineal descent, Bolingbroke is content that the crown should descend by bloody acts of will.⁷⁹ Does this necessarily imply that Bolingbroke's will is opposed to the will of God? Shakespeare, ever keen to keep open the question of the rights and wrongs of Bolingbroke's actions, has Bolingbroke dispute any such suggestion. When the Duke of York urges Bolingbroke to have regard to the heavens above his head, Bolingbroke claims to 'oppose not myself / Against their will' (3.3.18-19). Bolingbroke can be understood to regard war as a traditional mode of direct appeal to Divine authority, which is how he regarded his personal trial by combat with Mowbray. On this view, Bolingbroke is prepared to act by rolling the dice and to leave it to God to decide the outcome, whereas his father had been content, in more passive mode, to leave the 'quarrel to the will of heaven' without taking up arms to test the point (1.2.6). For Bolingbroke, the outcome of a war witnesses to the divine will, so that war is a 'purple testament' in that sense too. To open a testament of this sort, by way of trade or bargain with God, supports our suspicion that Bolingbroke is ever the businessman. On his illegal return to England, Bolingbroke confirms with heart and hand his bond of friendship with his allies: 'My heart this covenant makes; my hand thus seals it' (2.3.50). The language here is the biblical language of the Divine covenant written directly on the heart,⁸⁰ but it is also the language of commercial trade (it is preceded by references to 'count', 'fortune' and 'recompense').

⁷⁸ *The Plays of William Shakespeare* (in eight volumes) Vol IV (London: Longman et al, 1797), 190n.

⁷⁹ On seal and blood, see Chapter Six [of *Acts of Will*].

⁸⁰ Hebrews 10:16; quoting Jeremiah 31:33. In Hebrews 8:10, the same verse from Jeremiah is paraphrased with the word 'testament' substituted for 'covenant'.

Shakespeare emphasizes Bolingbroke's self-conscious agency when, wrongly put out of his rightful inheritance, Bolingbroke takes matters into his own hands: 'I am a subject, / And I challenge law. Attorneys are denied me, / And therefore personally I lay my claim / To my inheritance of free descent' (2.3.133-36).⁸¹ We know that Bolingbroke subsequently went further than this when he laid claim to Richard's royal inheritance. Bolingbroke was bound to claim that the usurpation was righteous and in accordance with God's will. On his deathbed he confides in Prince Hal that all his reign had 'been but as a scene / Acting that argument' (2*H4*, 4.5.197-8), adding that 'what in me was purchas'd / Falls upon thee in a more fairer sort; / So thou the garland wear'st successively' (4.5.199-201). Henry asserts that his death 'Changes the mood' (2*H4*, 4.5.199). Not the 'mood' only, but also the 'mode'. Bolingbroke acquired the crown by trade 'purchase' (1*H4*, 2.1.93), but his son will take it by traditional descent. Henry V's settled state of possession is what lawyers call 'quiescence of title', hence Henry IV's dying words to his son: 'To thee it shall descend with better quiet' (2*H4*, 4.5.187). At the last, Bolingbroke (King Henry) appeals to God to grant a gift by his Divine grace, signalling that his days of bargaining with God are over. Addressing Prince Hal he says 'How I came by the crown, O God forgive, / And grant it may with thee in true peace live!' (4.5.218-219). His prayer is that God will fill up the crown that he had hollowed out.

In *Richard II*, Henry Bolingbroke's hollow performance was not restricted to his knee. It extended to his hand, as when he threw down his gage in the opening scene and in doing so purported to discard his high status: 'I throw my gage, /

⁸¹ Contrast Thomas Cromwell's fatal submission to parliament under Henry VIII: 'I am a subject and born to obey laws' (J. D. Mackie, *The Earlier Tudors, 1485-1558*, Oxford History of England (Oxford: Clarendon Press, 1952), 415).

Disclaiming here the kindred of the King, / And lay aside my high blood's royalty,' (1.1.69-71). Despite this disclaimer, he takes the chance at every turn to bring up his status again, as, for example, when he refers to 'the glorious worth of [his] descent' (1.1.107)). When King Richard invites Bolingbroke to pick up his gage, Bolingbroke replies 'Shall I seem crest-fallen in my father's sight? / Or with pale beggar-fear impeach my height' (1.1.188-189)). His refusal to pick up his gage is a deliberate assertion of his status. He only bows when it suits his own performance. No wonder Richard gives Bolingbroke the mock title 'high Hereford' (1.4.2). In Shakespeare's lifetime, and as far back as the reign of Richard II, the throwing down of a gauntlet in gage of combat was employed ceremonially in the celebrations following the coronation of English monarchs.⁸² Few people, if any, in Shakespeare's audience would have been aware of that obscure ceremony, but many would have witnessed the use of a glove or gauntlet in a ceremony known as 'livery of seisin' and many would have taken an active part in it. In the middle ages, the ceremony of livery of seisin was 'the most essential part' of the conveyance of inheritable estates and interests in land.⁸³ Even during Shakespeare's lifetime, this hands-on method remained the standard mode of acquiring land by purchase or gift.⁸⁴ The general rule requiring land transactions to be made in writing did not enter the law until the

⁸² Alice Hunt, *The Drama of Coronation: Medieval Ceremony in Early Modern England* (Cambridge: CUP, 2008), 36.

⁸³ W. S. Holdsworth, *An Historical Introduction to the Land Law* (London: Oxford University Press, 1927), 288.

⁸⁴ Coke, *Littleton*, 60-66. P. S. Clarkson and C. T. Warren, *The Law of Property in Shakespeare and the Elizabethan Drama* (1942) (New York: Gordian Press, 1968), 113.

enactment of the Statute of Frauds in 1677 (29 Car 2 c 3). Holdsworth notes that, whereas the English relied on actual public performance of the ceremony of livery of seisin, on the European mainland ‘under the influence of Roman law, there was a tendency to allow the delivery of a document, stating that seisin had been delivered, to operate as an actual livery of seisin’.⁸⁵ As part of the ceremony items of material stuff – normally a sod of earth, a twig or such like, but occasionally something more exotic like ‘the door, the hasp, or the ring of the house’⁸⁶ – was held in hand to symbolise transfer of title to the land. Holdsworth records that ‘a sod from the churchyard will do, or a knife without any sod, or a glove, or indeed any small thing that lies handy’.⁸⁷ (Compare the use of earth from the churchyard in the ritual ‘passing’ of the dead in the Elizabethan burial rite, discussed earlier.) One might assume that the use of a glove was simply intended to symbolize the ‘handing over’ of the land. Perhaps it was, but it might also have been a vestige of something more violent. The legal historians Pollock and Maitland record that it was frequently required that the donee should *wear* a war glove or gauntlet transferred to him by the donor and that this glove was the ‘*vestita manus* that will fight in defence of this land against all comers’.⁸⁸ The hand vested in a glove or gauntlet therefore connects the gage thrown down in offer of combat with the land offered in lifetime purchase or gift. In both combat and contract, the gage of a glove is a material token of the fact

⁸⁵ Holdsworth, *Historical Introduction*, 112-13.

⁸⁶ Henry de Bracton, *De Legibus et Consuetudinibus Angliae*, 2.18.12; Coke, *Littleton*, 48a.

⁸⁷ Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I*, 2nd edn (Cambridge: CUP, 1898), II.86.

⁸⁸ Pollock and Maitland, *History*, II.85.

that traditional matters of honour and landholding are being grasped into human hands by human will.

Bolingbroke is not the only self-willing trader in town. When Richard appropriates Bolingbroke's Lancastrian inheritance (the estate which should have passed to Bolingbroke on the death of his father John of Gaunt), the wording of Richard's 'speech act' betrays him: 'Think what you will, we seize into our hands / His plate, his goods, his money and his lands' (2.1.209-10). Here we glimpse the historical Richard whom Holinshed records 'began to rule by will more than by reason' and by whose parliamentary authority 'diuerse rightfull heires were disherited of their lands and liuings'.⁸⁹ In *Troilus and Cressida*, Ulysses observes that 'when degree is shaken, / Which is the ladder to all high designs, / The enterprise is sick.' (1.3.101-3). Ulysses is talking here of such subversive acts as Richard's enterprise in pulling the ladder of inheritance away from Bolingbroke and Bolingbroke's enterprise in pulling the ladder of royal status away from Richard. Ulysses' point is that commercial ventures are no bad thing in themselves, but that trade is detrimental when it subverts the traditional order of things, for it is only 'by degree' that 'Peaceful commerce ... / The primogenity and due of birth, / Prerogative of age, crowns, sceptres, laurels, /...stand in authentic place' (*TC*, 105-108). Under feudal law a traitor's estate was automatically forfeited into the hands of his lord,⁹⁰ but until he broke his banishment Bolingbroke was no proven traitor (as York points out at 2.1.192-4) so Richard's seizure of Bolingbroke's estate is

⁸⁹ Holinshed, *Chronicles*, (London: J. Harison, 1587), VI.493 (An. Reg. 21. Richard II).

⁹⁰ William S. Holdsworth, *A History of English Law* (ten volumes) (London: Methuen, 1922-32), III.69 n.3.

illegitimate. Rejecting tradition, he has treated Bolingbroke's noble inheritance as if it were common stuff of trade to be grabbed and handled and passed from person to person regardless of due descent. It is surely no coincidence that the sound of 'seisin' is concealed in Richard's 'seize into'. The very next line betrays him further, for his inventory of the Lancastrian estate is in the itemised form that one associates with a bill of trade or a testament made by private will. Richard should take heed. Kings who favour trade over tradition might one day have to hand over their crown.

The Duke of York is incredulous that Richard intends to seize Bolingbroke's inheritance, he dares to challenge him directly: 'Seek you to seize and gripe into your hands / The royalties and rights of banished Hereford?' (2.1.189-190). This is surely the chief offence to which York was alluding, a few lines earlier, when he referred to 'England's private wrongs' (2.1.166). The word 'private' is apposite. By seizing into his own hands that which ought to have been handed down to Bolingbroke by inheritance, Richard effectively privatizes the public dignity of the nobility. Traditional inheritance becomes no better than the hollow subject matter of common trade, valued only as a commodity of bargain and exchange. York is in no doubt about the serious implications of Richard's offence: 'Take Hereford's rights away, and take from Time / His charters and his customary rights; / Let not tomorrow then ensue today; / Be not thyself, for how art thou a king / But by fair sequence and succession?' (2.1.195-9). York contrasts Richard's privateering to the dignity of Richard's royal predecessors whose hands had won glory by battle and blood; a mode traditionally approved as being dependent upon the providential hand of God (2.1.171-172, 179-181). Richard's act of seizing Bolingbroke's Lancastrian inheritance pre-empted and denied the providence of God. His hand had seized where God's hand should have granted. Bolingbroke's response, we might say his revenge, is to seize Richard's royal inheritance.

The play's final and climactic use of the word 'seize' comes in King Richard's line 'Here, cousin, seize the crown / Here cousin: / On this side my hand, and on that side thine' (4.1.182-183). Director and actor have significant choices to make in the suiting of gesture to these words. Should Richard stretch towards Bolingbroke the hand that holds the crown? This would be to 'tender' the crown in the etymological sense of ex-tending it in offer. David Tennant's Richard did something subtly but effectively different to this when he extended his arm, not towards Bolingbroke, but into neutral space, and without looking towards Bolingbroke beckoned him as a dog to a bone with a small, high-pitched 'Here cousin' (Gregory Doran, RSC 2013). Or should Richard merely hold the crown and require Bolingbroke to make all the moves? Fiona Shaw's Richard set the crown on the ground and with a little gesture of her hands goaded Bolingbroke to pounce on it (Deborah Warner, National Theatre, 1995). Ben Whishaw's Richard (BBC, 2012) remained rooted and Bolingbroke (Rory Kinnear) slowly walked towards him. When Bolingbroke took hold of the crown, Richard tightened his grip, and, contracting his arm, moved in to meet Bolingbroke at close quarters over the golden hollow. Eventually, Richard relinquished the crown by rolling it along the ground towards Bolingbroke, who wisely declines to stoop but stands in silence. Bolingbroke's agent, Northumberland, picks up the crown for him.

The physical passing of the crown is the moment of formal hand-over from Richard to Bolingbroke, from tradition to trade. Richard employs the language of commerce when he laments the trading of his name: 'I have no name, no title / ... / if my word be sterling yet in England, / Let it command a mirror hither straight, / That it may show me what a face I have, / Since it is bankrupt of his majesty' (4.1.255; 264-7). When he throws down the mirror it symbolizes the casting down of that aspect of himself that was king. The moment Richard performs the stage direction

‘*Shatters glass*’ (4.1.288), his regal image turns to dust. The gesture echoes the moment that Richard threw his warder (ceremonial staff) down to halt the trial by combat between Bolingbroke and Mowbray (1.3.118). Jorgensen notes that ‘[t]his simple motion, halting the empty ceremony of the combat, has solid repercussions for Richard’. Jorgensen cites the observation made by Mowbray in *2 Henry IV* that ‘when the king did throw his warder down, /... / Then threw he down himself’ (4.1.125,127).⁹¹ It has been said that King Richard ‘mistook his warder for an enchanter’s wand’,⁹² but in Shakespeare’s hands the warder does have magical properties on stage (compare Richard’s ‘senseless conjuration’ of the soil (3.2.12-23)). Sir James George Frazer divided the ‘sympathetic magic’ of material objects into two main branches – the ‘imitative’ (or ‘homeopathic’), and the ‘contagious’.⁹³ The glove (or gauntlet or gage), which performed so powerfully in early modern ritual, is magically potent in both of Frazer’s senses. Its physical form imitates the hand, and because it has been in contact with the hand it carries the ‘contagious’ magic of continuing contact. The mimetic and contagious qualities that we see in the throwing down of a glove as gage are also present in the casting down of Richard’s warder. The contagious quality is present in the fact that the warder has been in contact with the King and the mimetic quality is present in the warder’s capacity to represent the rectitude of regal rule. The phallic implications of the metonymic object and the symbolic implications of its removal from the king are self-evident. Richard seems to assert his royal power when he throws down the warder, but by interrupting Divinely supervised combat it is arguable that the true effect is to curtail

⁹¹ Jorgensen, ‘Vertical Patterns’, 123.

⁹² John, *Richard II*, xxiii.

⁹³ J. G. Frazer, *The Golden Bough* (New York: Macmillan, 1922), ch.3.

a traditional basis for determining royal right to rule. As such the throwing down of the warder can be seen as a symbolic and prophetic act of self-emasculation.⁹⁴

Richard had said ‘show us the hand of God / That hath dismissed us from our stewardship; / For well we know no hand of blood and bone / Can gripe the sacred handle of our sceptre, / Unless he do profane, steal or usurp’ (3.3.77-81), but Richard’s own anointed hand acts as the ‘hand of God’ to dismiss him from the throne. Richard’s hand trades with Bolingbroke’s in the shared business of deposing the true king. York reports to Bolingbroke that Richard is willing to yield his sceptre ‘To the possession of thy royal hand’ (4.1.111). He then proceeds immediately to the pretence that the trade has effected an orthodox succession when he invites Bolingbroke to ‘Ascend his throne, descending now from him’ (4.1.112). The truth is that the crown did not descend by the traditional mode. It became a hollow commodity of trade the moment Richard took it off. A few lines later, at the point of transfer of the physical crown, Richard’s words emphasize the work of his own hand in the business of hand-over: ‘I give this heavy weight from off my head, / And this unwieldy sceptre from my hand, /... / With mine own hands I give away my crown’ (4.1.204-205, 208). The form of his words might seem to suggest that this is a unilateral and willing gift, but in substance it is a bilateral transaction. The reason we can never decide if Richard’s hand gave or if Bolingbroke’s hand took is because they were both complicit in transferring the Crown. In the moment of their trade, in

⁹⁴ Compare Polonius’s line ‘Take this from this’ (*Ham*, 2.2.153). The context suggests that he means ‘take my head off my body’ and would gesture accordingly, but Edward Dowden opined that Polonius might be saying something like ‘take this staff of office from my hand’ (*Hamlet*, The Arden Shakespeare (London: Methuen, 1899)).

the joining of their hands either side of the physical crown, they shake hands upon a bargain.

And yet not so, for there can be no true bargain with a hollow crown, and no true bargain without consent, and Shakespeare embeds the sense (as must be common sense) that Richard is not a free and fully willing party to the deal. One of Shakespeare's most brilliant techniques for achieving this uncanny sense of unwilling volition is a method that I call 'fractional inference'. What I mean by this is that Shakespeare omits a key word but amplifies our sense of its absence by scattering fractions of the word throughout the text. In the following passage, for example, he omits the word 'will', but the sound elements of 'will' are included in such words as 'well' and 'fill' and 'whilst' and through the repeated sound of 'w'. This prompts a subconscious search for the word 'will' which makes us feel its absence all the more:

Now is this golden crown like a deep well
That owes two buckets, filling one another,
The emptier ever dancing in the air,
The other down, unseen and full of water.
That bucket down and full of tears am I,
Drinking my griefs, whilst you mount up on high. (4.1.184-189)

Bolingbroke's very next line – 'I thought you had been willing to resign' – by expressly using the word 'will', joins together the elements of 'will' that had been present in fractured parts in Richard's speech. We now sense more strongly than ever, if only subconsciously, that the word 'will' was absent from Richard's speech and we perhaps begin to feel deep down that Richard could not bring himself to say

the word ‘will’ because his mind was fundamentally unwilling. Richard’s response – ‘My crown I am, but still my griefs are mine’ (4.1.191) – purports to express his willingness to pass the crown, but through the assonance of ‘still’ it serves only to amplify again the absence of Richard’s actual will. Like a stage silence, the absence of Richard’s expressed ‘will’ demands our attention. Like a ‘pregnant pause’, it is a full absence. It fills up our attention. The placement of the static ‘I am; but’ between the ‘w’ of ‘crown’ and the ‘ill’ of ‘still’ adds another dimension. It produces the subconscious sense that Richard is poised in perfect stasis between will to resign and will to remain king.⁹⁵

‘Performance is a kind of will’, but Richard’s performance is a kind of unwilling will. It is true that, having handed over the crown, he calls himself a traitor to have given it with his ‘soul’s consent’ (4.1.249), but beforehand he had never once expressed his free consent to pass it. His ‘I will undo myself’ (4.1.203) is not so much a statement of his volition, as a prediction of his future action. His statement ‘I’ll give, and willing too; / For do we must what force will have us do’ (3.3.206-207) equivocates the voluntary nature of his actions. As far as we know, Elizabethan playgoers were never permitted to witness the politically incendiary deposition scene on stage. Certainly they never saw an authorized version in print. Despite this, the fact of the disposition was plain enough from the play, and it was plainly puzzling. Part of the puzzle was to know if human will had forced the transfer of the crown or

⁹⁵ Darlene Farabee notes the contrast between the movement in the metaphor of the bucket ‘dancing in the air’ and the ‘stage image’ of the ‘static crown’. (‘Grounded Action and Making Space in *Richard II*’, in *Shakespeare’s Staged Spaces and Playgoers’ Perceptions* (London: Palgrave Macmillan, 2014), ch.2, 49.)

whether everything had unfolded according to the will of God. The question was intensely relevant to the question of who should succeed to the English crown after Elizabeth, and the related question of the mode by which the next monarch should succeed. In breach of the traditional rule of primogeniture, Henry VIII's will had sought to oust the Scottish line descended from his elder sister Margaret in favour of the descendants of his younger sister Mary Tudor. Elizabeth ignored her father's testament and confirmed the traditional mode of descent by consanguinity and primogeniture. She designated James VI of Scotland to be her successor, and though he had 'a hereditary claim no stronger than Bolingbroke's', it was at least a plausible hereditary claim. Elizabeth therefore 'spared the land the spectacle of a Monarch being designated by purely human agency'.⁹⁶ When Shakespeare wrote *Richard II*, it was politically prudent to leave the question open as between succession by tradition and succession by testament. The weighty question of will and descent was left in the playgoer's hands and in the balance of their minds – on this side one argument, and on that another.

This seems an appropriate point at which to pass from *Richard II* to *King John*. Tillyard downplays the correspondence between *Richard II* and *King John*, but this is because he was determined to demonstrate the unity of *Richard II* and *Henry IV*. He argued that between *Richard II* and *King John* 'the connexions are fitful and unimportant'.⁹⁷ I will argue, to the contrary, that the plays are in many substantial respects twinned; and not only because they are amongst a small group of

⁹⁶ Jack Benoit Gohn, 'Richard II: Shakespeare's Legal Brief on the Royal Prerogative and the Succession to the Throne', *Georgetown Law Journal* 70 (1981-1982), 943, 973.

⁹⁷ Tillyard, *History Plays*, 240.

Shakespeare's plays that are entirely in verse, or because they appear adjacent to each other (*King John* first) in the First Folio, or because they were both written around the same time.⁹⁸ The more important fact is that *King John* and *Richard II* resonate with each other and amplify each other through such shared thematic concerns as testamentary will, succession, inheritance, tradition and trade. The two plays also correspond in the ways these themes are realised through such performative attributes as staging, physical gesture and touch.

The key question posed by *King John* is essentially the same as that posed by *Richard II*. As Robert Lane puts it, *King John* asks 'to what extent should the prince be able to dispose of the Crown as if it were his/her own property, thereby superseding the historically sanctioned rules of succession?'⁹⁹ Swinburne correctly summarizes the legal orthodoxy when he writes that 'It is unlawfull for a king to giue awaie his kingdome from his lawfull heires',¹⁰⁰ but the orthodoxy had certainly been by challenged by the pretensions of Henry VIII's testament (supported by statute, see Chapter One) and, as we observed in relation to *Richard II*, the position remained doubtful and dramatically potent throughout Elizabeth's reign.

The traditional rules of succession by blood supported Arthur's (John's nephew's) claim to the throne by virtue of his being the surviving legitimate son of

⁹⁸ A broad, but by no means total, consensus dates them *Richard II* (1595) and *King John* (1596).

⁹⁹ Robert Lane, 'The Sequence of Posterity': Shakespeare's 'King John' and the Succession Controversy', *Studies in Philology* 92(4) (1995), 460-481, 467.

¹⁰⁰ Henry Swinburne, *A Briefe Treatise of Testaments and Last Willes* (London: John Windet, 1590), 68.

John's elder brother Geoffrey, Duke of Brittany. John disputes Arthur's claim, and when he observes 'There is no sure foundation set on blood' (4.2.104) Shakespeare might be implying, beneath the more obvious sense of blood in battle, that an estate established on lineal descent of blood is less secure than one established by a strong political will. Arthur is a somewhat weak-willed creature, quite unlike his mother Constance but rather like Richard II. He even resembles Richard in talk of graves ('I would that I were low laid in my grave' (2.1.164)) and in his precipitous descent from a castle wall. In Arthur's case, his descent is an immediate fall to his death. The text tells us that 'th' inheritance of this poor child' is a 'little kingdom of a forced grave' (4.2.97-98). (Recall that Richard traded his 'kingdom for a little grave' (3.3.153).) If this is what becomes of Arthur's weak will and his claim based on inheritance by descent, perhaps John was right to suppose that a claim based on will is superior to one based on blood.

In terms of direct and prior lineage, John's title is not so well supported as Arthur's, but it has its props. One is John's 'strong possession' of the crown; another is the support of the people; a third is the testamentary will of his elder brother Richard I; and a fourth is the fierce support of his mother Elinor (of Aquitaine). As for the first prop, Elinor confides in John that she suspects that he relies on 'strong possession' more than his 'right' (1.1.40). It may be that possession cannot confer moral 'right', but the position in law was, and remains, that possession confers a presumption of formal entitlement. This is why King John can challenge the citizens of Angiers with the question 'Doth not the crown of England prove the king?' (2.1.273). John's argument was an old one, as William Camden confirmed in his *Annales of the reign of Queen Elizabeth*: 'The Lawes of England many yeeres agoe determined ... That the Crowne once possessed, cleareth and purifies all manner of

defaults or imperfections'.¹⁰¹ We noted earlier that Shakespeare's King Henry IV was confident on his deathbed that his son's possession of the crown would quietly settle the title that had hitherto been questionable. This was an important principle for the Tudor dynasty, for it relied upon the crown's peaceful descent to Henry VIII to settle the title that his father Henry VII had acquired through war. Shakespeare includes essentially the same theme in *King John*. John had acquired the crown laterally by act of will, but when John dies Philip the Bastard expresses the hope that John's son, Henry, will succeed by traditional vertical (lineal) descent:

PRINCE HENRY

At Worcester must his body be interr'd;

For so he will'd it.

BASTARD

Thither shall it then:

And happily may your sweet self put on

The lineal state and glory of the land!

To whom, with all submission, on my knee

I do bequeath my faithful services

And true subjection everlastingly. (5.7.99-105)

Regarding the second 'prop' in John's support, which is the support of the commoners, John argues that if the crown does not prove him king then 'I bring you witnesses, / Twice fifteen thousand hearts of England's breed' (2.1.274-5). John's reliance upon commoners to bear witness echoes Bolingbroke in *Richard II*, who had

¹⁰¹ William Camden, *Annales Rerum Anglicanarum et Hibernicarum regnante Elizabetha* (London: William Stansby for Simon Waterson, 1615), I.14.

issued the instruction ‘Fetch hither Richard, that in common view / He may surrender...’ (4.1.156-7). Bolingbroke, fortified by the commons, looked to God to bless his possession of the crown. Robert Parsons, an early modern commentator, saw something similar at work in the reign of the historical King John. He wrote that Arthur sought ‘to remedy the matter, by warr, yet it semed that god did more defend [the] election of the common wealth [in favour of John], then the right title of Arthur by succession’.¹⁰² The third prop supporting John was the will of Richard I. This was of prime importance to the historical King John (Holinshed records that the will had purported to assign to John ‘the crowne of England, and all other his lands and dominions’),¹⁰³ but Richard’s will is passed over only fleetingly and obliquely in Shakespeare’s play. No doubt ‘Richard I’s will gave the succession dispute in *King John* a direct relevance to the Elizabethan debate’,¹⁰⁴ but Shakespeare did not focus on historical detail to the detriment of drama. Regardless of what he knew about the testament of Henry VIII, the Acts of Succession and the Statute of Wills, Shakespeare’s instinct for dramatic tension led him to focus on battles between the wills of the living rather than upon the documented will of the dead. When Elinor opposes Constance and Arthur with the claim ‘I have a will’, Shakespeare elides the fact that she is referring to the will of her son King Richard I. Constance’s reply – ‘Ay, who doubts that? a will! a wicked will; / A woman’s will; a cank’red grandam’s will!’ (2.1.193-194) – puts the focus firmly on the living will of Elinor (and of her son John) as the main dramatic opposition to Arthur’s claim.

¹⁰² Robert Parsons, *Conference About the Next Succession to the Crowne of England* (Antwerp: A. Conincx, 1594 [1595]), 194.

¹⁰³ Holinshed, *Chronicles*, VI.156. (An. Reg. 10. Richard I).

¹⁰⁴ Lane, ‘Succession Controversy’, 466.

In *King John* and *Richard II*, Shakespeare invites us to question the capacity of individual will to determine the destination of the Crown and of other landed estates. To respond to that invitation involves nothing less than to question an individual's capacity to depart from tradition. *King John* poses the question in the opening scene in which the king adjudicates upon the testamentary will of the deceased gentleman Sir Robert Faulconbridge. The primacy and prominence of this testamentary trial indicates Shakespeare's intent to make contested will a central *agon* of the play. Lane points out that the testamentary episode 'is wholly Shakespeare's invention', there being no reference to a testament in the earlier play *The Troublesome Reign of King John* which supplied Shakespeare play in other respects.¹⁰⁵ In the opening scene, Shakespeare's King John performs the role of the participatory witness and judge. He is the testamentary 'third party standing by' who plays the part that is necessary to fulfil the dramatic action of the two protagonists (see Chapter One). The dispute between them concerns their entitlement to succeed to the Faulconbridge estate. On one side is an elder son fathered by Richard I but born to the wife of Faulconbridge. On the other side is the younger son of the same mother, but this one fathered by Faulconbridge. The younger asserts the testamentary wishes of the deceased Faulconbridge. He claims to be entitled to 'My father's land, as was my father's will' (1.1.115). John rejects that claim and instead recognizes the rights of the elder son. He employs the then standard, and dehumanizing, proprietary reasoning that applied to a child born to a woman within wedlock, which was to recognize the husband's entitlement to the 'calf bred from his cow' (1.1.124).¹⁰⁶ The upshot was that the elder Faulconbridge, though acknowledged to be the bastard son

¹⁰⁵ Ibid.

¹⁰⁶ Swinburne, 'Testaments', 162.

of Richard I, was adjudged to be the legitimate son of Sir Robert. Thus Philip Faulconbridge, called the Bastard, was held to be heir to the Faulconbridge estate. John explains to the younger son that ‘Your father’s heir must have your father’s land’ (1.1.129). In dismissing the will of Faulconbridge and favouring the traditional mode of descent by inheritance, King John was obeying the law as it was prior to the 1540 Statute of Wills, but it was nevertheless somewhat hypocritical to do so when he had himself taken the crown by will despite Arthur’s better legal claim by blood. The hypocrisy does not lie, as Lane suggests, in the fact that King John depended upon the will of Richard I.¹⁰⁷ The historical king did, but Shakespeare’s king did not. In the play, John’s decision to oppose individual will in the Faulconbridge dispute is hypocritical, not because John’s title rests on the testamentary will of Richard I, but because John’s title rests on the living will of John, supported by the living will of his mother Elinor.

In *Richard II*, the initial scene of the king on his high throne and the central scene of Richard ‘*on the Walls*’ (stage direction 3.3.62) is succeeded later in the play by the commoners on the high walls of London who look down on Richard and Bolingbroke (5.2). In *King John*, the opening scene of the king on his high throne arbitrating between the two sons of Faulconbridge is followed in the next Act by the scene of the citizens of Angiers installed high ‘*upon the walls*’ of their city (stage direction 2.1.200) arbitrating between King John and King Philip of France. At this point ‘the stage picture is divided significantly both horizontally and vertically, with the English and French either side of the stage, and the Citizens centrally and above’.¹⁰⁸ As in the opening scene, the conflict before the walls of Angiers is

¹⁰⁷ Lane, ‘Succession Controversy’, 467.

¹⁰⁸ Dillon, *Staging*, 49.

between traditional lineal succession and individual will, but the subject matter of the issue between King Philip and King John concerns nothing less than the proper descent of the English crown. The citizens who look down on the debating kings are not mere passive bystanders, but observers of an active and participatory sort. To express their role in testamentary language, we can say that they are not mere witnesses but judges who are called upon to observe the trial or probation of John's will. In other words, to decide in testamentary mode if his will has 'passed probate'. If not, the default rule of lineal descent should determine the outcome in favour of Arthur and the French king. The progress of the play from the first scene to this has the effect of passing judicial authority from monarch to commoner. That progress naturally culminates in the passage of judicial authority from the citizens on stage to the citizens in the audience. Thus 'Shakespeare provokes precisely what the Crown's policy precluded - the exercise of critical judgment on the part of his audience - casting them as participants in the process of determining the successor'.¹⁰⁹

Modern playgoers are also invited to participate as judges,¹¹⁰ although we may 'feel that, like the citizens of Angiers, we cannot adjudicate between the claims'.¹¹¹ The question put to the Citizens of Angiers, and hence to the playgoers, is not a straightforward dispute between traditional inheritance and testamentary will. On the side of traditional inheritance is the default mode of lineal succession according to descent by blood; which order of descent was assumed to have been ordained by Divine providence of priority and gender at birth. Advocating this side

¹⁰⁹ Lane, 'Succession Controversy', 464.

¹¹⁰ See Julen Etxabe, *The Experience of Tragic Judgment* (Abingdon: Routledge, 2013).

¹¹¹ Emma Smith, *The Cambridge Shakespeare Guide* (Cambridge: CUP, 2012), 78.

of the argument on behalf of Arthur, King Philip appeals to ‘God and our right!’ (2.1.299) and asks John ‘How comes it then that thou art call’d a king, / When living blood doth in these temples beat, / Which owe the crown that thou o’ermasterest?’ (2.1.107-9).¹¹² In similar vein, Arthur’s mother Constance complains that Elinor is a ‘monstrous injurer of heaven and earth!’ (2.1.174) for denying ‘The dominations, royalties and rights / Of this oppressed boy: this is thy eld’st son’s son’ (2.1.184-5). The words ‘o’ermasterest’ and ‘oppressed’ both connote the revolutionary overthrow of God’s order and imply that John, in wrongfully assuming a height not ordained by God, has turned the true king into a ‘subject’ – literally someone thrown-under (*sub-jactus*). The language of over-mastering and over-pressing evokes the image of the king trodden underfoot, which was so powerfully employed in *Richard II*. Indeed, King Philip makes express the connection between ‘tread’ and the subjection of Arthur and the justice of his claim: ‘For this down-trodden equity, we tread / In warlike march these greens before your town’ (2.1.241-242). ‘Equity’ in the sense used here, means the Divinely ordained descent of the crown.¹¹³ The word imports a sense of substantial truth and justice that differs from formal appearance. John’s title is based on the legal formality of physical possession and (obliquely) upon the form of Richard I’s will. Philip claims that despite John’s formal or apparent title, Arthur’s title is the one supported by the Divinely ordained default rules of descent.

¹¹² Here ‘owe’ means ‘own’ and is intended to contrast Arthur’s ‘true’ title with John’s presumptive title based on possession.

¹¹³ Compare Stephen Hawes’s poem ‘Example of Virtue’ (c 1503–04). Dedicated to the Prince of Wales (the future King Henry VIII), it contains the line ‘Prince Henry is sprung, our King to be, / After his father, by right good equity’ (J. M. Berdan, *Early Tudor Poetry* (New York: Macmillan, 1931), 43).

When King Philip later turns traitor against Arthur, Constance turns Philip's own use of 'tread' against him. She complains that fortune 'with her golden hand hath pluck'd on France / To tread down fair respect of sovereignty,' (2.2.57-8). In this we hear her complain that tradition has been downtrodden by the levelling tread of trade. It is a note that resonates with *Richard II*, but also with the passage in *King John* where the Bastard delivers his famous commentary on 'commodity'. In that speech, he likens the distorting effect of commodity on the world to the distorting effect of a bias (weight) on a bowling ball (2.1.574-580). In his plays, Shakespeare usually employs the word 'commodity' in the economic sense of the word. (The phrase 'profitt and comodytye' even appeared in his deposition in the dispute over the dowry to the marriage of Stephen Bellott to Mary Mountjoy.¹¹⁴ This followed his role as 'an agent, a go-between, a broker' in securing that marriage.)¹¹⁵ In *King John*, the Bastard's usage emphasizes commodity as 'exchange-value'.¹¹⁶ He should know, for he had exchanged his own feudal inheritance for 'adventure capital on the international battlefield'.¹¹⁷ The Bastard helps the playgoers to see the mercantile reality of the peace brokered between King John and King Philip, which had been sealed by the marriage of John's niece Blanche to the Dauphin together with 'Full

¹¹⁴ 11 May 1612.

¹¹⁵ Nicholl, *Lodger*, 252.

¹¹⁶ Christian A. Smith, "That smooth-faced gentleman ...Commodity": Shakespeare's critique of exchange-value in *King John*, *Shakespeare* 4 (2013), 1-14.

¹¹⁷ *Ibid.*, p.5.

thirty thousand marks of English coin' (2.1.530).¹¹⁸ The Bastard alerts us to the fact that 'Angiers finally opens its gates, not to its rightful king but to a bargain'.¹¹⁹

King Philip had Arthur in hand when pleading his traditional right: 'Lo, in this right hand, whose protection / Is most divinely vow'd upon the right / Of him it holds, stands young Plantagenet' (2.1.236-8), but King John had tried to take Arthur in hand by force of will: 'Arthur of Britain, yield thee to my hand; / And out of my dear love I'll give thee more / Than e'er the coward hand of France can win: / Submit thee, boy' (2.1.156-159). In the event, the two kings cut a deal that rendered Arthur irrelevant and they sealed it by the joining of their hands. The scene has been called '[p]erhaps the most graphic illustration of the symbolic power invested in the early modern handclasp'.¹²⁰ The business handled between the kings, mirrored in the handfasting of Lewis and Blanche (2.1.532-3), engages the playgoers to handle the matter in their minds. The papal legate will soon be persuaded to approve the kings' bargain, but initially he cautions 'Philip of France, on peril of a curse' to 'Let go the hand of that arch-heretic' (3.1.191-192). The legate will later say that John, having seized Arthur, holds a 'sceptre snatch'd with an unruly hand' (3.3.135) (compare Henry IV's deathbed confession that the crown 'seem'd in me / But as an honour snatch'd with boist'rous hand' (2*HA*, 4.5.190-191). Philip initially resists the legate's request to part hands that have been 'newly knit...newly join'd in love' (3.1.226, 240), and at first he refuses to 'Unyoke this seizure and this kind regret?' by

¹¹⁸ *Ibid.*, p.4.

¹¹⁹ Sigurd Burckhardt, 'King John: The Ordering of this Present Time', *ELH* 33(2) (1966), 133-153, 141.

¹²⁰ Michael Neill, *Putting History to the Question: Power, Politics, and Society in English Renaissance* (New York: Columbia University Press, 2002), 456 n.43.

snatching ‘palm from palm’ (3.1.241, 244), but he inevitably relents. Only when John makes his peace with the papal legate, is the pact between the kings confirmed. In *King John*, the matter of tradition, which should be handed down inviolate, is handled like the stuff of trade. As in *Richard II*, even the crown is physically handed over. For Shakespeare, the most significant event of the reign of King John was not the signing of Magna Carta, but the surrender of the crown to the papal legate and his receiving it back again ‘as a vassal of the Pope’.¹²¹ John’s ‘Thus have I yielded up into your hand / The circle of my glory.’ (5.1.1-2) receives the reply of the papal legate: ‘Take again / From this my hand, as holding of the pope’ (5.1.2-3). When John hands the crown to the Pope and receives it back, he claims that he does so in a manner that is ‘but voluntary’ (5.1.29). This confirms that the transfer is part of a free-will bargain, and yet it is the sort of foolish exercise of free will that merely serves to produce new subjection. (For discussion of this species of foolish will in Shakespeare’s comedies, see Chapter Three of [*Acts of Will*]).

The bargains in *King John*, and the many other evidences of John’s self-will, collectively demonstrate the same shift from handed-down tradition to hand-to-hand testamentary trade that we witnessed in *Richard II*. Queen Elinor employs testamentary language when she invites the Bastard Faulconbridge to pursue his will and abandon his inheritance to the younger Faulconbridge: ‘...wilt thou forsake thy fortune, / Bequeath thy land to him and follow me?’ (1.1.148-9). His response – ‘Brother, take you my land, I’ll take my chance’ (1.1.151) – leaves us unsure, as the broker Bolingbroke left us unsure, whether to choose chance is to choose the path of self-will, or to commit the lottery to the hand of God. The Bastard’s preference for

¹²¹ Frederick S. Boas, *Shakspeare and his Predecessors* (1896) (London: John Murray, 1940), 243.

‘chance’ is in one respect the commercial preference of a merchant venturer, but it is also, etymologically-speaking, a preference for whatever may fall from on high. Elinor’s use of the word ‘fortune’ is similarly ambiguous in the way it confuses notions of traditional inheritance with merchant commodity. What we are really seeing when we see a shift from tradition to trade (and, by the same token, from tradition to testament) is not unlike the shift from status to contract that Sir Henry Maine observed in the ancient world;¹²² it is not a neat paradigm shift, but a dramatically significant change in emphasis. Elizabethan playgoers would have taken different sides in the drama and appreciated Shakespeare’s questions differently according to the perspectives of their own cultural, and specifically religious, traditions. It has been said, for example, that during Shakespeare’s lifetime ‘the Catholic sin of usury’ became ‘the Protestant virtue of banking’.¹²³ One person’s tradition is another person’s trade.

The key witness to the wills and deeds in *King John* is the Bastard Faulconbridge. He is ‘a surrogate for a particularly arch kind of spectator’.¹²⁴ This is perhaps especially clear in scene 2.1 in which he provides a running commentary on the contest conducted between the kings before the citizens of Angiers on their high walls. At the conclusion of that scene, the Bastard is left alone on stage to deliver his soliloquy on commodity. The scene can be appreciated as an extended metatheatrical exercise in the art of persuading the playgoers to identify themselves with the

¹²² Henry S. Maine, *Ancient Law* (London, John Murray, 1861).

¹²³ Ben Ross Schneider Jr., ‘*King Lear* in Its Own Time: The Difference that Death Makes’, *Early Modern Literary Studies* 1(1) (1995), 3.1-49, 31.

¹²⁴ Smith, *Cambridge Shakespeare Guide*, 79.

citizens of Angiers. Some of the metatheatrical references will seem obscure to us now, including King John's reference to 'the sky that hangs above our heads' (2.1.397) and Lewis's reference to 'the vaulty top of heaven / Figur'd quite o'er with burning meteors.' (5.2.52-53), but Elizabethan playgoers would have incorporated this into their appreciation of a theatre whose ceiling was both the natural sky and the ceiling of the stage 'heavens' (i.e. the underside of the 'hut' projecting over the inner stage, which was decorated with comets and other celestial forms). Other metatheatrical references are blatant, as for example where the Bastard observes: 'By heaven, these scroyles of Angiers flout you, kings, / And stand securely on their battlements, / As in a theatre, whence they gape and point / At your industrious scenes and acts of death' (2.1.373-76). The play's (politically dangerous) success in the endeavour of securing the playgoer's imaginative participation might explain the strange change mid-scene from 'Citizen' to 'Hubert' in the First Folio's designation of the spokesman for Angiers. The change might have signaled 'a sense of political decorum' and specifically a 'reluctance to grant a significant role to an unnamed, untitled figure who speaks for a body of the king's subjects'.¹²⁵

It is fitting that we should end with the practical business of the theatre. When Shakespeare referred to it as the 'two hours' traffic of our stage' (*RJ*, 1.prologue.12), we can be sure that one sense of the 'traffic' he had in mind was 'traffic' as the commercial offering that his company made to the paying playgoers. His use of the word in the other nine plays in which it appears is always in a merchant or monetary context. In *1 Henry VI*, reference is made to a royal marriage made 'in traffic of a king' (5.3.164). In *Macbeth*, he expressly pairs traffic with trade to emphasise their shared capacity to subvert traditional hierarchy. Hecate, Queen of

¹²⁵ Lane, 'Succession Controversy', 478.

the Witches, objects that her underlings (the ‘weird sisters’) have taken business into their own hands, and insists on her position at the top of the hierarchy (*Mac*, 3.5.4).

The traffic of the stage that Shakespeare had in mind was the commercial offering that his playing company made to the paying playgoers, but he seems always to have had more than one thing in mind. Another sense of traffic is the traffic that takes place on the stage between the players. The word ‘traffic’ probably derives from the Vulgar Latin **transfricare* (‘to rub across’), the original sense of the Italian verb being ‘to touch repeatedly, handle’.¹²⁶ The traffic of the stage is the trade business of handling and handing on. Occasionally, it is the handing on of props such as crowns and rings and parchments: ‘[m]uch like coins and other units of currency, hand props testify by their size and portability to an open potential. They can be variously possessed, traded, lost, found, concealed, and evaluated.’¹²⁷ Gesture also plays its part in this stage traffic or trade. Since ancient times, rhetoricians have appreciated the need to combine gesture and word in the process of conveying an argument. For the ancient orators, and their early modern counterparts, rhetoric was the ‘open palm’ to logic’s ‘closed fist’.¹²⁸ Even during every day speech, the gestural move from grasping to letting go, for example by relaxing and

¹²⁶ *Chambers Dictionary of Etymology*, R K Barnhart, ed (London: H Wilson and Company, 1988).

¹²⁷ Douglas Bruster, ‘The Dramatic Life of Objects in the Early Modern Theatre’ in *Staged Properties in Early Modern English Drama*, J. G. Harris and N. Korda eds (Cambridge: Cambridge University Press, 2002), 67-96, 70-71.

¹²⁸ Following Zeno’s metaphor.

opening up a fist, frequently signals a handing over of the power of speech.¹²⁹ The business of Shakespeare's stage was the urgent traffic of 'two hours' and lines were sometimes handed over so briskly that they rubbed up against each other. A single ten-syllable line of verse might be trafficked between parts as if the words were an object too hot to handle. A good example appears in *King John*, in the scene in which Hubert threatens to burn out Arthur's eyes with a hot brand:

HUBERT

Young boy, I must.

ARTHUR

And will you?

HUBERT

And I will. (4.1.40)

For all the talk of 'will' in that exchange, there is a clear sense that neither party is willing to hold the horrible thought for long. A scene such as this demonstrates one of the key demands made upon all theatrical performance: if the playgoers are to be moved, the drama must be full of moving energy and drive. When actors trade words and gestures and objects on stage it will be for nothing if there is no passing on of what I will term the performative 'Urge'. The word 'Urge', from the PIE root **werg-* ('to work', 'to do' or 'to perform') usefully combines the theatrical sense of practical production ('dramaturgy') with the theatrical sense of spiritual ceremony and dance

¹²⁹ S. Duncan, 'Some Signals and Rules for *Taking Speaking Turns in Conversations*', *Journal of Personality and Social Psychology* 23 (1972), 283-292, 287.

(as in the Greek ‘*orgia*’) with the sense of speed (‘urgency’) and thrust (‘energy’) and the sense that all parts (‘organs’) work together in the performance. Lag on stage is like ‘the law’s delay’ (*Ham*, 3.1.71); it does not feel ‘just’. Stage action feels fairer when it shows the humanity of swift and lively exchange between the players. The playgoers will be caught up in the current of the drama when the treading of the boards, trading of hands, and trafficking of words is done ‘trippingly’ (*Ham*, 3.2.2). To return to this chapter’s theme of ‘dust’, we can say that stage action should be like legal action in the popular ‘Court of Piepowders’. This ad hoc court was required to be present at medieval and early modern markets and fairs and was first named because merchants and market-goers would find justice done as ‘speedy’ there ‘for the advancement of trade and traffic, as the dust can fall from the foot’ (French: ‘*pie poudre*’).¹³⁰ Sir William Blackstone called it ‘the lowest, and at the same time the most expeditious, court of justice known to the law of England’.¹³¹

One of the rehearsal exercises employed by the Royal Shakespeare Company calls for a circle of actors to pass a pulse round the group with a clap of their hands – one actor clapping to give, and the next, facing, clapping to receive. Allocating the players a line from a passage of text, the exercise is repeated with each actor speaking their line before handing on to the next actor to speak theirs. The individual actor should not speak their line as if it stops with them. The breath must not be

¹³⁰ Coke, *Institutes*, IV.60. See Bradin Cormack, *A Power to Do Justice:*

Jurisdiction, English Literature, and the Rise of Common Law, 1509-1625 (Chicago: University of Chicago Press, 2008), 93-4.

¹³¹ William Blackstone, *Commentaries on the Laws of England* (in four volumes) 1st edn (Oxford: Clarendon Press, 1765–69), II.4.

allowed to drop off at the end.¹³² Borrowing the legal vernacular of *Richard II*, we might say that the actor should not neglect or ‘waste’ the energy of the speech, but that it must be kept up and passed along. Cicely Berry notes that there are many clichés for this: ‘keep the ball in the air’, ‘pass on the baton’, and so forth.¹³³ She advises that syllables should be differently weighted and that the ‘key’ is to ‘perceive the thought as movement’.¹³⁴ Thus the practical traffic of the stage is a sort of trade in metaphysical currency; a discharging from hand-to-hand, and mind-to-mind, of the precious cargo of a question, an idea and a will. This precious thought, expressed in word and movement and gesture and breath, should not be wasted or dropped or thrown down. It must be handed on. It then becomes something more than it could have been in a single mind or in one person’s hands. The creative trade of hands fills it up with values that economic grasping would hollow out. It becomes a communal and artistic artefact that can be passed from the stage to be handled by the playgoers. The playgoers will feel the frisson of its touch. They will encounter its weight, and it will move them. This sort of traffic is Shakespeare’s stock-in-trade, and it is part of the legacy he hands on to us.

¹³² I am grateful to RSC Voice coach Emma Woodvine for letting me participate in a demonstration of the technique.

¹³³ Cicely Berry, *The Actor and the Text* (1987) (London: Virgin Books, 2000), 82.

¹³⁴ *Ibid.*, 83.

Shakespeare's Acts of Will: Law, Testament and Properties of Performance

(London: Bloomsbury Arden Shakespeare, 2016)

Chapter Four

'Shall I descend?': Rhetorical Stasis and Moving Will in *Julius Caesar*

'Friends, Romans, countrymen, lend me your ears' (3.2.74).¹ The opening words of Antony's funeral oration exemplify what the rhetorician Thomas Wilson called 'a plaine beginning' wherein 'the hearer is made apt to giue good eare out of hande'.² This type of 'plaine beginning' has a history in English drama going back at least as far as *The Castle of Perseverance* (c. 1420), where the prologue contains the second flag-bearer's 'Farewel, fayre frendys, / That lofly wyl lystyn and lendys'.³ Antony delivers his opening words (in rhetorical terms his 'exordium') from what Shakespeare calls 'the pulpit'. He addresses the plebeians down on the stage, but the

¹ In this chapter, all references to *Julius Caesar* are to David Daniell ed, *Julius Caesar*, The Arden Shakespeare, third series (London: Bloomsbury, 1998) unless otherwise stated.

² Thomas Wilson, *Arte of Rhetorique* (1560) G. H. Mair ed, (Oxford: Clarendon Press, 1909), 99. On Shakespeare's familiarity with Wilson's *Rhetoric*, see Chapter One.

³ F. J. Furnivall and A. W. Pollard eds, *The Macro Plays* (London: Oxford University Press, 1904), 75–188, lines 153–4.

groundlings in the playhouse yard, sharing the inferior aspect of the stage citizens, must have felt that Antony was delivering his rhetoric directly down to them.⁴ All classes of playgoer are incorporated into the performance. So when Antony addresses the ‘gentle Romans’ (3.2.73), Shakespeare is speaking to the gentlemen playgoers and to any who, like the poet, had the will and social ambition to climb up to gentility.⁵ Antony’s speech also speaks to playgoers of the highest social standing, and by the end of it they had cause to stir uneasily in their seats.

To the Elizabethan playgoer, Antony in his ‘pulpit’ was in the familiar place of preacher. Brutus likewise. What kind of preachers were they? We might characterize Brutus as a sort of Puritan. From the first scene it is clear that the men of his faction disapprove of ceremonial holidays and the sanctification of Caesar. In this they share the Puritans’ objection to Roman Catholic ceremony and saints’ days. Brutus’s followers also object to the threatened crowning of Caesar and insist on the removal of robes and diadems from his public statues. What Brutus fears is a crown coupled to the caprice of individual ‘will’ (2.1.17). ‘Will’ was a particular concern of Protestantism during Elizabeth’s reign. Calvin, following Luther, believed that

⁴ On the connection between the groundlings and the Roman Citizen in the context of the 1999 production at the Shakespeare’s Globe see *Andrew Gurr, Around the Globe* 11 (Autumn 1999), 33. Michael E. Mooney, ‘“Passion, I See, Is Catching”: The Rhetoric of ‘Julius Caesar’’, *The Journal of English and Germanic Philology* 90(1) (1991), 31-50, 32).

⁵ Shakespeare possibly played a part in the grant of arms to his father in 1596 (see Raymond Carter Sutherland, ‘The Grants of Arms to Shakespeare’s Father’ *Shakespeare Quarterly* 14(4) (1963) 379-385). Heraldic arms were a standard indicator of gentlemanly status.

individuals have no free will to reject God if he chooses ('elects') them, but that humans are morally responsible for their own acts of will.⁶ Calvin's rejection of astrology chimes with Cassius's advice to Brutus that the 'fault...is not in our stars / But in ourselves' (1.2.139-140). The conspiracy of Brutus and Cassius can be understood in Calvinist terms as their taking responsibility for their own willed acts in resistance to the will of Caesar. Antony, in contrast, is no Puritan. In his forum speech he speaks of Caesar as Roman Catholics speak of saints: prophesying that the people would 'dip their napkins in his sacred blood, / Yea, beg a hair of him for memory' (3.2.134-5). The historical Antony was the holder of high priestly office in Rome, but Shakespeare's play presents him as something like an altar boy to Caesar's Roman Catholic priest. Antony plays his part in the ceremonial rites of Lupercal as Caesar directs him – 'When Caesar says 'Do this', it is performed' (1.2.10).

If these are the respective natures of Brutus and Antony as Shakespeare presents them, does he give them rhetorical language appropriate to their character? Clearly not. One of Shakespeare's masterstrokes is to lend Antony a style and an argument that should properly belong to Brutus. Antony employs a congregational style and argument in order to promote the quite contrary cause of Caesar and the crown. ('A crucial point of contention between Anglican conservatives and Puritan reformers was whether a clergyman's authority came from above or from below, from the crown or from the congregation').⁷ Antony makes much of the fact that on

⁶ See generally Martin Luther, *The Bondage of the Will*, J. I. Packer and O. R. Johnson eds (Grand Rapids: Fleming H: Revell Company, 1957) (translating Luther's *De Servo Arbitrio* (1525)).

⁷ Mark Rose, 'Conjuring Caesar: Ceremony, History, and Authority in 1599',

the feast of Lupercal he three-times offered Caesar a crown, which ‘he did thrice refuse’ (3.2.98), but he conceals the fact (revealed by Casca (1.2.241))⁸ that Caesar’s true desire was to take it. Outwardly Antony acknowledges the authority of the people, but he hides the crown in his heart. In contrast, Shakespeare makes the supposedly ‘congregational’ Brutus rely upon the inappropriately aristocratic virtue of his own high ‘honour’. As the historical Brutus rested his ultimate claim to honour on the merits of his ancestor Lucius Junius Brutus who had expelled the kings from Rome,⁹ so Shakespeare’s Brutus bases his claim to honour on his status as a patrician within the traditional social hierarchy. To early modern ears this undermines his congregational cause and his pretension to be a man of the people. Writing in 1579, William Harrison equated the Roman patricians with the English nobility.¹⁰ Brutus further damages his Calvinist credentials in the eyes of the playgoing ‘congregation’ by asserting human favour as the basis of his honour. For

English Literary Renaissance 19(3) (1989), 291-304, 292.

⁸ Casca is spelled Caska in the First Folio. Daniell follows this in his Arden edition. I have adopted the original Roman spelling.

⁹ This Brutus features in Shakespeare’s *Rape of Lucrece* (1594). In a scene anticipating *Julius Caesar*, the people revolt following the display of Lucrece’s body in the Roman forum. (Lines 1734-5 are amongst many that bear comparison with the play (see *JC*, 3.2.175-6)). The poem contains one of the few Shakespearean uses of the word ‘testament’: ‘My stained blood to TARQUIN I’ll bequeath, / ... / ...as his due writ in my testament’ (1181-3). (Katherine Duncan-Jones and H. R. Woudhuysen eds, *Shakespeare’s Poems*, The Arden Shakespeare, third series (London: Bloomsbury, 2007).)

¹⁰ *The Description of England* (London: 1577), III.4.

Calvin, 'anything in profane men appearing praiseworthy must be considered worthless'.¹¹ (Compare Henry V's 'if it be a sin to covet honour' (*H5*, 4.3.28)). By the same token, Brutus offends the ethos of the early modern neo-Stoics, for as Guillaume DuVair wrote in 1598, we should not look to others to honour us since that 'doth no way depend of our willes'.¹² The neo-Stoics were reacting to the commonplace notion that honour is the 'reward due to virtuous action'.¹³ Brutus resorts to the commonplace when he purports to honour Caesar because he was 'valiant' (3.2.25-6).

Brutus demands that the 'base' plebeians should 'honour' him because of his superior status. Instead of demanding 'Believe me for mine honour' (3.2.14-15), he might have fared better if he had said 'Honour me for mine acts', or better still to have left his honour out of it. Antony, takes a very different approach. He commences his address to the plebeians with 'humble talk to win their good wils'.¹⁴ Shakespeare has Brutus speak in prose and Antony in verse. In a play that is only five per cent verse, this is clearly a considered choice. At first sight, prose might seem to enhance Brutus's credibility with the commoners given Shakespeare's known practice of allocating prose to lower status speakers, but Brutus's prose

¹¹ John Calvin, *The Institutes of the Christian Religion* (1536), Thomas Norton trans (London: Wolfe & Harisson, 1561), II.3.4. See R. M. Frye, *Shakespeare and Christian Doctrine* (Princeton: Princeton University Press, 1963), 183.

¹² *Moral Philosophie of the Stoicks* (c.1585), Thomas James trans (London: Thomas Man, 1598), 47.

¹³ Norman Council, *When Honour's at the Stake: Ideas of Honour in Shakespeare's Plays* (London: George Allen & Unwin, 1973), 12.

¹⁴ Wilson, *Rhetorique*, 100.

speech gives no sense that he has the common touch. Instead, his prosaic style makes Brutus seem cold. It confirms the perception that Brutus is employing rhetoric ‘by the book’, with its calculated logic and formal schemes (*isocolon*, *parison*, *antithesis* and *chiasmus* all figure prominently).¹⁵ Mark Antony’s more naturalistic verse speech achieves the early modern rhetorical ideal of hiding the art and it serves to emphasize the essential humanity that connects him to Caesar and the citizens.¹⁶ Shakespeare has Brutus fall into the trap of promoting a coup by the nobility, leaving the way clear for Antony to feed, and to feed off, the forces of popular uprising.¹⁷ Antony succeeds because he wields the popular will, and at the conclusion of his forum speech he wields it tangibly in the form of Caesar’s sealed testament. The assassins had manifested their bloody hands and stained swords. Antony brandishes the will marked red with Caesar’s seal.¹⁸ Antony tantalizes the citizens with talk of their legacy under it: ‘Let but the commons hear this testament - / Which, pardon me, I do not mean to read’ (3.2.131-2). This rhetorical device of *paralepsis* or *praeteritio*, a species of irony, serves to increase interest in the very thing that is

¹⁵ R. W. Zandvoort, ‘Brutus’s Forum Speech in *Julius Cæsar*’, *Review of English Studies* 61 (1940), 62-66. A compact example of *chiasmus* is ‘Censure...your senses’ (3.2.16-17)

¹⁶ Brian Vickers, ‘Shakespeare’s Use of Rhetoric’, in *A Reader in the Language of Shakespearean Drama*, Vivian Salmon and Edwina Burness eds (Amsterdam: John Benjamin, 1987), 398.

¹⁷ On rebellion of the nobility, see the discussion of the ‘Essex Rebellion’ in Chapter Two.

¹⁸ On the significance of bloody napkins and Caesar’s bloody toga, see Chapter Six [of *Acts of Will*].

purportedly downplayed. In Thomas North's 1579 translation of Plutarch's *Lives*, Antonius reveals the content of Caesar's will before he reveals Caesar's bloody mantle.¹⁹ In Shakespeare's drama, suspense is sustained. The mantle is examined, the corpse is disclosed (an event not recorded in Plutarch) and only at the last, when the citizens have been stoked to mutinous fervour, does Antony restrain them just long enough for them to hear the terms of the will: 'To every Roman citizen he gives, / To every several man, seventy-five drachmas. /... / Moreover, he hath left you all his walks, / His private arbours and new-planted orchards' (3.2.234-239).²⁰ This is a popular will indeed.

The unveiling of Caesar's corpse relates to 'the play's interest in vesting and divesting of power'.²¹ Equally potent is the unfolding of the will, especially in the way it speaks to key socio-political concerns of early modern England, for it reveals the commoners' vested interest in public discourse and public spaces (including their interest in the public forum) which had hitherto been the preserve of a privileged elite. The outcome of Antony's oratory in Shakespeare's play is the same as in North's Plutarch: 'his words moved the common people to compassion' and they

¹⁹ Shakespeare's main 'source' for Roman history was *Plutarch's Lives of the Noble Grecians and Romans*, Thomas North trans (1579); references are to Walter W. Skeat, ed (London: Macmillan and Co., 1875).

²⁰ On Caesar's 'transmutation of private land into public spaces', see Michael Mangan, 'I am no orator': the language of public spaces' in *Longman Critical Essays: Julius Caesar*, Linda Cookson and Bryan Loughrey eds (Harlow: Longman, 1992), 66-77, 77.

²¹ 'A Savage Spectacle': reproducing Caesar', in Cookson and Loughrey, 'Essays', *ibid.*, 17-26, 24.

‘fell presently into such a rage and mutiny, that there was no more order kept amongst the common people’.²² Like Bolingbroke in *Richard II*, Antony opens a ‘purple testament’ of blood. Crucially, though, and in true Elizabethan style, there is no outright rejection of monarchy. Indeed, one of the plebeians responds to the reading of the will with the exclamation ‘O royal Caesar!’ (3.2.237). The word ‘royal’ appears in only one other place in the play: in Antony’s description of Caesar spoken by Antony’s servant at the scene of the assassination (3.1.127).

What action might suit Antony’s most famous phrase ‘Friends, Romans, countrymen, lend me your ears’? The first action, especially important in a rhetorical performance, is to assume an appropriate posture and demeanour. Before he spoke a word, Ray Fearon’s Antony (Gregory Doran, RSC, 2012) commenced with a suitably humble downwards countenance and slightly stooped stance. What next? Should the actor stand still or walk? What gesture should accompany the spoken words? Should the actor gesture with his hands? The action should be something suitable to the logical sense of the line, but the action (or inaction) accompanying the exordium of an oration should also be suitable as an introduction to the themes of the speech as a whole. The appropriate choice will vary according to the medium. The close confines of the Elizabethan theatre and Shakespeare’s references to ‘pulpit’ and ‘coffin’ suggest the intimacy of a church funeral service. Gestures might be correspondingly contained. In cinematic renditions, the dynamics can be quite different. Marlon Brando’s Antony spoke from the rostra in the noisy forum and had to shout down the clamour with ‘lend me your ears’ (Mankiewicz, MGM, 1953). Charlton Heston’s Antony (Burge, Commonwealth United Entertainment, 1970) shifted in the forum scene between public oration and private conversation and his

²² North, *Plutarch: Brutus*, §15.

attempt to integrate these contrasting approaches perhaps comes across as a somewhat precarious balancing act. Don Kraemer supposes that in the forum scene Antony ‘deploys rhetorical strategies perfected by Demosthenes’.²³ Demosthenes was one of the great orators of ancient Greece. The Vatican Museum in Rome contains a statue of the man that is missing its hands and which therefore stands as a symbol of the harm that is done to rhetoric by the removal of manual gesture. Rhetoric is too frequently regarded within the academic’s study as if it were only concerned with the short journey from brain to mouth and back again. A full appreciation of rhetoric’s true capacity to touch us and to move us requires us to attend to the whole body. That effort should include attention to the hands.²⁴ Peter Ure summarized the forum speech in *Julius Caesar* in terms that merit repetition:

The speeches are deeds done, in a society which is shown as moving and being moved primarily by the power of words, or, rather, by the arts of the orator, words accompanied by the proper and revealing gestures...with words men strike through each others’ armour and at each others’ wills²⁵

²³ Don J. Kraemer Jr, ‘‘Alas, thou hast misconstrued every thing’: Amplifying Words and Things in *Julius Caesar*’, *Rhetorica: A Journal of the History of Rhetoric*, 9.2 (1991), 165-178, 166.

²⁴ See, further, Peter Goodrich, ‘The Missing Hand of the Law’, in *Legal Emblems and the Art of Law: Obiter Depicta as the Vision of Governance* (Cambridge: CUP, 2013), ch.6.

²⁵ Peter Ure, *Julius Caesar: A Casebook* (London: Macmillan, 1969), Introduction, 14-15.

Even when rhetoric is described as an art of speech, it is inevitably concerned with handling matter, and is frequently described using ‘manual’ terminology. Consider the opening paragraph of Thomas Wilson’s treatise:

Rhetorique is an Arte to set fourth by vtterauce of words, matter at large, or (as *Cicero* doth say) it is a learned, or rather an artificiall declaration of the mynd, in the handling of any cause, called in contention, that may through reason largely be discussed.

For good or ill, rhetoric is an art of ‘handling’ or manipulation, and in this play Antony is the arch manipulator.²⁶ Shakespeare has Antony manipulate the playgoers through props and gesture and through his feel for verse. Antony even uses Caesar’s corpse as a prop in his rhetorical performance and thinks of his ally Lepidus merely ‘as a property’ (4.1.40). Casca is the conspirators’ counterpart to Antony when it comes to active exploitation of stage properties. Casca was the first assassin to stab Caesar and he was the only Roman to draw a weapon before the assassination.²⁷ He enters Scene 1.3 with his sword drawn after an encounter with a lion and in another he points his sword to the sun (2.1.105). In the same scene, he indicates a correspondence between the physical Capitol and Caesar’s lofty status, at which moment it would be appropriate to point to the lords’ rooms or to the gallery (‘balcony’) aloft the stage (2.1.106-110). It is in Casca’s words as he stabs Caesar

²⁶ Harry Keyishian, *The Shapes of Revenge: Victimization, Vengeance, and Vindictiveness in Shakespeare* (Atlantic Highlands, NJ: Humanities Press, 1995), 87.

²⁷ Robert Hapgood, ‘Speak Hands for Me: Gesture as Language in *Julius Caesar*’, *Drama Survey*, 5 (1966), 162-70, 164.

that Shakespeare most clearly shows his appreciation of the expressive power of gesture: ‘Speak hands for me!’ (3.1.76).²⁸

‘Friends, Romans, countrymen, lend me your ears’. As an experiment, let me invite you, the reader, to deliver Antony’s famous line. For this you will need to stand up and put the book down. Or the book could be held in the left hand to replicate in a small degree the way that the Roman toga weighed down the left arm and restricted its movement.²⁹ Consider how you will vocalize Antony’s line and what actions you will use to accompany the words, bearing in mind that an over-literal correspondence between word and action might not be the best choice. A discerning actor or director might choose to generate dramatic interest by deliberately resisting or disrupting the most obvious correspondence between word and deed. That point can be illustrated with the line ‘Something is rotten in the state of Denmark’ (1.4.90). How would Hamlet ‘suit the action to the word’ (3.2.17)? Perfectly correspondent action might prompt the actor to walk across the stage and to stop on the word ‘state’ in order to emphasize that word’s static connotations, but the better choice might be the opposite one of starting in a static position and to commence walking on the word ‘state’ in order to emphasize the expressed sense that the State is rotten. To take another example involving the word ‘state’, it seems suitable that Mark Antony’s servant should, like Caesar’s static corpse, lie prostrate at the feet of the conspirators when he refers to ‘hazards of this untrod state’

²⁸ See J. R. Mulryne, ‘Speak hands for me: image and action in *Julius Caesar*’, in *Shakespeare et le corps à la Renaissance* (Société Française Shakespeare Actes du congrès 1990) (Paris: Les Belles Lettres, 1991), 101–12.

²⁹ On the toga, see Jonathan Edmondson and Alison Keith eds, *Roman Dress and the Fabrics of Roman Culture* (Toronto: University of Toronto Press, 2008).

(3.1.136). Clearly there is no single right answer to such performative choices, but deeper attention to Shakespeare's words in their context will expand the choices and improve the chances of choosing something more suitable. Before we conjecture a suitable action for Antony's famous opening line, we should bear in mind Harley Granville-Barker's belief that Shakespeare's verse was his chief means of emotional expression and that 'when it comes to staging the plays, the speaking of the verse must be the foundation of all study'.³⁰ This suggests that one gestural option is to be guided by the metre of 'Friends, Romans, countrymen, lend me your ears', by which I mean its syllabic structure. (Seymour Chatman writes that that '[t]he only important question for metrics is 'How many syllables are there?''³¹ We can see that Antony's line is arranged into two distinct syllabic groups: the first six syllables followed by the final four. The 'end' sound in the first and seventh syllables marks the start of each of the two syllabic groups. The striking structural pattern of the first six syllables resides in the swelling sequence of one syllable, two syllables and three syllables. I am not the first person to notice this,³² and at least one editor has noticed that the gradation of the syllabic groups from smallest to largest is suited to the expanding sense of the sequence 'friends' to 'Romans' to 'countrymen'.³³ Antony's intimate style makes one think when he talks of 'Romans' that he is referring not to

³⁰ Harley Granville-Barker, *Prefaces to Shakespeare* (London: Batsford, 1930), 12.

³¹ *A Theory of Meter* (London: Mouton & Co, 1964), 39; quoted in George T. Wright, *Shakespeare's Metrical Art* (Berkeley: University of California Press, 1988), 150.

³² Jean Fuzier, 'Rhetoric versus Rhetoric: A Study of Shakespeare's *Julius Caesar*, Act III, Scene 2.' *Cahiers Élisabéthains* 5 (1974), 25-65, 48.

³³ Daniell, *Julius Caesar*, 257n.

the whole Roman Empire, but to the people of Rome to whom he is directly speaking. Thus 'Friends' is the smallest and nearest group; 'Romans' is a bigger group suggestive of the ambit of the whole city; and 'countrymen' denotes the largest group and the ambit of the entire country. The first three words therefore produce 'a special and subtle case' of 'ascending tricolon'.³⁴ What makes it special is that Antony achieves a kind of expanding emphasis without any actual ascent. The expansion is horizontal, not vertical. The three opening words are 'on the level' and this is because Antony is 'appealing to his crowd on a human level'.³⁵ What has not been noted before is how this expansive effect corresponds with the expansive sense of the word 'ambition', which is a key word in Brutus's complaint and Antony's response, and how the four syllables of the second part of Antony's line reverse the expansive effect of the first six syllables by turning expansion into intimacy. Before elaborating this, it should be noted that the spatial sense of Antony's address might have been more obviously apparent to an Elizabethan audience than it is to us, for Shakespeare's playgoers would have been attuned to hearing 'Rome' pronounced

³⁴ Sam Leith, *You Talkin' to Me: Rhetoric from Aristotle to Obama* (London: Profile Books, 2011), 49.

³⁵ *Ibid.*, 50.

‘room’,³⁶ hence the pun ‘Now is it Rome indeed, and room enough’ (1.2.155)).³⁷

One wonders if Thomas Wilson’s advice on opening an oration was echoing in Shakespeare’s head: ‘by no meanes better shall the standers by knowe what we say, and carie awaie that which they heare, then if at the first we couch together, the whole course of our tale in as small roome as we can’.³⁸ It is certainly significant that Antony’s soliloquy over the corpse of Caesar in the previous scene had primed the playgoers to associate the dead Caesar with spatial confinement rather than expansive ambition. Antony had invited the association through his use of the rhetorical figure of *asyndeton* (the contraction of speech through the omission of conjunctions): ‘Are all thy conquests, glories, triumphs, spoils, / Shrunk to this little measure?’ (3.1.149-150).

Before deciding on the gesture that will accompany Antony’s first line (and let me stress again that there are almost as many valid alternatives as there are actors), it is not enough to note significant metrical patterns. It is also necessary to appreciate the verse metre in the context of the whole speech, and this requires us to relate the syllabic structure to the argument that Antony employs to oppose Brutus’s claims. Brutus presents two key justifications for his actions. First, that Caesar was

³⁶ Fausto Cercignani’s *Shakespeare Works and Elizabethan Pronunciation* (Oxford: OUP, 1981), 184-5. Shakespeare rhymes ‘Rome’ with ‘doom’ (*Luc*, 715-17, 1849-51) and he puns ‘Rome’ and ‘Roam’ (*IH6*, 3.1.51), so it is possible that ‘room’, ‘Rome’ and ‘roam’ were homonyms or that pronunciation of Rome was in flux and beginning to acquire its modern sound (see Helge Kökeritz, *Shakespeare’s Pronunciation* (New Haven: Yale University Press, 1953), 141-2).

³⁷ And possibly, also, 3.1.289; 3.2.164-5; 4.3.39.

³⁸ Wilson, *Rhetorique*, 100-101.

ambitious and for that reason deserved to die. Second, that he (Brutus) is honourable and for that reason deserves to be respected. Antony's opening line of speech is his initial effort to undermine the first of Brutus's claims. The line swells physically as ambition does – one syllable, two syllables, three syllables; and it swells conceptually as ambition does – from friends, to Rome, to the whole Country. An atmosphere of ambition having been thus established, it is swiftly undone by the two short pairs of syllables that express the friendly intimacy of 'lend me your ears'. The spatial contraction is confirmed by Antony's metonymic use of the small organ of the 'ear' to represent the hearers' whole attention and perhaps (synecdochally) their whole selves. Let us ask the question again: what gestural action might accompany Antony's line? Is there anything more suitable than to start with one's hands held close to one's chest; to open them out a little on the monosyllabic 'friends'; to open them wider on the two syllables of 'Romans'; to open them to their full lateral extent on the three syllables of 'Countrymen'; and, finally, to draw the hands in again to the heart with the words 'lend me your ears'? As the ambit of Antony's arms and the sense of his words swell wider and wider, his initial gesture might seem to suggest that he is ambitious and thereby lend support (by reason of Antony's association with Caesar) to Brutus's argument that Caesar was ambitious, but when Antony's arms are drawn in again to the heart, the sense of ambition is replaced by a sense of humility and intimacy. The cumulative gestural effect of the outward expanse of the first six syllables and the inward gathering of the last four is to produce the action of an embrace.³⁹ The overall effect is that Antony's opening line preemptively answers

³⁹ Even without referring to physical gesture or to the final four syllables, Lynette Hunter sees in the first six syllables something 'like a widening arc embracing the

with a subconscious ‘no’ a question that he will posit later in his speech: ‘Was this ambition?’ (3.2.98).

Building on the syllabic subtleties of the opening line, Shakespeare goes on to employ the verse metre throughout Antony’s opening passage of his forum speech to produce an embodied effect that will confirm the playgoers’ subconscious rejection of the charge of ambition. The effect I am referring to derives from Shakespeare’s ingenious use of short lines every time the word ‘ambitious’ appears. *Julius Caesar* is ‘a play notable for its experiments with short lines’,⁴⁰ but Shakespeare’s inventiveness with Antony’s ‘ambitious’ lines has hitherto been overlooked. Shakespeare’s Antony’s thirty-four lines of speech from ‘Friends, Romans, countrymen, lend me your ears’ to ‘And I must pause till it come back to me’ are mostly of ten syllables in length and many, including the last line, can bear a regular iambic stress. Only five of the thirty-four lines are missing a syllable and each of those hypometrical lines ends with the word ‘ambitious’.⁴¹ In what follows I want to explore the potential significance of this fact, but first I need to defend the ‘fact’ against editors who have suggested that the ‘ambitious’ lines should be filled out to ten syllables by stressing the word ‘ambitious’ tetra-syllabically (am-bish-ee-

audience’ (‘Persuasion’, in *Reading Shakespeare’s Dramatic Language: A Guide* (London: Arden Shakespeare, 2001), 113-129, 125).

⁴⁰ Wright, *Metrical Art*, 109. Carol Marks Sicherman argues that in this play ‘Shakespeare wrote short lines with deliberate thought’ (‘Short Lines and Interpretation: The Case of *Julius Caesar*’, *Shakespeare Quarterly* 35(2) (1984), 180-195, 181.)

⁴¹ For this observation I am indebted to my sometime workshop colleague, the RSC actor Keith Osborn.

ush).⁴² I can't recall an example of an actor adopting that practice and it would surely sound highly artificial and pompous if any did. It is possible that in the original Elizabethan pronunciation the word was sometimes pronounced with four-syllables, but Shakespeare's other plays supply example after example to indicate that if 'ambitious' is pronounced strictly within the metre it will be pronounced tri-syllabically.⁴³ In *Julius Caesar*, the only use of 'ambitious' outside the forum scene is in Casca's line 'Th'ambitious ocean swell, and rage, and foam' (1.3.7). This line is ambiguous as to syllabic length, but the contraction 'Th'ambitious' might imply that the line has been deliberately shortened to bring it within the standard pentameter. If so, 'ambitious' would be tri-syllabic. A further clue to the fact that Shakespeare intended to make the 'ambitious' lines in the forum scene seem short compared to their neighbours is the fact that there are only three over-length ('hypermetrical') lines in this whole passage of speech and two of these come immediately before an 'ambitious' line. This alerts us to the fact that something unusual is at work in the metre. The first line concluding with the word 'ambitious' is immediately preceded by a twelve-syllable line; which is the longest line in the entire passage. Another 'ambitious' line is preceded by an eleven-syllable line. This combines with the missing syllable in the 'ambitious' lines to exaggerate the discomfiting sense that something is lacking in those lines.

Whatever the original pronunciation might have been, it is clear that a modern actor should pronounce 'ambitious' tri-syllabically. Tri-syllabic

⁴² E.g. Cedric Watts, *Julius Caesar* (Ware: Wordsworth Editions, 1992), 118 n.85); Daniell, *Julius Caesar*, 257 n.79).

⁴³ To cite just three examples of 'ambitious' appearing in strongly metrical passages: *Cor*, 4.5.113; *3H6*, 2.2.19, 3.3.27.

pronunciation produces an under-length ('hypometrical') line that engenders an embodied sense that is directly contrary to the literal sense of the word 'ambitious'. To be ambitious is to seek a wider and larger ambit of power and influence, but in Antony's speech the lines ending 'ambitious' are the most humble lines of all in terms of syllabic extent. As a result, those lines ring false. The missing syllable also gives the audience space in which to connect their embodied sense of disquiet with Brutus's claim that Caesar was ambitious. The pause gives just enough time to sense that Brutus was lying. The doubt is felt limbically before it is thought logically, by which I mean that the doubt flows primarily from an embodied sense of lack. This turns satisfaction into dissatisfaction. The poetic strictures of metrical verse are in some sense artificial, but one cannot be reminded too often that the rhythmic quality of poetic metre has a natural appeal almost in spite of the art. Part of its appeal is the fact that the two syllables of a metrical 'foot' echo the beating of the human heart. This is true of all disyllabic metrical feet, but the iambic foot has a special resonance. The cardiac cycle produces a number of sounds, but the human ear can detect two dominant beats; the so-called 'lub-dub' pairing. This sound is comparable to the iambic foot of an unstressed syllable followed by a stressed. Antony stokes the citizens' subconscious unease by setting up a natural rhythmic expectation through regular iambic pentameter only to snatch it away in the repeated hypometrical 'ambitious' lines. Alongside this subconscious sense he strikes his hearers' conscious sense with express doubts concerning Brutus's claim: 'Did this in Caesar seem ambitious?'; 'Ambition should be made of sterner stuff'; 'Was this ambition?' (3.2.91, 93, 98). For good measure he even reminds them, again repeatedly, that Caesar's ambition is not a fact but something that Brutus 'says' and 'Hath told' (3.2.87; 79).

Shakespeare's excellence as a poet is to a great extent an excellence in knowing how to manage the embodied feel of words. Perhaps Shakespeare is advertising his own poetic awareness when he has Cassius say to Brutus '...what should be in that 'Caesar'? / Why should that name be sounded more than yours? / ... / Sound them, it doth become the mouth as well. / Weigh them, it is as heavy:...' (1.2.141-145), and yet he might also be presenting Cassius as one who can only appreciate words instrumentally; politically rather than poetically. Caesar voiced this suspicion when he called Cassius 'a great observer' who 'looks / Quite through the deeds of men' and 'loves no plays' (1.2.201-202). If there is a part of Shakespeare in Cassius, it is the part of the pragmatic businessman and not the poet's part. Brutus is the only one of the conspirators who makes express reference to 'business' – notably in reference to the conspirators' 'bleeding business' (3.1.168), which he also terms their 'ventures' (4.3.222) – but it is Cassius who moved the 'bargain' (1.3.120) and 'enterprise' (1.2.297; 1.3.123; 3.1.13,16) of Caesar's assassination. Eventually the private bargain will take Cassius to the tent of Brutus where the pair haggle on the theme of hands itching for gold (4.3.10-11). The mercantile scene can be appreciated as a potted version of *The Merchant of Venice*, in which Cassius plays the part of Antonio: beginning 'a-weary of the world', then bearing his naked breast to a dagger, and finally (having failed to transfer gold) announcing 'I...will give my heart' (4.3.94-103).

At the assassination, we hear the dispassionate tone of the 'great observer' in Cassius's metatheatrical musings: 'How many ages hence / Shall this our lofty scene be acted over / In states unborn and accents yet unknown?' (3.1.111-113).⁴⁴ Cassius

⁴⁴ Shakespeare may be alluding to future theatrical performances of Caesar's fall or alluding more generally to political assassinations. See Cedric Watts, '*Julius Caesar*,

is the dramaturge of the conspirators' performance. He is not only a 'great observer' of the political scene, but also one who assembles others to act as witnesses ('Messala: / Be thou my witness that against my will / ...am I compelled' (5.1.72-4)). He also has a dramatist's instinct to know that Brutus should not permit Antony to take the stage in Caesar's funeral. Cassius chooses Brutus to direct and star in the conspiracy because he can be relied upon to draw a favourable audience. The fact that Brutus 'sits high in all the people's hearts' (1.3.157) was a feature calculated to enhance the 'lofty' nature of the assassination. Brutus's chief mistake is that he plays the part too well and depends too much on his high status when he demands 'respect to mine honour' (3.2.15) and rests his credit on it ('Believe me for mine honour' (3.2.14-15)). As a strategy to enhance the *ethos* of his rhetoric, it backfires horribly. Antony not only casts doubt upon the honour of Brutus, but he also employs every aspect of his performance to subvert Brutus's founding assumption that honour is indeed a virtue. What if honour could be characterized as haughtiness? Brutus's confession that he 'rose' against Caesar (3.2.20), and the assertion of his status as a highborn patrician, would then serve to distance himself from the sympathy of the plebeians. In the assassination scene, Brutus and each of his fellow conspirators literally 'rises' from a kneeling position to stab Caesar.⁴⁵ Ray Fearon, playing Antony in Gregory Doran's Stratford production (RSC, 2012), accompanied his first

III.1.111-113' in Cookson and Loughrey, 'Essays', 48-55, 54. On the continuing political relevance of the play, see John Drakakis, 'Fashion it thus': *Julius Caesar* and the Politics of Theatrical Representation', *Shakespeare Survey: Shakespeare and Politics* 44 (1991), 65-74.

⁴⁵ John Russell Brown, *Shakespeare's Dramatic Style* (London: Heinemann, 1970), 119.

‘Brutus is an honourable man’ with a suitable upwards gesture that was effective in emphasising Brutus’s remoteness and haughtiness. Keith Michell’s Antony (BBC 1979) made a similar upwards gesture, followed swiftly by a downwards gesture to the corpse on the words ‘in Caesar’s funeral’. Shakespeare almost certainly knew Wilson’s *Arte of Rhetorique*, but he needed no manual to tell him the strategy of judicial rhetoric by which ‘We shall get fauour by speaking of our aduersaries...if we report vnto the Iudges that they beare themselues hault.’⁴⁶

There is no virtue in altitude, but it is a cultural and rhetorical commonplace to regard ‘up’ as good and ‘down’ as bad. As a rule of language it seems inviolable. We can no longer hear ‘superior’ as a value-neutral term. Heaven is up, hell is down; the highborn are the social betters of the base born; things are looking up when they improve and there is a downturn when they worsen. Shakespeare’s greatest rhetorical achievement through the course of Mark Antony’s funeral oration is to turn this rhetorical and cultural commonplace on its head. Antony is a pragmatist and only takes the revolutionary route because Brutus insists so strongly upon the honour associated with his high social status. Antony’s tactic in defeating Brutus’s claim to honour is not to contradict Brutus, but instead to emphasize honour’s haughty, hierarchical aspect and the contrasting merits of a lowly position. We can see this technique in operation at every turn of his oration, starting with his rhetorical commonplace ‘The good is oft interred’ (3.2.77). The dead are down but Antony sees their physically inferior status as a basis for dignity, not disgrace. Antony lays the body of Caesar on the floor of the forum, at the level of the common people and

⁴⁶ Wilson, *Rhetorique*, 102 (‘hault’ means ‘haughty’, compare ‘haught’: *R2*, 4.1.254).

below the level of the ‘pulpit’ (Shakespeare’s version of the Roman ‘rostra’).⁴⁷ In contrast, Brutus sets himself up. Not for the usual fall, but for the failure of being too far exalted above the plebeians. Even before he utters a word, Brutus physically distances himself from the people by taking the high ground of the pulpit. Antony will succeed if his oration can amplify the perceived distance between the humble level of the citizens and the high level of Brutus and the honourable patricians. I do not agree with Ernest Schanzer’s suggestion that Brutus’s refusal to lower his speech to the level of the plebeians is a ‘compliment to their intelligence’;⁴⁸ it is rather a sign of Brutus’s arrogance. So too is Brutus’s self-referential style, with its oft-repeated ‘I’, ‘Brutus’, ‘Me’, ‘Myself’ and ‘Mine’.⁴⁹

The cue for Brutus’s forum speech, spoken by one of the citizens, contains clues to three flaws in Brutus’s rhetoric. The single line ‘The noble Brutus is ascended. Silence.’ (3.2.11) confirms that Brutus is known for his high social status, that he takes the high ground (assumes superiority) and that he will not allow the people free expression. So it proves as his main passage of speech ensues. It begins

⁴⁷ Hodges portrays the pulpit (rostra) as ‘a firmly-built structure of commanding height’. It is a platform erected against the centre of the *frons* and accessed by a flight of stairs leading up from the stage. The usual ‘state’ structure (of dias and throne) is used to represent Caesar’s chair of State in the Senate (C. Walter Hodges, *Enter The Whole Army: A Pictorial Study of Shakespearean Staging 1576-1616* (Cambridge: CUP, 1999), 42-48).

⁴⁸ Ernest Schanzer, *The Problem Plays of Shakespeare* (London: Routledge and Kegan Paul, 1963), 48.

⁴⁹ Garry Wills, *Rome and Rhetoric: Shakespeare’s Julius Caesar* (New Haven: Yale University Press, 2011), 54-7.

with a repeated demand for silent audience: 'Be patient till the last' ... 'hear me' ... 'be silent, that you may hear' (3.2.12-14). The last line – 'I pause for a reply' (3.2.33-4) – pretends to open an opportunity for critical response, but it is unconvincing and no citizen feels free to speak. Brutus puts the plebeians firmly in their inferior place. He asks 'Who is here so base, that would be a bondman?...so rude, that would not be a Roman?...here so vile, that will not love his country?' (3.2.29-34). Brutus is in no doubt that the commoners are base, vile and rude; he only questions the degree of their ignobility. As Brutus asks these questions he employs the formal rhetorical ornament of alliteration 'base / bondman', 'rude / Roman' and, more subtly, 'vile / love', so that his audience will be in no doubt that these are rhetorical questions. As such, they admit no response. Schanzer was mistaken to suppose that Brutus was 'skilful' when he 'blocked all further questions'.⁵⁰ Foreclosing questions might seem a good technique for winning minds in a logical debate, but it is no way to win hearts in a rhetorical endeavour. Brutus's rhetorical questions are reminiscent of Thomas Wilson's: 'what man I pray you, being better able to maintaine himself by valiaunt courage, then by living in base subjection, would not rather looke to rule like a Lord, then to liue like an vnderling...?'⁵¹ At first sight, Brutus appears to urge the people to something more than base subjection, but in fact he has no intention that they should 'rule like a lord'. By naming their inferior status he keeps them down and persuades them, in Wilson's words, 'not to seeke anye higher rounge'.⁵² Brutus employs rhetoric not to change the social settlement, but to confirm the existing order. The question of the

⁵⁰ Schanzer, *Problem Plays*, 48.

⁵¹ Wilson, *Rhetorique*, Preface.

⁵² *Ibid.*

rights and wrongs of Caesar's assassination was a standard one in the rhetorical exercise of *controversia* (debates) and specifically in the exercise of *argumentum in utramque partem* ('argument on both sides') in the Elizabethan school curriculum, but Brutus attempts to silence even that question and to take it out of the hands of the common people. He informs them that the debate has already been carried out, fully documented and securely filed in the archives on the Capitoline hill: 'The question of his death is enrolled in the Capitol' (3.2.37-8). Brutus thus forecloses the school exercise of *controversia* by attempting to replace it with a rhetorical set speech or *suasorium*. Yet the very formality of Brutus's approach removes the sweetness that should give a *suasorium* its defining persuasive quality.

Having established a great distance of social status between his highborn honour and the citizens' lowborn baseness, Brutus will have done Antony's work for him if Antony can demonstrate either that elevation is bad or that lowliness is good. He does both by all manner of rhetorical means – verbal, gestural and spatial. As Antony's 'Friends, Romans, countrymen, lend me your ears' commenced his assault on the argument of Caesar's ambition, so his line 'The good is oft interred with their bones. / So let it be with Caesar' (3.2.77-8) begins his revolutionary endeavour to show that the virtue of goodness might be found below rather than above. Antony's servant had already signaled his master's intent when, in the preceding scene, he had performed a gestural *gradatio* by kneeling, then falling down and finally prostrating himself before the assassins (3.1.123-5). When Antony contrasts the goodness of the dead Caesar with the evil of the living ('The evil that men do lives after them' (3.2.76)) he is alluding to the living Brutus. This is apparent from Antony's palindromic 'evil lives' (evillive), which turns Brutus's own palindromic pairing of 'vile' and 'live' (vilevil) back against him. This correspondence will only be sensed on a subconscious level, but it is all the more powerful for that. Shakespeare 'was a

very great psychologist'.⁵³ Having confirmed that Caesar is down at the level of the commoners and that Brutus is up, Antony continues to the key point of his rhetorical strategy which is to contrast his own status with that of the noble Brutus. Antony locates himself in the same lowly position as Caesar, the plebeians and 'the good'. The first line to do this is 'Here, under leave of Brutus and the rest' (3.2.82). 'Here' awakens the hearers' spatial awareness, so that when Antony announces that he speaks 'under' leave of Brutus, it will produce the sense that he is positioned down with the people. It will also confirm Brutus in the contrasting position of being up with the conspirators, both in terms of social status and (to anyone with an awareness of the topography of Rome) physically up on one of hills adjacent to the forum: most likely the Capitoline or the patricians' favourite, the Palatine. Antony confirms his own lowly position by locating himself 'in' Caesar's funeral (3.2.85), just as he will shortly locate his heart 'in' Caesar's coffin (3.2.107). The eleven syllables of the line 'My heart is in the coffin there with Caesar' produce an embodied metrical sense of surfeit to match the logical sense of a coffin crowded with one heart too many. So far, there is nothing in Antony's oration that Brutus would have objected to it if he had stayed to hear it. Antony even continues, in his next lines, to amplify the high honourable status of Brutus and his faction: 'For Brutus is an honourable man; / So are they all, all honourable men' (3.2.83-84). This elevation of Brutus is done, as we now know, so that Antony can locate himself in the contrasting place of being down with Caesar and the people. The subsequent line – 'He was my friend, faithful and just to me' (3.2.86) – in large part fulfills the hope of creating fellowship between

⁵³ L. C. Knights, *Further Explorations: Essays in Criticism* (Stanford: Stanford UP, 1965), 42.

Antony, Caesar and the people which Antony had begun to advance with the very first word of his speech, 'Friends'.

In Chapter Two, we observed how *Richard II* and *King John* employed structural features of the theatre to upset normal expectations of social status. In *Richard II*, the king descends from his castle wall into the lower court and the next time we hear of high walls they are populated with the citizenry of London looking down on the deposed king. In *King John*, the play begins with the king on his throne looking down in judgment on two of his subjects, but soon he will be one of two kings subjected to the judgment of citizens located on the high walls of Angiers. In *Julius Caesar*, Shakespeare again employs the physical hierarchies of the stage to symbolic effect, but whereas the early histories for the most part employed the simple medieval semaphore of higher as better and lower as worse, the more mature artist of 1599 does something more sophisticated. (He does so not only in *Julius Caesar*, but also in the near-contemporary *Hamlet*, where the ghost of the king descends to the cellarage below the level of the stage.) Through careful coordination of staging, word and action in *Julius Caesar*, and in the forum scene in particular, Shakespeare succeeds in turning the traditional rules of the rhetoric manual upside down. He performs a hierarchical inversion befitting a Rome in which 'Graves have yawn'd and yielded up their dead' (2.2.18). *Julius Caesar* is similar to *King John* in the way it employs physical stage hierarchy to constitute the commons as judge, but in *Julius Caesar* the revolutionary innovation is to place the commons-as-judge physically below the level of Brutus, who is – at his own invitation (3.2.16-18) – the subject of their judgment. Shakespeare's decision to place judgment at the ground level of the commoners rather than raise the commoners up to the high place of the battlements or rooftops was as revolutionary in the monarchical State of early

modern England as it was in the republic of Rome. It is revolutionary because it is fundamentally democratic.

The dramatic inversion that Shakespeare achieves in the forum is energized by the fall of Caesar. The first three Acts employ the classic tragedian's trick of raising the titular hero to a great height in order that he might fall. It has been observed that until the forum scene 'Caesar is rendered in terms of great height; all other men in terms of even subterranean lowness'.⁵⁴ There is a highly effective portrayal of Caesar's trajectory in the film version of Gregory Doran's *Julius Caesar* (RSC, 2012). The moment of Caesar's fatal decision to leave his home to go to the senate is marked by his symbolic descent down a flight of stairs. His assassination is played out at the foot, not of Pompey's statue, but of an electric escalator that stands static and defunct. Shakespeare's dramatic prowess is witnessed in the way he charges the rise of Caesar with potential energy that is not lost when Caesar dies. Shakespeare is able to store up the dramatic energy or 'Urge' (see Chapter Two) within the stage properties of the coffin, the bloody cloak and the corpse, until it is powerfully discharged in Antony's funeral oration. It is discharged from Antony to the common people, in whom the force of Caesar's spirit becomes a violent overflow. Cassius had provoked Brutus to mutiny with talk of Caesar as a colossus and complained that 'we petty men / Walk under his huge legs and peep about / To find ourselves dishonourable graves / ...we are underlings' (1.2.135-140). Originally, these words might have been spoken between the two large stage pillars that

⁵⁴ Herbert R. Coursen, Jr, 'The Fall and Decline of *Julius Caesar*', *Texas Studies in Literature and Language* 4(2) (1962), 241-251, 242.

underpropped the overhanging ‘heavens’.⁵⁵ There is an almost comic irony here, for Cassius, despite being the stage manager of Caesar’s downfall, fails to foresee that if they are under the tyrant’s legs they will inevitably find the graves they are looking for when they bring the full force of Caesar’s greatness crashing down. Elsewhere, Shakespeare posits a clue to the gravity of a great man and the crushing power of rhetoric when one of the conspirators conjectures that by enlisting Cicero they might cause their less weighty qualities to be ‘buried in his gravity’ (2.1.148). Just as ‘gravity’ contains a portend of ‘grave’, so does the sequence in that scene of the words ‘soil’, ‘grieved’ and ‘buried’.

The speeches of Brutus and Antony in the forum are quite distinct from their mode of speech elsewhere. It is as if the forum oratory was crafted as a self-contained rhetorical *étude* and then inserted into the main course of the play.⁵⁶ It is plausible to suppose that Shakespeare is here deliberately showing off his rhetorical art. Dorsch opines that ‘If ever Shakespeare wished to show genius at work, surely it was in Antony’s oration’.⁵⁷ Plutarch records that Antony moved the people, but does not record what he said. Shakespeare seems to have taken this as a personal challenge to produce a piece of exemplary rhetoric. Like a school teacher setting a

⁵⁵ Andrew Gurr, ‘Staging at The Globe’, in *Shakespeare’s Globe Rebuilt*, R. Mulryne and Margaret Shewring eds (Cambridge: Cambridge University Press, 1997), 159-168, 164.

⁵⁶ Marvin Spevack (ed), *Julius Caesar* The New Cambridge Shakespeare (Cambridge: CUP, 1988), 21. They have been likened to the formality of ‘speeches in a courtroom drama’ (Michael Mangan, ‘public spaces’, 67).

⁵⁷ T. S. Dorsch ed, *Julius Caesar*, The Arden Shakespeare (London: Methuen, 1955), lii.

rhetorical exercise, history set Shakespeare the homework to end all homework – nothing less than to write the speech that turned Rome from Republic towards Empire. To display his rhetorical *étude* to best advantage, Shakespeare places it at the very centre of the play and at the crux of the dramatic action.

‘Friends, Romans, countrymen, lend me your ears’ is as rhetorically rich as one can imagine any phrase to be. It demonstrates Shakespeare’s regard for all five of the ‘faculties’ or ‘canons’ into which early modern rhetoricians divided the art of rhetoric following the classical model. Thomas Wilson wrote that ‘[a]ny one that will largely handle any matter, must fasten his mynde first of all, vppon these fiue especiall pointes’.⁵⁸ The reference to ‘handle’ hints that it is probably not by accident that there is one faculty for each digit of the rhetorician’s hand. The first faculty is ‘Invention’ (*inventio*), which encompasses the substantial content of a speech and comprises the three major categories of artificial proof as Aristotle described them: ‘logos’ (words of proof), ‘ethos’ (the speaker’s character) and ‘pathos’ (gaining the sympathy of the audience);⁵⁹ The second of the five faculties is ‘Arrangement’ (*dispositio*), which is the ordering of the elements of an oration; then ‘Memory’ (*memoria*), which is the ability to deliver an apparently unscripted speech; next ‘Delivery’ (*actio*; Wilson’s ‘utteraunce’) which is the ‘framing of the voyce, countenance, and gesture after a comely maner’⁶⁰ and finally ‘Style’ (*elocutio*) which covers all formal and figurative elements of the speech. By moving ‘Style’ from the middle to the last place, my sequence differs in this one detail from the classical and early modern model for no better reason than to order them Invention-

⁵⁸ Wilson, *Rhetorique*, 5.

⁵⁹ Aristotle, *The Art of Rhetoric*, I.2.3.

⁶⁰ Wilson, *Rhetorique*, 6.

Arrangement-Memory-Delivery-Style. This produces the initialism I-A-M-D-S and therefore enables budding rhetoricians to encourage themselves with this thought: ‘I AM DemostheneS’.

The key elements of the faculty of ‘Invention’ – logos, ethos and pathos – are all present in ‘Friends, Romans, countrymen, lend me your ears’. Logos is inherent in the conceptual and syllabic expansion from friends to Romans to countrymen and in the logical meaning of each word. Ethos is evoked in the implication that Antony exhibits the civic virtues of friendship and patriotism and in the humility of his acknowledgement that the common citizen might have something of worth to ‘lend’ so great a general. Pathos, which is emotional sympathy or fellow feeling, is engendered by the suggestion that he needs the people to lend him attention as a client might need a patron to lend money. An imploring facial expression would be one effective way to enhance the emotional pathos of the line. Brutus the Stoic relies on his ethos as an honourable man, but he omits pathos from his strategy or includes it clumsily and unconvincingly. Instead of actually weeping for Caesar, Brutus merely documents his emotions with the words: ‘I weep for him’ (3.2.24-5). Brutus sheds no tears for Caesar, for his wife or for Cassius. Indeed, as Hapgood notes, his first weeping is for his own lost cause.⁶¹ Antony, in contrast, uses pathos to full effect. The citizens appreciate Antony’s enthymematic logos: ‘Mark ye his words? He would not take the crown; / Therefore ’tis certain he was not ambitious’ (3.2.113-114) but it is equally clear that his pathos has persuaded them. One of them notes that his ‘eyes are red as fire with weeping’ (3.2.116), which recalls Thomas Wilson’s observation that ‘a weeping eye causeth much moisture, and prouoketh teares’.⁶² The

⁶¹ Hapgood, ‘Gesture’, 169.

⁶² Wilson, *Rhetorique*, 134.

next line – ‘There’s not a nobler man in Rome than Antony’ (3.2.117) – confirms that Antony’s attempt to communicate his ethos has been successful. Compared to Antony, Brutus lacks human warmth. He is not ‘void of all sense and common feeling of humanity’, but it is only a slight exaggeration to equate Brutus with Erasmus’s caricature of the Stoic who ‘sets up a stony semblance of a man’.⁶³ Brutus is emotionally detached when he says ‘I pause for a reply’ (3.2.33-34), whereas Antony is seemingly overcome with emotion when he utters the corresponding words ‘I must pause’ (3.2.108). In keeping with his reliance on the pathetic affect, ‘Antony employs one of the most distinctive features of Arcadianism: *animation*’.⁶⁴ This is exemplified in the way he animates Caesar’s wounds as ‘dumb mouths’ (3.2.218) and imagines Caesar’s blood ‘rushing out of doors’ (3.2.177). In performance it would be in keeping with their contrasting styles for Brutus to assume statuesque stillness in contrast with a more physically animated Antony.⁶⁵ The actor playing Antony might adopt the advice of the Roman rhetorician Quintilian, which was to demonstrate passion by gesticulating with such vigour that the toga falls from the shoulder.⁶⁶

⁶³ Desiderius Erasmus, *The Praise of Folly*, John Wilson trans (1668) (New York: Black, 1942), 140.

⁶⁴ Zandvoort, ‘Brutus’s Speech’, 65.

⁶⁵ Compare Hapgood, ‘Gesture’, 167.

⁶⁶ Quintilian, *Institutio Oratoria*, 11.3.147. On Roman rhetorical gesture, see Fritz Graf, ‘Gestures and conventions: the gestures of Roman actors and orators’, in *A Cultural History of Gesture*, J. Bremmer and H. Roodenburg eds (Cambridge: Polity Press, 1991), 36–58; Gregory S. Aldrete, *Gestures and Acclamations in Ancient Rome* (Baltimore: The Johns Hopkins University Press, 2003).

The faculty of ‘Arrangement’ is exemplified by Antony’s opening line; not merely through the organization of the words within it, but also by the careful positioning of the line within Antony’s oration as a whole. To pick up on just one aspect, it is notable that Antony’s first word associates himself with the citizens as their ‘friend’ and that a few lines later he associates himself with Caesar in the same terms: ‘He was my friend, faithful and just to me’ (3.2.86). The effect of the arrangement is to imply a direct association of friendship between the citizens and Caesar that Antony will later express in the phrase ‘you all did love him once’ (3.2.103). Contrast the poor arrangement of the words in Brutus’s opening line and his failure to fit the sentiment of the opening line within the arrangement of his speech as a whole. His error within the first line is to move from the political sphere of ‘Romans’ to the political sphere of ‘countrymen’ and then to the intimacy of ‘lovers’. Like talk of ‘love’ on a first date, this is too much too soon. It is a politician’s awkward attempt to match the soldier’s (Antony’s) easy reference to ‘friends’. The flaw is even worse when considered within the arrangement of Brutus’s speech as a whole. Having announced at the commencement of his speech that the people are his ‘lovers’, he reveals at its conclusion that he ‘slew’ his ‘best lover’. It is almost as if he has forgotten his use of the word ‘lover’ in his *exordium*. If he will kill his best lover for the good of Rome, will he not slay his new lovers, the citizens of Rome, on much lesser ground? The faculty of ‘Memory’ speaks for itself, for Antony’s opening line is amongst the most memorable in all of Shakespeare’s works. It holds the mind through the combined grip of its metre and its many rhetorical features. The faculty of ‘Delivery’ calls for suitable use of voice, including pace and pitch, and also of the silent pause (the *aposiopesis* or *interruptio*).⁶⁷

⁶⁷ On the use of pauses, see J. L. Styan, *Shakespeare’s Stagecraft* (Cambridge:

Gesture, movement and the handling of material stuff also contributes to Delivery or ‘*actio*’. Indeed, it is the rhetorician’s notion of *actio* that eventually gave its name to the theatrical profession of acting.

The faculty of ‘Style’ is abundant in Antony’s opening line. The tricolon of the first three words is one stylistic feature, the syllabic *gradatio* within those words is another and both features are amplified by the tri-syllabic nature of the third word. The assonance of ‘en’ in the final syllable of ‘Friends’, ‘Romans’ and ‘countrymen’, further exploits the ‘rule of three’.⁶⁸ The overall effect is surreptitious theft of the listener’s ‘ear’ while purporting, by means of the ‘lending’ metaphor, to borrow it merely. Much more could be said, but perhaps the most obvious stylistic element in Antony’s line is the reference to ‘ears’ itself. This exemplifies metonymy (in that ‘ear’ represents ‘hearing’) but to the extent that it uses a part to represent a whole (*partem pro toto*) it also, as briefly mentioned earlier, has something of synecdoche about it. As the pound of flesh represents Antonio’s entire self in *The Merchant of Venice*, so ‘ears’ betrays the fact that Antony is not really seeking to borrow a part of his audience but is actually seeking to take them whole. It follows that there is also a euphemistic aspect to the phrase ‘lend me your ears’, for what Antony is really saying is ‘listen to me’ or even ‘give yourselves to me’.

Notice the contrast between Brutus’s ill-judged use of the language of love with Antony’s skilful arts of persuasion. The word ‘persuade’ should not be taken to imply the achievement of winning an argument, but should be understood as the art of enhancing speech ‘through sweetness’ (‘per-sweet’). Persuasion and delight are inseparable. As Thomas Wilson describes it, the ‘ende of Rhetorique’ is ‘To teach.

Cambridge University Press, 1967), 189–92.

⁶⁸ *Omne trium perfectum* (‘all perfection is threefold’).

To delight. And to perswade'.⁶⁹ Sweetness is the spoonful of sugar that makes the medicine of good teaching go down. As Wilson puts it: 'to delite is needfull, without the which weightie matters will not be heard at all, and therefore him cunne I thanke, that both can and will ever, mingle sweete among the sower'.⁷⁰ Like a master confectioner, Shakespeare combines word, metre, action and the materiality of stage and theatre space in order to sweeten just enough to win hearts. This, rather than to win a logical argument, is his aim. No wonder Francis Meres praised 'mellifluous and honey-tongued Shakespeare' for 'his *Venus and Adonis*, his *Lucrece*, his sugared sonnets'.⁷¹ The art he had honed in his stanzas transferred perfectly to the stage.

In *As You Like It*, Rosalind asks the age-old question 'can one desire too much of a good thing?' (4.1.113-4) (compare *Ham*, 4.7.115-6). Shakespeare the poet knows, as Shakespeare the rhetorician knows, that when it comes to 'the taste of sweetness', 'a little / More than a little is by much too much' (*IH4*, 3.2.72-73). Thus when occasion called for it, Shakespeare exploited the effects of excess in order that 'surfeiting, / The appetite may sicken' and a sweet thing become 'not so sweet now as it was before' (*TN*, 1.1.2-8). Words are likely to be rejected if their sweetness is detected, thus Caesar rejects 'sweet words, / Low-crooked curtsies and base spaniel fawning' (3.1.42-43). Metullus misses the point when, his entreaty having failed, he

⁶⁹ Almost the entirety of Wilson's wisdom on rhetoric is traceable to classic sources, chiefly Cicero and Quintilian. Here his immediate source appears to be Cicero's *De optimo genere oratorum*: 'The supreme orator...is the one whose speech instructs, delights and moves the minds of his audience') ('The Best Kind of Orator', H. M. Hubbell trans Loeb Classical Library (Cambridge, MA: Harvard UP, 1949), I.3-4.

⁷⁰ Wilson, *Rhetorique*, 4.

⁷¹ *Palladis Tamia: Wit's Treasure* (London: P. Short for Cuthbert Burbie, 1598).

asks 'Is there no voice more worthy than my own / To sound more sweetly in great Caesar's ear'? (3.1.49-50). Excess of sweetness is a major reason why Antony's repetition of the word 'honourable' turns the idea from sweet to sickly. Antony utters it eleven times in the forum scene. This excess, which includes the three-fold repetition of 'Brutus is an honourable man', turns the sense of Brutus' honour from something that might have started sweet to something unpalatable. Thomas Wilson understood the dangers of excessive repetition when he observed that 'we cannot without refreshing, long abide to heare any one thing'.⁷² By the time Antony adds the slight variant: 'sure he is an honourable man' (which casually effaces Brutus to 'he'),⁷³ the citizens are already sick of the sentiment. The word 'sure' is really an elliptical question '[are you] sure?' The citizens not only reject Brutus's rhetorical claim to 'honour' but they start to doubt the quality of 'honour' itself. This doubt eventually leads them to entertain the hitherto unthinkable possibility that the conspirators 'were traitors: honourable men' (3.2.154). When one of the citizens says this, Antony knows that he has succeeded in throwing down the high status of honour. With high honour discredited (and with it, Brutus), Antony might now succeed in his ultimate aim of encouraging the lowly citizens to identify with the dignity of Caesar's laid-low corpse. Only now does Antony descend to the floor of the forum. He does not descend as of right, but with tactical humility asks the citizens' permission: 'Shall I descend? And will you give me leave?' (3.2.160).

Antony's rhetorical action of descending is calculated to provoke in the crowd the equal and opposite reaction of rising up.⁷⁴ The aim of Antony's rhetoric

⁷² Wilson, *Rhetorique*, 4.

⁷³ I am grateful to Keith Osborn for pointing this out.

⁷⁴ On rhetoric's 'Newtonian' capacity to move, see Chapter Six [of *Acts of Will*].

all along, and of all rhetoric always, is to move others. Michael Mangan suggests that Shakespeare's forum scene is 'apparently static', but can actually be considered 'the most dynamic scene in the play, the one containing the greatest amount of movement'.⁷⁵ Mangan rightly locates the main movement 'in the hearts and minds of the listeners, the people of Rome',⁷⁶ but we have seen how Antony's gestural movements and his physical descent can also operate to enhance the moving impact of his rhetorical speech. The opening scene of the play provides the first clue to the rhetorical heart of the whole work. The meanest of the playgoers may be mere groundlings down in the playhouse yard, but the first scene of *Julius Caesar* alludes to their capacity to move and rise up. When Marullus berates the on-stage citizens with 'You blocks, you stones, you worse than senseless things! / O you hard hearts, you cruel men of Rome' (1.1.36-37), Shakespeare is here employing a commonplace metaphor of the populace as a stubborn stone which the politician is called upon to move through the power of rhetoric. In his funeral oration, Antony contradicts Marullus when he says to the citizens 'You are not wood, you are not stones, but men' (3.2.143). Actually, Antony knows as well as Marullus that the people are stubborn blocks, but he knows much better than Marullus how to move them. This is clear when he makes the disingenuous statement 'were I Brutus, / And Brutus Antony, there were an Antony / Would ruffle up your spirits and put a tongue / In every wound of Caesar that should move / The stones of Rome to rise and mutiny' (3.2.219-223). Daniell associates this with the passage in Luke's gospel that prophesies that stones will be animated in praise of Christ,⁷⁷ but the metaphor of

⁷⁵ Mangan, 'public spaces', 67.

⁷⁶ Ibid.

⁷⁷ Luke 19:40.

stubborn wills being moved through rhetoric to advance the public good was a commonplace of classical and renaissance thought. For example, in Horace's *Ars Poetica* we read that 'Amphion too, the builder of the Theban wall, was said to give the stones motion with the sound of his lyre, and to lead them – whithersoever he would, by engaging persuasion.'⁷⁸

Horace was a staple of grammar school education in early modern England. Pupils were required to memorize it and mine it for rhetorical instances.⁷⁹ In *Titus Andronicus*, Shakespeare makes specific allusion to grammar school study of the *Odes* (4.2.22-4). Perhaps he had also encountered the quoted passage from the *Ars Poetica*. Certainly he was familiar with the myth of Orpheus who, like Amphion, had a supernatural ability to stir stones by the music of his lyre (*TGV*, 3.2.77-9). In *The Merchant of Venice* we are told (by Lorenzo) that 'the poet / Did feign that Orpheus drew trees, stones and floods' (5.1.80). The poet referred to is probably Ovid,⁸⁰ but it might be Horace. What is beyond doubt is that Shakespeare was fully conversant with the allegorical sense that art moves stubborn hearts and minds as supernatural music moves stones. It seems equally clear from the depiction of the citizens in *Julius Caesar*, that Shakespeare conceived them to be stones susceptible to the moving music of rhetorical speech. Caesar himself, who is likened to a statue or 'colossus' (1.2.135), is the play's only true fixture. Caesar takes pride in it:

⁷⁸ Hor. *Ars* 394 (C. Smart trans).

⁷⁹ Charles Hoole, *A New Discovery of the Old Art of Teaching Schoole* (London: J. T. for Andrew Crook, 1660) (Syracuse, NY: C. W. Bardeen, 1912), 219 (based on treatises written by Hoole in the 1630s).

⁸⁰ Jonathan Bate, *The Genius of Shakespeare* (London: Picador, 1997), 63.

I could be well moved if I were as you:
If I could pray to move, prayers would move me.
But I am constant as the northern star,
Of whose true-fixed and resting quality
There is no fellow in the firmament. (3.1.58-62)

Caesar's pride in the fixed and unmoving nature of his will is the pride that precipitates his fall. The conspirators conclude that if the statue of his will cannot be made to move, then his flesh must be made to bleed. When Antony uses Caesar's corpse and Caesar's testament as theatrical props to move the people, the metaphor is clear. Caesar, whose will was immovable in life, still has power to move others in death. Brutus, having inflicted violent force on the great stubborn object that was Caesar and Caesar's will, sets it in motion and cannot stop the motion until it is too late. Even Caesar's ghost, a symbol of Caesar's animated will, is moved to haunt Brutus. It is only with Brutus's own last breath, and his own last 'will', that he can say 'Caesar, now be still. / I killed not thee with half so good a will' (5.5.51).

Marvin Spevack notes that 'The word 'constant' and its inflected forms 'constancy' and 'constantly' occur more often in *Julius Caesar* (eight times) than in any other work of Shakespeare's' and that '[i]t is also a frequent and crucial word in Plutarch'.⁸¹ It is especially striking that Shakespeare gives it to Caesar three times in quick succession 'in his ironic and hubristic insistence on his 'constant' position and attitude just a few lines before he is struck down'.⁸² Shakespeare's theme of Roman constancy is partly attributable to the rise of neo-Stoicism in England in the 1590s as

⁸¹ Spevack, *Julius Caesar*, 11.

⁸² *Ibid.*, 12.

evidenced by such publications as DuVair's *Moral Philosophie* mentioned earlier and Sir John Stradling's 1595 translation of Justus Lipsius's *Two Bookes of Constancie* (1584),⁸³ but the emphasis on stubborn standing is also attributable to the Elizabethan renaissance of classical rhetoric. In rhetoric, *stasis* denotes a fixed or stubborn truth-claim on which one takes a stand. *Stasis* is a highly dynamic and contested state. It only appears to be unmoving because as one side pushes, so the other side pushes back with equal vigour. Hanns Hohmann likens rhetorical stasis to 'a stance taken in a fight' and 'even to civil strife itself'.⁸⁴ The civil question between Brutus and Antony epitomizes rhetorical stasis. Shakespeare would have known that the 'foundation' or 'principall point in euery debated matter' was 'called of the Rhetoricians the state, or constitution of the cause'.⁸⁵ The idea of the 'state' or 'statement' of the cause at issue in argument goes back to Aristotle.⁸⁶ In forensic rhetoric it became 'the State legall'.⁸⁷ The rhetorical state of stasis is also akin to the medical state of stasis in which the flow of blood is blocked. When Antony triumphs in the forum scene, the blood flows. The 'st' sound is an ancient, indeed a prehistoric, example of 'sound symbolism'.⁸⁸ It is a perfectly efficient physical

⁸³ See, generally, John Anson, 'Julius Caesar: The Politics of the Hardened Heart', *Shakespeare Studies* 2 (1966), 11-33.

⁸⁴ 'The Dynamics of Stasis: Classical Rhetorical Theory and Modern Legal Argumentation', *The American Journal of Jurisprudence* 34(1) (1989), 171-97, 171.

⁸⁵ Wilson, *Rhetorique*, 86.

⁸⁶ *The Art of Rhetoric*, III.17.1.

⁸⁷ See Quentin Skinner, *Forensic Shakespeare* (Oxford: OUP, 2014), 198.

⁸⁸ Gary Watt, 'Rule of the Root: Proto-Indo-European Domination of Legal Language', in *Law and Language Current Legal Issues*, Fiona Smith and Andrew

expression of the very thing it stands for – which is movement coming to a standstill. In the ‘st’ sound, the swift flow of breath is stopped by tongue on tooth. No single line more clearly encapsulates the static connotations of the ‘st’ sound than Caesar’s ‘I am constant as the northern star’ (3.1.60). The very next line (‘Of whose true-fixed and resting quality’) contains three ‘st’ sounds, two of which are not apparent until the words are spoken. The Proto-Indo-European root **stā-*, which gives us ‘statute’ and ‘statue’, also gives us the key words ‘constancy’ ‘*stasis*’ and the related ‘stay’ and ‘stand’. Indeed, *Julius Caesar* can be appreciated as an extended rhetorical exercise of *figura etymologica* on the Latin verb *stare* (‘to stand’)⁸⁹ and on the theme of rhetoric’s capacity to move the stones of Roman popular will.

We have noted that Caesar’s constancy – the fixed nature of his will and his unmovable spirit – is confirmed by the statue metaphor. In performance the metaphor is in turn confirmed by stage furniture. Marvin Spevack observes that it ‘has...become customary to have a statue of Caesar on stage’.⁹⁰ He cites the example of a performance at the Festival D’Automne in Paris, 2001, ‘in which Antony’s forum speech received visual comments from a bust of Caesar that descended from the flies ‘upside down’’ (befitting the upset state of Rome) and in which the ‘small corpse of the emperor’ was dramatically contrasted to Antony’s references to ‘great

Lewis eds (Oxford: OUP, 2013), 571-589. On sound symbolism generally see, for example, David Reid, *Sound Symbolism* (Edinburgh, T & A Constable Ltd, 1967); Roman Jakobson and Linda R Waugh, *The Sound Shape of Language* (Bloomington, Indiana University Press, 1979); Leanne Hinton, Johanna Nichols and John J. Ohala eds, *Sound Symbolism* (Cambridge, CUP, 1994).

⁸⁹ For another example, see *H8*, 1.2.84-87.

⁹⁰ Spevack, *Julius Caesar*, 58.

Caesar'.⁹¹ It might be small, but Caesar's corpse has an iconic, statuesque quality on stage. As Peter Ure observes, 'With a short break, Caesar's corpse is visible on the stage for more than five hundred continuous lines: this is a play whose centre is most exactly a murdered human body'.⁹² Michael Vale's set for Gregory Doran's Stratford production (RSC, 2012) incorporated a towering statue of Caesar which uncannily faced away from the audience and thus implied that all the action was taking place not only within Caesar's shadow but also behind his back. It thus had the effect of constituting the audience as complicit participants in the play's secret conspiracies and devices.

When the conspirator Decius Brutus⁹³ urged Caesar to leave home for the Senate house, Caesar stated in the space of a few lines: 'Caesar will not come'; 'The cause is in my will'; 'I will let you know'; 'I will stay at home today' (2.2.68-82). Caesar's stubbornness is reinforced by the static quality of 'stay', a word that belongs to the Proto-Indo-European **stā-* set. 'Stay' appears, with 'stay'd' and 'stays', nineteen times in the play. Without seeking to stand anything weighty on the shaky evidence of word frequency, it may be observed that, with three exceptions (*TS*, *RJ*, *3H6*), nineteen occurrences is not exceeded by any other of Shakespeare's plays, and is exactly the same number as in Shakespeare's other 'statue' play, *The Winter's Tale*. Caesar's own will to stay at home contrasts with Antony's will to move the crowd by means of Caesar's testamentary will. There are twenty-two lines of text from the citizens' first call to hear Caesar's will: 'We'll hear the will. Read it, Mark Antony' (3.2.139) to Antony's 'Shall I descend? And will you give me leave?'

⁹¹ Spevack, *Julius Caesar*, 59.

⁹² Ure, *Casebook*, 22.

⁹³ Historically, Decimus Brutus.

(3.2.160). Within those twenty-two lines the word ‘will’ appears twenty times. This is a remarkably concentrated and sustained repetition of a key conceptual word. That this passage of intense usage culminates in Antony’s descent to the forum floor is telling. This physical act purports to acknowledge the popular will and therefore performs, however insincerely, a form of democratic devolution to the people. It has a parliamentary parallel in the 1540 Statute of Wills; a very different act of will, but one that also performed, however reluctantly, a democratic gesture through testamentary descent

More prosaically, the repetition of the word ‘will’ serves to heighten the sense of anticipation. It connotes desire, but it also implies a future happening. At the middle of Antony’s long list of ‘will’ references we find his line ‘Will you be patient? Will you stay awhile?’ (3.2.150). ‘Stay’ draws attention to the stasis of this scene. When a citizen demands ‘We’ll hear the will. Read it, Mark Antony’ (3.2.139), Antony stalls. The ‘st’ sound in his next line enhances the sense of stasis: ‘Have patience, gentle friends. I must not read it’ (3.2.141). With that line Antony stokes up the citizens’ anticipation through the rhetorical device of *paralepsis* (*praeteritio*), which draws attention to a matter by appearing to pass over it. He uses the device repeatedly in relation to Caesar’s will; ‘It is not meet you know how Caesar loved you’ (3.2.142); ‘’Tis good you know not that you are his heirs’ (3.2.146). His audience can by now be in no doubt as to the contents of the will, but as yet Antony has not come straight out with it. Instead, as with Caesar’s corpse, he keeps the will in plain sight but formally under wraps. The anticipation of revelation and release produces a build up of tension like dammed blood that is ready to burst forth.⁹⁴ This is stasis in the medical sense of the word. Shakespeare subtly associates

⁹⁴ In David Farr’s production at the Swan Theatre (RSC, 2004), Gary Oliver’s

Antony's rhetoric with the issue of blood even from the moment Antony resolves to deliver the funeral oration:

Into the market-place. There shall I try
In my oration how the people take
The cruel issue of these bloody men (3.1.292-4)

Mark Van Doran suggested that 'there is as much real blood in 'Julius Caesar' as there is in stone'.⁹⁵ There is, though, an intense flow of rhetorical blood, pumped along by the beat of Antony's verse. Antony says 'I am no orator' (3.2.210), but the irony of this claim is apparent when he lists the rhetorical skills he lacks and in the process demonstrates not only a detailed knowledge of the key elements of the rhetorician's art but great practical skill in using them: 'For I have neither wit, [invention] nor words, [style, and logos] nor worth, [ethos] / Action, [gesture] nor utterance, [delivery] nor the power of speech, / To stir men's blood' (3.2.214-216). His speech is calculated to move the standing, static members of the crowd and to 'stir' their blood.⁹⁶ To achieve this, he repeats the elements of the sound 'stir' with

Antony tore up the will and dropped it into a bucket of blood (Patricia Elizabeth Tatspaugh, 'Shakespeare Onstage in England, 2004–2005', *Shakespeare Quarterly* 56(4) (2005), 448-478, 466).

⁹⁵ Mark Van Doren, *Shakespeare* (New York: H. Holt, 1939), 185.

⁹⁶ See, generally, Gayle Greene, "'The Power of Speech to Stir Men's Blood': The Language of Tragedy in Shakespeare's *Julius Caesar*", *Renaissance Drama* 2 (1980), 67-93.

increasing intensity until eventually uttering the word 'stir' itself so as to strike the conscious mind with the subconscious sense that has been welling up:

But ye[ster]day the word of Caesar might
Have [stood again{st the wor}ld. Now lies he there,]
And none [so poor to do him rever]ence.
O ma[sters]! If I were disposed to [stir]
Your hearts and mindsto mutiny and rage (3.2.119-123)

Fuzier observes that the final line of this quote contains the palindromic sound sequence r-t-m m-t-r, but what he does not notice is that the fulcrum at the centre of this balanced line is the 'st' sound formed from the end of 'minds' and the beginning of 'to'. The line exemplifies the stasis that is produced by the opposition of equal forces and nothing could be more fitting, not only to the line but also to this pivotal speech and to the theme of the whole play, than that 'st' should stand at the middle of it. When we think so structurally there is always a risk that we will miss the more fluid aspects of Shakespeare's poetic art, so for balance we should note that as the consonants supply the structural staves of the line, so the vowel sounds fill them with music. In modern Received Pronunciation the sequence of vowels is: ore – are – a – ai – oo – ewe – i – ee – a – aay (or to use the English phonetic alphabet: ɔ: – ɑ: – æ – aɪ – u: – ju: – ɪ – i: – æ – eɪ). Of the ten vowel sounds in this sequence only the 'a' sound in 'and' is repeated. The variation in the vowels enlivens and energizes the structural scheme of the consonants. The secrets of Shakespeare's rhetorical and poetic genius are to be found in countless similar instances. It is as astounding to think that they were produced instinctively as to think that they were produced by craft.

When the purple testament is finally opened, after so much pausing and putting it off, the blood begins its inevitable flow. Antony's repeated 'st' sounds correspond to the repeated use of the same sound in the scene of Caesar's assassination. Caesar's last speech had been on the theme of his constancy, the last lines being 'That I was constant Cimber should be banished / And constant do remain to keep him so' (3.1.72-3). After the stage direction 'They stab Caesar', the 'st' sounds uttered by the conspirators voice the percussion of their blades. Brutus's (inconsistent) statements 'Fly not; stand still;' (3.1.83) and 'Talk not of standing' (3.1.89) frame Metellus's 'Stand fast together, lest...' (3.1.87). There are numerous instances in the lines that follow, including the threefold repetition of 'stoop' (3.1.105-111). Brutus's reference to 'dust' (3.1.116) is especially noteworthy for the hold that dust seems to have had on Shakespeare's dramatic imagination ([as discussed in Chapters Two, Five and Six of *Acts of Will*]). Julius Caesar and Alexander were paired lives in Plutarch, and in *Hamlet* they are paired in Hamlet's extended discourse on their dust (5.1.193-205), which includes the couplet 'Imperious Caesar, dead and turn'd to clay, / Might stop a hole to keep the wind away' (5.1.202-3). How fitting that dust should end up as a stop. Dust ends with the stopping sound 'st', and we all of us end in dust.

Garry Wills suggests that Antony's descent into the forum mirrors the move from 'head to heart, from mind to will, from scrutiny to action'.⁹⁷ Through Antony, Shakespeare is surely calling on the playgoers to be more than passive spectators. They are called to be active participants in the constitution of the play world and in the political world beyond the playhouse walls. Likewise in the assassination scene, 'an audience may well feel that it is not only witnessing but participating in a kind of

⁹⁷ Wills, *Rhetoric*, 97-8.

ceremony'.⁹⁸ It is the participation and approval of the witnessing public that perfects the performance and gives it the testamentary power to last 'many ages hence' (3.1.111). The call to the playgoers to assume responsibility as participatory witnesses is repeatedly confirmed in the nature of the on-stage action and speech. Armed with dramatic gestures and physical props, Antony marshals his rhetorical forces to produce a massy, moving press of figures around Caesar's corpse. The release of pressure through mutiny, riot and bloodshed becomes inevitable. We have seen how Shakespeare uses special metrical effects in the 'Friends, Romans, countrymen' speech. We will now see that he employs another quite different metrical effect in the speech beginning 'If you have tears, prepare to shed them now' (3.2.167). Before we consider the metrical evidence it will be informative to note that the speech follows Antony's descent onto the floor of the forum and is immediately preceded by five tightly packed lines spoken by the citizens and Antony: 'A ring; stand round', 'Stand from the hearse, stand from the body', 'Room for Antony, most noble Antony', 'Nay, press not so upon me; stand far off', 'Stand back; room; bear back' (3.2.161-166). We have already noted how the repetition of 'stand' intensifies the rhetorical stasis of the scene and how this generates dramatic potential through the sense of anticipated movement. This almost physically palpable sense of pressure or dramatic 'Urge' is further enhanced by a metrical effect that mirrors the thick throng of figures on the floor of the forum. There are twenty-nine lines in this speech from the first 'If you have tears, prepare to shed them now' to the last 'Here is himself, marred as you see with traitors' (3.2.195). Of those lines, the vast majority are in regular ten-syllable pentameter. There are only four lines that are

⁹⁸ Mark Rose, 'Conjuring Caesar: Ceremony, History, and Authority in 1599', *English Literary Renaissance* 19(3) (1989), 291-304, 298.

of irregular length and every one of those extends to eleven syllables. (A fifth line is a contender to have eleven syllables, but depends for its inclusion on the replacement of the Folio's 'statue' with 'statua' or 'statuè' and for the substitute word to be pronounced tri-syllabically.) The four hypermetrical lines are as follows:

You all do know this mantle. I remember

...

For Brutus, as you know, was Caesar's angel.

Judge, O you gods, how dearly Caesar loved him.

...

Here is himself, marred as you see with traitors. (3.2.168-195)

Three of the four hypermetrical lines contain express reference to the citizens' knowledge, distinctively employed to produce the sense that Antony is calling for the commoners to share with him in bearing witness to the truth: 'you...know', 'you know', 'you see'. No other line in this section of the speech carries quite this sense of unity in perspective between Antony and the citizens;⁹⁹ no other line carries so

⁹⁹ The remaining line in the group calls for judgment of the gods. If Brutus is Caesar's 'angel' up there, perhaps Antony is implying that the commoners are 'gods' down there. After all, Antony is certainly addressing the plebeians with his apostrophe 'O Masters!' and also, I would suggest, in his 'O judgment' (3.2.105). The remainder of that line 'Thou art fled to brutish beasts' is clearly an allusion to Brutus. A revolutionary, but perfectly suitable gesture for this line, would be to gesture down to the people on 'O judgment!' (contrary to the instinct to appeal

clear a call for collective scrutiny of the evidence on show. Hypermetrical lines ‘pluck at our metrical attention’,¹⁰⁰ here they summon the audience to witness and they call for their judgment. It is notable that when a citizen passed judgment on the first passage of Antony’s speech, it was done in an eleven-syllable line: ‘Therefore ’tis certain he was not ambitious’ (3.2.114). As always, ‘the additional syllable at the end seems a major element in the line’s structure’.¹⁰¹ The citizen’s ‘ambitious’ line supplies the syllable that was missing from each of Antony’s ‘ambitious’ lines in his funeral oration. It confirms that Antony was successful in putting across his argument on the question of Caesar’s ambition.

Taken as a whole, then, Antony’s speech has the effect of incorporating Antony, Caesar and the citizens as one body. In similar vein elsewhere, Antony, speaking to the citizens, equates ‘the dead...myself and you’ (3.2.127). The line ‘Then I, and you, and all of us fell down’ (3.2.189), is especially effective in this regard. The expansion and sudden contraction resembles the conceptual and syllabic expansion and collapse of ‘Friends, Romans, countrymen, lend me your ears’. Where that line produced the sense of an intimate embrace, this line produces a sense of emotional collapse. Antony’s descent also produces community in another way, for in theatrical terms it represents a move to the level of folk or ‘popular’ drama.¹⁰² To

upwards for justice from the gods, compare *TA*, 4.3.11-13) and to gesture upwards to Brutus on ‘fled to British beasts’.

¹⁰⁰ Wright, *Metrical Art*, p.107. Wright adds that the same is true of hypometrical lines.

¹⁰¹ Wright, *Metrical Art*, p.164.

¹⁰² Daniell (*Julius Caesar*, 261 n.162) associates the citizen’s call to make ‘Room for Antony’ (3.2.164) with the medieval practice of making playing room in the popular

use Weimann's terminology (see Chapter One), 'Antony moves from locus to platea'.¹⁰³ The play began in the stage space of the 'platea' that unites the streets of Rome with the streets of London.¹⁰⁴ Now, at the moment of Antony's descent from the pulpit, he descends to the street level and to the communal ground that Shakespeare has prepared for him. Whereas Brutus is uncomfortable in close proximity to the plebs and seemingly could not wait to quit them (hence his 'Good countrymen, let me depart alone' (3.2.56)), Antony gives the appearance of being much more at home in the press of the common people of Rome.

Now that the dust has settled on the rhetoric and the riot, we can allow ourselves to join the playgoers in reflecting on the scene as objective bystanders. The black cloth hanging as a curtain from the stage to the playhouse floor confirms that

throng. Daniell cites Chambers who quotes lines from the start of a Leicestershire Mummers Play: 'Room, a room! brave gallants, give us room to sport; / For in this house we do resort' (*The Medieval Stage*, 2 vols (Oxford: Clarendon, 1903), 2.276).

¹⁰³ D. J. Hopkins, *City/Stage/Globe: Performance and Space in Shakespeare's London* (London: Routledge, 2008), 170. Hopkins conjectures that in early performances Antony might have moved as far down as the groundlings in the yard, but the association between the stage level and the common street (both share the space of the 'platea', see Chapter One) would make such an extreme descent dramatically unnecessary. On the other hand, some modern productions have placed the citizens in the orchestra pit. (John Ripley, *Julius Caesar on Stage in England and America, 1599-1973* (Cambridge: CUP, 1980), 240).

¹⁰⁴ Hopkins *ibid.*, 164.

we are witnessing a tragic drama,¹⁰⁵ but as we join the groundlings in pressing up against the stage and its deathly drape, we are left puzzling this profound question of the play: ‘whose tragedy is it?’ The title of the play, *The Tragedy of Julius Caesar*, states the obvious answer, but all states in the play, especially those relating to the person of Caesar, are contestable and moveable. The title, like the title of *The Merchant of Venice*, might be a tease: ‘Which is the merchant here, and which the Jew?’ (4.1.170). If this really is the tragedy of Caesar we are bound to ponder the nature of his tragic flaw. Brutus claims it was ‘ambition’, but we have seen that Brutus’s claim suffers some serious rhetorical opposition. The more plausible candidate flaw is that Caesar was excessively stubborn. For a rhetorical poet like Shakespeare, whose drama relies upon his art to move, stubbornness must seem a chief vice. Shakespeare was also a philosopher of practical reasonableness in the Aristotelian mode. He understood, as contemporary lawyers understood, that will without flexibility must be opposed as one must oppose law without equity.¹⁰⁶ On this view, Caesar’s tragic flaw is the same that makes *The Merchant of Venice* the tragedy of Shylock. However rational his justification for stubbornness (for Shylock, the chief justification was the rule of law), Caesar’s fault (as Shylock’s) was to take hubristic pride in the security of his cause and in his personal immovability. The justice of equitable moderation, or practical reasonableness, demanded that Caesar

¹⁰⁵ ‘The stage is hung with black; and I perceive / The auditors prepared for a tragedy’ (Anon, *A Warning for Fair Women* (c.1590), induction). The stage skirt seems to be represented in Johannes De Witt’s famous 1596 drawing of the Swan theatre.

¹⁰⁶ Gary Watt, *Equity Stirring: The Story of Justice Beyond Law* (Oxford: Hart, 2009).

be (re)moved precisely because he set such store by his stubborn constancy and, to borrow an apt phrase, his ‘inflexible will’.¹⁰⁷ The art of equitable moderation is akin to the art of rhetoric, which according to Wilson, calls for the quality of ‘movyng pitie, and stirring men to mercie’.¹⁰⁸ A marginal gloss in North’s Plutarch praises the ‘wonderful constancy of Brutus in matters of justice and equity’,¹⁰⁹ but Shakespeare prefers to set the stoic constancy of Brutus against the wilful constancy of Caesar. Antony, the Lupercalian runner, contributes a dramatic urgency throughout the course of the play and he moves passions, but he stirs the people to riot and not to mercy. He brings no equity to moderate the strict constancy of Caesar or Brutus. We must look to the playgoers, performing as witnesses and jury, to supply the moderating equity.

The play can perhaps be thought of as the tragedy of Brutus. Brutus’s last stand is predicted in the encounter that brings the forces of Cassius and Brutus to a state of impasse:

CASSIUS

Stand ho.

BRUTUS

Stand ho. Speak the word along.

FIRST SOLDIER

Stand.

SECOND SOLDIER

¹⁰⁷ John I. M. Stewart, *Character and motive in Shakespeare* (London: Longmans, Green, 1949), 53.

¹⁰⁸ Wilson, *Rhetorique*, 133.

¹⁰⁹ North, *Plutarch: Brutus*, §10. Cited in Spevack, ‘*Julius Caesar*’, 11.

Stand.

THIRD SOLDIER

Stand. (4.2.32-36)

In the immediate aftermath of the assassination of Caesar, Brutus uses the word 'stand' in reference to death in a way that is significant: 'That we shall die we know; 'tis but the time / And drawing days out, that men stand upon' (3.1.99-100). What makes it so significant is that it anticipates Brutus's own death and the words of Antony: 'This was the noblest Roman of them all: / ... / His life was gentle, and the elements / So mixed in him that nature might stand up / And say to all the world, 'This was a man!'' (5.5.69-76). The exact phrase 'stand up' appears in only one other place in the play, and it is Brutus who uses it: 'We all stand up against the spirit of Caesar, / And in the spirit of men there is no blood' (2.1.166-7). This bloodless line exemplifies stasis. The reference to stand and to the lack of blood in Caesar's spirit evoke an unnatural, even statue-like, absence of movement in the physical state of the man and in the state of the body politic. The line is naturally followed by the flow of 'Caesar must bleed' (2.1.170). When that resolution is enacted by Caesar's assassination, stasis momentarily turns to catharsis and even the statue 'all the while ran blood' (3.2.187), as Calpurnia's dream had forewarned.

In Shakespeare's account, Brutus runs himself through on his own sword. North's Plutarch gives two versions, one in which Brutus holds the sword and one in which Strato holds the sword. Shakespeare, in adopting the latter account, omits North's description of Strato as one with whom Brutus 'came first acquainted by the study of rhetoric'.¹¹⁰ He does something better. Through the entire course of the play

¹¹⁰ North, *Plutarch: Brutus*, §32.

he depicts a Brutus who is impaled on the point of his own rhetoric. In the forum scene, Brutus wounds his own cause with condescending patrician rhetoric and Antony deals the deathblow by a sort of congregational rhetoric that properly belonged to Brutus. There is, then, a (presumably unintended) mirroring of North's 'double' account of Brutus's death: Brutus is impaled on the blade of his own rhetoric held both in his own hands and in the hands of another. Shakespeare's Brutus is a student of rhetoric, a stoic and an actor (witness Brutus's direction to his fellow conspirators that they should disguise their intentions and 'bear it as our Roman actors do with...formal constancy' (2.1.226-7)). All things considered, he seems too cold and calculating a character to have the heroism necessary to make him the intended tragic subject of this play. Mark Antony has a claim to be the hero of the play, but in *Julius Caesar* his trajectory is in no plausible sense 'tragic' (contrast his fall in *Antony and Cleopatra*).

The most plausible possibility is that *Julius Caesar* is the tragedy of Rome itself. As Jennifer Richards writes: Antony's rhetorical 'success represents the beginning of the end for the republic';¹¹¹ 'Antony wins, but Rome loses'.¹¹² Ironically it all starts to go downhill for the Republic following Antony's descent into the forum; that most potent physical gesture of condescension to the people. Perhaps it was only ever a shallow showman's gesture. For all his rhetorical sweetness, Mark Antony does not truly seek to replace traditional hierarchy with popular will. A wise witness can see this truth hidden in Antony's words. The Antony who predicts that the people, having heard of their legacy under Caesar's

¹¹¹ Jennifer Richards, *Rhetoric The New Critical Idiom* (Abingdon: Routledge, 2008), 91.

¹¹² *Ibid.*, 93.

testament, will 'dying, mention it within their wills, / Bequeathing it as a rich legacy / Unto their issue' and 'dip their napkins in his sacred blood' (3.2.134-8) is, in early modern terms, a man who, despite talk of wills and pretension to congregational Protestantism, is harking back to hierarchical traditions of dynastic inheritance and Roman Catholic hagiography. The success of Antony's rhetoric is that it captured the will of the Roman people. Its tragic failure is that the will of the people was never free.

Shakespeare's Acts of Will: Law, Testament and Properties of Performance

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Chapter Six

From dust to dust and sealing wax: the materials of testamentary performance

In Chapter Two we considered some of the methods employed in *Richard II*, *King John* and the prologues of *Henry V* by which Shakespeare sought to engage the hands of the playgoers' minds to touch the play and to make the play more touching. One such technique was to place characters on stage to narrate first-hand witness accounts of materials being handled. All witness narratives turn sights into sounds and therefore have the merit of appealing to playgoers as spectators and as audience. Witness accounts of materials being handled are especially potent because they excite the playgoers' senses of sight and sound and touch at the same time. Having been thus engaged to a more complete sensory imagination of the play, the playgoers are better able to get a feel for it and to weigh it up and to probe its forms and test its substance.

Richard II contains an important on-stage witness account of materials being handled. It is the scene, already considered in Chapter Two, in which the Duke of York narrates his account of the moment that the citizens of London threw dust on Richard's head. The fact that the reported 'handlers' in that instance were the common people of London gathered to witness a great event must have enhanced the original London playgoers' ability to imagine and relate to the physical reality of the scene. Sometimes an on-stage witness account describes a more exotic scene and

more luxurious materials. An example is Enobarbus's account of how 'The city cast / Her people out' to see Cleopatra and the famous 'barge she sat in' (*AC*, 2.2.223-224, 2.2.201); the words 'sat in' evoke the feel of satin and suit perfectly the description of 'silken tackle' that 'Swell with the touches of those flower-soft hands' (*AC*, 2.2.220). The poetry produces a tactile sense to the mind.

A little later in this chapter we will consider two extended examples of Shakespeare's method of engaging the sympathy of playgoing witnesses through the evidentiary narrative of an on-stage witness. Both accounts present material evidence to be assessed by the playgoers and therefore constitute the playgoer as judge. Throughout this book I have proposed that it is helpful to think of early modern playgoers as witnesses who are involved in a process of probing or testing the will that is performed before them on stage. The suggestion that the nature of a play can be appreciated by analogy to the process of testing (that is 'proving') a testamentary will is not so far removed from the idea that a play can be appreciated by analogy to legal processes of putting witness testimony to the proof.¹ That analogy is particularly apposite to plays in which an innocent person (almost invariably a

¹ A great deal of fine scholarship has engaged with the trope of trial in law. The following list is by no means conclusive, but represents a good basis for further reading: Lorna Hutson, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford: OUP, 2007); Subha Mukherji, *Law and Representation in Early Modern Drama* (Cambridge: CUP, 2006); Barbara Shapiro, *A Culture of Fact: England, 1550–1730* (Ithaca, NY: Cornell University Press, 2000); Luke Wilson, *Theaters of Intention: Drama and the Law in Early Modern* (Stanford, CA: Stanford UP, 2000).

woman) has been falsely accused, for example *Othello*, *Much Ado About Nothing*, *The Winter's Tale*.² One figure that connects the early modern legal world of testament and testimony is the judge known as the 'Ordinary'. These judges were clerics in the ecclesiastical courts whose task it was to decide whether or not a will passed probate. They acted under authority of the bishop (the bishop's ordained status is said to be the origin of the title 'Ordinary') and the seal of approval that they sometimes added in witness and probate of a will was the seal of the presiding bishop. Swinburne writes that:

this office and charge of executing...testaments and last willes hath been imposed vpon the reuerend Bishops: in the sinceritie of whose consciences all Christian laws and namely the lawe of this land, hath reposed greater confidence then in other lay people, about the performance of deade mens willes.³

There is a strong clerical flavour and more than a hint of probation and a red seal at the start of Shakespeare's *Henry V*. Immediately before the Archbishop of Canterbury embarks upon his lengthy formal proof of Henry's legal title to the throne of France, the king warns that if he is incited to go to war many men 'Shall drop their blood in approbation' (1.2.19) of the legal claim. For our purposes the title

² See Daniela Carpi, 'A just and open trial': The Trial Based on Circumstantial Evidence in *The Winter's Tale*', in P. Kennan and M. Tempera (eds) *International Shakespeare. The Comedies* (Bologna: Clueb, 2004) 75.

³ Henry Swinburne, *A Briefe Treatise of Testaments and Last Willes* (London: John Windet, 1590), 206, citing Perkins, *De Testamentis*, fol. 94.

of Ordinary is convenient to remind us that the ordinary citizens of London attended the Elizabethan playhouses with the opportunity to ‘prove’ (‘probe’) and to judge the will and testament (and testimony) presented to them. With this in mind, we can now turn to our two extended examples of on-stage witness accounts: one from *Hamlet*, the other from *Macbeth*. Both narrate the same standard early modern sequence of working with materials to produce a sealed document: folding of paper, writing and sealing.

In *Hamlet*, Hamlet reports how he forged a document in the form of an order made by the king of Denmark:

HORATIO

How was this sealed?

HAMLET

Why even in that was heaven ordinant:

I had my father’s signet in my purse –

Which was the model of that Danish seal –

Folded the writ up in the form of th’other,

Subscribed it, gave’t th’impression, placed it safely (*Ham*, 5.2.47-52)

The word ‘ordinant’ will now put the reader in mind of the seal affixed by the clerical Ordinary, and it may be that the word had similar resonance for the first playgoers.

In *Macbeth*, we have the Gentlewoman’s report of Lady Macbeth’s nocturnal compositions:

GENTLEWOMAN

Since his majesty went into the field, I have seen
her rise from her bed, throw her nightgown upon
her, unlock her closet, take forth paper, fold it,
write upon't, read it, afterwards seal it, and again
return to bed, yet all this while in a most fast sleep.

DOCTOR

...besides her

walking and other actual performances, what, at any
time, have you heard her say?

GENTLEWOMAN

That, sir, which I will not report after her.

DOCTOR

You may to me: and 'tis most meet you should.

GENTLEWOMAN

Neither to you, nor any one, having no witness to
confirm my speech. (*MAC*, 5.1.4-18)

These accounts of the act of producing a documentary form are accounts of 'actual performances', as the *Macbeth* passage expressly confirms. Both narratives also describe performances in the theatrical sense of gestured and propertied action. In each instance the sequence by which the form is created ends in the impression of wax, presumably blood red, and can therefore be said to plot in microcosm the tragic trajectory of the entire play in which the sequence appears. The fact that the sequence of folding–writing–sealing in both *Hamlet* and *Macbeth* appears early in the final Act creates a tangible sense of events unfolding that are written in the fates and bound for a bloody end. The reader will recall [from Chapter Five of *Acts of*

Will] that *Hamlet* began with the documentary and performative connotations of an invitation to ‘unfold’, and that Hamlet’s own idea of the acting aspect of theatrical performance was one which called for the players to show ‘the time his form and pressure’ (*Ham*, 3.2.24). Perhaps there is a pun here on the pressing of a seal on a documentary form.

In the two documentary episodes under consideration, the witness narratives of Hamlet and the Gentlewoman are of a special sort. They resemble the legal process of ‘attestation’, whereby a witness affirms the veracity of writing, signature and seal. In Shakespeare’s day, the law reflected the fact that the national population was largely illiterate. Testators did not have to write their wills in person, or sign them, or seal them. Following the 1540 Statute of Wills, a devise of land by will was required to be in writing, but that was as far as the formalities went during Shakespeare’s lifetime.⁴ Neither did witnesses have to subscribe the will or seal it or otherwise attest to it in writing. In cases of doubt, their oral testimony was sufficient.⁵ Writing, signing and sealing by the testator and witnesses were, of course, encouraged, and it was expedient for the avoidance of doubt. Shakespeare’s

⁴ E. A. J. Honigmann and S. Brock, *Playhouse Wills, 1558–1642* (Manchester, Manchester University Press, 1993), 12-13.

⁵ All the words of the testator’s will must be expressed in writing or not at all (*Thomas Brett v. John Rigden* (1567) 1 Plowden 340, 345; 75 E.R. 516, 525). Even if the testator does not witness the will by signature or seal, and even if the witnesses do not, the Ordinary in the ecclesiastical court may do so if satisfied that the writing presented is proved to be the testator’s will. The Ordinary therefore acts as a sort of witness of last resort (see *Alvared Graysbrook, Executor of the Testament of Thomas Kene v. Robert Fox* (1564) 1 Plow. 275, 280; 75 E.R. 419, 428 (1 January 1564)).

own will was subscribed by witnesses and signed by Shakespeare in his own hand. A subscribing testator is always, in a sense, acting as witness to their own will. The example of Shakespeare's will makes this clear. It recites a standard form of words: 'In witnes Whereof I have hereunto put my ~~Seale~~ hand'. As a gentleman, Shakespeare must have owned a signet or seal matrix bearing his arms, but for some reason it was not used and the word 'Seale' is deleted. The idea of performers acting as witnesses to their own wills is a very potent one. It speaks of actors being in a sense alienated from their acts. Where this decays into deep alienation from oneself it can produce a destructive schism between act and will. This is the case with Lady Macbeth in the episode set out above, and something like it (but for very different reasons) is true of Hamlet throughout most of *Hamlet*. Hamlet is not, however, alienated from his actions in the episode quoted above. In that episode the sequential process of documentary performance (pressed on by the urgency of a deadline) engages his will to act in a way that we seldom witness elsewhere in the play. Whatever block it is that Hamlet suffers from, it is not writer's block. Hamlet shows us in this scene that a character on stage (and, where appropriate, an actor on stage) can engender a sense that he or she is a witness to their own performance. Where they do this, it invites the playgoers to witness the performance with them. Playgoers cannot help but join with Hamlet and the Gentlewoman and the Doctor in witness to the performances described in the two episodes. The playgoers might also relate to the on-stage depiction of quotidian rituals of manual work, in this case writing. The presence of similar writing sequences in both plays is, in addition to its other significations, a sign of a professional writer attesting to the work of his own hands by representing his everyday practices on stage.

Early modern writing called for a fairly standard set of materials. These included paper (rarely parchment); scissors to cut the paper; a ruler to fold the paper

and to rule lines; an inkstand ('standish'); an inkwell; ink; feathers (*pennae*) for quills; a penknife (to cut the *penna* into quill pens); a whetstone to sharpen the knife; a dustbox or sandbox or pouncebox from which to sprinkle dust, sand or 'pounce';⁶ a candle to see by and to melt the sealing wax; string or ribbon for the seal; a signet ring or other seal matrix; and, finally, a chair to sit at, and a desk to stage the whole performance.⁷ When items such as these become properties on stage, they have the 'power to puncture dramatic illusion by pointing to alternate social dramas of economic production, exchange, and ownership'.⁸ One of the best examples of this is the gage or glove that we considered in Chapter Two. As the son of a glover, the glove was an obvious thing for Shakespeare to focus on, but playgoers did not have to be glovers to be able to imagine a personal connection to the thing. It was common enough as an item of fashionable dress or labouring garb.

As words move us through their effect on the mind, especially through the material connotations that metaphors create, so physical material can have the same effect unmediated by words. In earlier chapters we considered John Austin's notion of 'performative utterances' (or 'speech acts' as he later termed them), but we can also speak of 'performative materials' or 'performative properties'. The art of rhetoric is most effective when it appreciates the material reality of words and

⁶ Also known as 'pin-dust' (typically comprising ground pumice or cuttlefish). It was used to prepare the paper by rubbing, and for blotting ink after writing.

⁷ See the detailed account in James Daybell, *The Material Letter in Early Modern England: Manuscript Letters and the Culture and Practices of Letter-Writing, 1512-1635* (Basingstoke, Palgrave Macmillan, 2012), 30-41.

⁸ Jonathan Gil Harris and Natasha Korda eds, *Staged Properties in Early Modern English Drama* (Cambridge: Cambridge University Press, 2002), 15.

marries this to the moving potential of silent action and material stuff.⁹ This is real rhetoric. Some wordless sights and objects have the quality that Shakespeare calls ‘a prone and speechless dialect / Such as move men’ (*MM*, 1.2.173-4). The word ‘object’ denotes something that is conceptually ‘thrown against’ the senses, and we have seen through the course of this book that some of the most striking and significant stage objects are not only thrown conceptually, but are also thrown physically (e.g. dust, gloves, warder, skulls). When an object is thrown against another thing it will move it, all other things being equal. As Newton’s laws explain material encounters in the physical world, so we can talk of dramatic laws through which stage properties have a metaphysical power to move people. There is something proto-Newtonian in the hope expressed by Claudius that a visit to England will move Hamlet to change: ‘Haply the seas and countries different / With variable objects shall expel / This something-settled matter in his heart’ (*Ham*, 3.1.170-72). Newton’s language of ‘force’ and ‘gravity’ and ‘motion’ would not have existed without a rhetorical tradition that understood the matter of the mind to be moved by emotional force. Consider, for example, the proto-Newtonian quality of Thomas Wilson’s observation that ‘Affections therefore (called Passions) are none other thing, but a stirring or forsing of the minde’.¹⁰

Legal documentary performance combines word, act and thing. The word ‘deed’ is a clue to the speech act by which the legal word is performed and the deed is also a documentary thing. It operates not only as a performative utterance, but also

⁹ The connection between thing (*res*) and word (*verba*) is a long-standing concern in rhetorical studies.

¹⁰ Thomas Wilson, *Arte of Rhetorique* (1560) G. H. Mair ed, (Oxford: Clarendon Press, 1909), 130.

as a performative property. The seal is the most significant material aspect of a legal deed and a clue to this is the fact the word itself derives from the Latin for ‘little sign’ (*sigillum*). The seal is evidence of the wilful participation of the one who impresses it.¹¹ When, in *King John*, Salisbury says ‘we swear / A voluntary zeal’ (*KJ*, 5.2.9-10), Shakespeare is implying a fluid poetic connection between will and seal: ‘Voluntary’ corresponds to ‘will’; ‘zeal’ corresponds to ‘seal’. ‘Seal’ and ‘zeal’ are expressly identified with each other where The Duke of Austria says ‘Upon thy cheek lay I this zealous kiss, / As seal to this indenture of my love’ (*KJ*, 2.1.19-20) (the association is also intimated at 2.1.244, 250). More demanding on the imagination, and in that respect more engaging, are the moments where Shakespeare connects seal and zeal indirectly through reference to their shared qualities. If one had to choose a word to describe the property of blood (or a blood-red substance) which becomes hot, congeals when cool and is used to confirm the performance of deeds, ‘seal’ and ‘zeal’ would both be apt. Shakespeare plays with this poetic connection – between ‘zeal’ and ‘heat’ and ‘blood’ and ‘voluntary’ and ‘deeds’ and ‘seal’ – throughout *King John*. On ‘will’ and ‘heat’ we have the ‘fiery voluntaries’ of the English camp (*KJ*, 2.1.67). On ‘zeal’ and ‘blood’, we have Hubert’s ‘If zealous love should go in search of virtue... Whose veins bound richer blood than Lady Blanche?’ (*KJ*, 2.1.428-431); On ‘blood’ and ‘heat’, we have the Bastard’s line ‘the rich blood of kings is set on fire!’ (*KJ*, 2.1.351), and King John’s, ‘France, I am burn’d up with inflaming wrath; A rage whose heat hath this condition, / That nothing can allay, nothing but blood, / The blood, and dearest-valued blood, of

¹¹ *Eyre of Kent* (S.S.) II.10 (Spigurnel, J.), cited William S. Holdsworth, *A History of English Law* (London: Methuen, 1922-32), III, 417 n.4; *Sharington and Pledall v. Strotton* Court of King’s Bench (1564) 1 Plow. 298, 309; 75 E.R. 454, 470-71.

France' (*KJ*, 3.1.340-343). On 'zeal' and 'heat' and 'blood' together, we have Cardinal Pandulph's 'This act so evilly borne shall cool the hearts / Of all his people, and freeze up their zeal' (*KJ*, 3.3.149-150) (compare *R2*, 1.1.47, 51). On 'zeal' and 'heat' and 'wax', we have Queen Elinor's 'Lest zeal, now melted by the windy breath / Of soft petitions, pity and remorse, / Cool and congeal again to what it was' (*KJ*, 2.1.477-9). Malone argued that Elinor is referring to zeal as the congealed ice of resolution, and Honigmann's suggestion that Shakespeare might be contrasting the heat of English zeal to the iciness of French zeal is not implausible,¹² but I agree with John Dover Wilson that Shakespeare is here quibbling on 'zeal' as a hot humour associated with a wax 'seal'.¹³ On 'blood' and 'heat' and 'wax' together, we have Melun's 'Have I not hideous death within my view, / Retaining but a quantity of life, / Which bleeds away, even as a form of wax / Resolveth from his figure 'gainst the fire?' (*KJ*, 5.4.22-25).

Melun's words are 'testamentary' in the most obvious sense of having 'death within...view', but they are also testamentary in their connection to the play's central concern with inheritance. The connection to the play's inheritance theme can be inferred into Melun's phrase "'gainst the fire?" (5.4.22-25). The phrase is echoed in King John's 'all my bowels crumble up to dust: / I am a scribbled form, drawn with a pen / Upon a parchment, and against this fire / Do I shrink up' (*KJ*, 5.7.31-34). This intensely material reiteration of the material processes of writing, takes us directly to what Pettet calls the play's 'dominant image, in both the words and the stage spectacle', which is Arthur – the play's symbol of the true royal succession –

¹² E. A. J. Honigmann, *King John*, The Arden Shakespeare, second series (London: Methuen, 1954), 47.

¹³ John D. Wilson, *King John* (Cambridge: CUP, 1936), 127.

sitting bound against the fire (the brazier of hot coals) in Scene 4.1. Pettet concludes that ‘the fire imagery of *King John* does something, superficially, towards unifying the play’ but that ‘it contributes nothing at all to the meaning’.¹⁴ I disagree. It seems to me that the heat image is essential to the sealing of the testamentary performance and is therefore a most meaningful signifier of the play’s intense concern to engage the sensory participation of the playgoing witnesses. Their participation becomes politically charged when the play invites them to join in passing judgment on the willful acts of a king. Hubert, a citizen comrade to the original London playgoers, presents the documentary evidence of John’s order to kill Arthur:

HUBERT

Here is your hand and seal for what I did.

KING JOHN

O, when the last account 'twixt heaven and earth

Is to be made, then shall this hand and seal

Witness against us to damnation!

How oft the sight of means to do ill deeds

Make deeds ill done! Hadst not thou been by,

A fellow by the hand of nature mark'd,

Quoted and sign'd to do a deed of shame,

This murder had not come into my mind (*KJ*, 4.2.215-224).

¹⁴ E. C. Pettet, ‘Hot Irons and Fever: A Note on some of the Imagery of *King John*’, *Essays in Criticism* 4(2) (1954), 128-144, 136.

John does not deny that the document is his, but he tries to deny responsibility for the deed by shifting the blame on to Hubert and to 'nature'. This is a dramatically interesting variation on the legal plea '*non est factum*' ('this is not my deed').¹⁵ This legal plea asserts that the pleader did not appreciate the import of what it was that he or she had signed. A successful plea of *non est factum* renders the instrument void from its inception.¹⁶ The plea normally applies to *inter vivos* instruments (documents created during the creator's lifetime), but even in Shakespeare's day the plea had a counterpart in the law of wills. According to Swinburne, '[i]t is the minde and not the words which giveth life to the testament', so a will was void and 'no testament' if it lacked *animum testandi*.¹⁷ This covered the case of a testator who was found to have made his will 'rashly, unadvisedly' or otherwise 'not seriously, nor with a firme purpose to make his will',¹⁸ and it covered cases of fraud.¹⁹ Shakespeare's King John, likewise Bolingbroke in *Richard II*, perform acts of trade with the crown (see Chapter Two), and it is notable that they both attempt similar pleas of *non est factum* in order to deny responsibility for deeds. In *Richard II*, there is an episode in which Bolingbroke purports to deny responsibility for the deed of killing the rightful king in almost exactly the same way that King John does, although in Bolingbroke's case the deed is not written down. When Exton presents Richard's body. Bolingbroke

¹⁵ For a more literal rendering of the plea on stage, see Ben Jonson's *Volpone*, where the Advocate Voltore ('Vulture') says 'it is my hand; / But all that it contains is false.' (5.8).

¹⁶ *Stone and Withypolls Case* (1587) 1 Leonard 113, 114; 74 E.R. 106.

¹⁷ Swinburne, '*Testaments*', 261.

¹⁸ *Ibid.*

¹⁹ Swinburne, '*Testaments*', 240.

decries Exton's 'deed of slander', to which Exton replies 'From your own mouth, my lord, did I this deed' (*R2*, 5.6.37). In the same play, Aumerle attempts a plea of *non est factum* in more orthodox form when he repents the deed by which he sealed his treason against Bolingbroke, saying: 'Read not my name there; / My heart is not confederate with my hand' (*R2*, 5.3.51-52). The denial of deeds is fundamentally alienating behaviour. A legal documentary deed is a deed of action (of the hand and mind) represented as a physical thing. When the actor playing King John denies his own act and the actor Hubert (in the role of executor and executioner) refuses his role, the performance as a whole becomes a detached or alien object thrown against the playgoers as something to be handled and assessed. With apologies to the melancholy Jaques, one person can at any time 'play many parts', and here, as John turns from testator to witness of his own will, and as Hubert turns from executor to judge, so the playgoing witnesses are engaged to all perspectives at once. They witness the wills of others in performance and through a process of trial or probation they pass judgment on others with a will of their own.

In *Julius Caesar*, Brutus did not in express terms seek to deny his deed, but Harry Keyishian notes that in the assassination scene in Stuart Burge's film version (Commonwealth United Entertainment, 1970), when the conspirators held their 'hands palms-outward, so as not to stain their clothes', they 'in some *gestural* sense repudiate their deed even as they praise it'.²⁰ The motif of the 'bloody deed' is ubiquitous in Shakespeare's tragedies. In *Hamlet*, Gertrude says 'bloody deed is this!' (*Ham*, 3.4.25) in reference to the accidental execution of Polonius. (That's

²⁰ Harry Keyishian, 'Storm, Fire, and Blood: Patterns of Imagery in Stuart Burge's *Julius Caesar*', in *Shakespeare in Performance*, Frank Occhiogrosso ed (Newark: University of Delaware Press, 2003), 101.

execution of a ‘formality’ if ever there was one). Hamlet immediately echoes her: ‘A bloody deed’ (*Ham*, 3.4.26). The ‘bloody deed’ is frequently employed as a pun or trope on a legal deed. As blood marks the violent performance of will, so the red mark of wax seals the legal performance of will in testamentary and lifetime documents. Hamlet says that he will ‘speak daggers’ to his mother in the form of ‘words’, but will not give his words ‘seals’ by actually using a dagger (*Ham*, 3.2.386-389). Early modern drama frequently employs physical properties of red on white – typically a stain of blood on white flesh or white cloth – to associate murderous deeds and executions with the legal execution of documentary deeds. The signal contrast between red and white is primal. It may be as close as we get to a universal sign of the performance of human life. With regard to the Ndembu people, the anthropologist Victor Turner observed that:

when the colors are considered in abstraction from social and ritual contexts, Ndembu think of white and black as the supreme antitheses in their scheme of reality. Yet...in rite after rite white and red appear in conjunction and black is seldom directly expressed...in action contexts red is regularly paired with white²¹

In Shakespeare’s usage, the mark of red on white has ritual and liminal significance. It denotes loss of innocence. Witness Hubert’s ‘this hand of mine / Is yet a maiden and an innocent hand, / Not painted with the crimson spots of blood’ (*KJ*, 4.2.251-253)). Desdemona’s ‘handkerchief / Spotted with strawberries’ (*Oth*, 3.3.437-438),

²¹ Victor W. Turner, *The Forest of Symbols: Aspects of Ndembu Ritual* (Ithaca: Cornell University Press, 1967), 74.

which was adduced by Iago in evidence of her infidelity, seems to be a similar sign – always assuming that the handkerchief was white (in Iqbal Khan’s 2015 RSC production it was black, and so was Iago). Violence, death, mourning and remembrance of the dead are frequently signalled by the sign of red and white and by the prop of a bloodied handkerchief (*JC*, 3.2.134; *R3*, 4.4.274-277). Shakespeare and other early modern playwrights followed the medieval theatrical tradition of using blood symbolically to evoke the performative power of the blood of Christ and His saints.²² They were also reviving a tradition, dating back to ancient Greek drama, in which the stain of blood was used to represent the violence inherent in the performance of will, especially will expressed through the imposition of rigid rules and inflexible forms of law. An important early example appears in Sophocles’ *Antigone*.²³ Creon, King of Thebes, had decreed that Polyneices (eldest son of Oedipus’ incestuous union with his mother Jocasta), who had died in an assault upon his native Thebes, must be left unburied in the public street as punishment for his treachery. Antigone, a sister of Polyneices, was imprisoned at Creon’s command when it emerged that she had secretly performed burial rites for her brother by sprinkling earth on his corpse. Antigone’s dungeon cell became her tomb when she killed herself by hanging and it was in that state that Haemon, Creon’s son and Antigone’s lover, discovered her pale corpse. Impassioned with rage, he assailed Creon and in the process killed himself upon his own sword. The line that sets the seal on the tragic scene is delivered by a messenger to Haemon’s mother, Eurydice.

²² See, generally, John Spalding Gattton, “‘There must be blood’: mutilation and martyrdom on the medieval stage”, in *Violence in Drama*, J Redmond ed (Cambridge: CUP, 1991), 79-91.

²³ Mark Griffith ed, *Sophocles: Antigone* (Cambridge: CUP, 1999).

Through the messenger's report (an ancient precedent for the theatrical technique of using on-stage witness narrative), we learn that when Haemon (the 'man of blood') took Antigone in a final embrace, 'he spurted a quick stream of bloody drops onto her white cheek' (1238-1239). This sealed the violent performance of Creon's will and law. Red blood on a white cheek was an established sign of ritual mourning. (Euripides' *The Suppliant Women*, records that the Argive mothers were directed to mourn their dead sons with the words: 'Bloody the white fingernail along the cheek, and stain the skin!').²⁴ The blood on Antigone's white cheek was also a sign of her lost innocence, and as such it set a tragic seal on her will to marry Haemon.²⁵

The climactic crypt scene in Shakespeare's *Romeo and Juliet* is in some salient respects similar to the climactic dungeon scene in Sophocles' *Antigone*. When Romeo finds Juliet in the crypt, he associates her facial appearance with the sign of red and white, observing that 'Beauty's ensign yet / Is crimson in thy lips and in thy cheeks, / And death's pale flag is not advanced there' (*RJ*, 5.3.94-96). Believing Juliet to be dead, Romeo kills himself, as Haemon did, by an act that is at once deliberate and unintended. Shakespeare has Romeo express his performance in the legal terminology of a deed that has been sealed and thereby finalised or 'engrossed', but he does so with typically poetic disregard for legal technical distinctions between doctrinal categories. He blends the sense of contractual act and testamentary consequence:

²⁴ F. W. Jones trans, *Euripides: The Suppliant Women*, in *The Complete Greek Tragedies*, Volume 4, D. Grene and R. A. Lattimore eds (Chicago: University of Chicago Press, 1974), 139.

²⁵ L. J. Bennett and W. B. Tyrrell, 'What is Antigone Wearing?', *The Classical World* 85(2) (1991), 107-109.

...Eyes, look your last;
Arms, take your last embrace, and lips, O you
The doors of breath, seal with a righteous kiss
A dateless bargain to engrossing death. (5.3.112-115)

Shakespeare returned to a similar set of thoughts in *Henry V*, where the Duke of Exeter narrates the report of a touching encounter between the dying Duke of York and the body of his comrade, the Duke of Suffolk. He tells how York kissed ‘the gashes / That bloodily did yawn upon his face’ (4.6.13-14), and:

So did he turn, and over Suffolk’s neck
He threw his wounded arm and kissed his lips,
And so, espoused to death, with blood he sealed
A testament of noble-ending love. (4.6.24-27)

In *Henry V*, Shakespeare describes written evidence of the treachery of the Earl of Cambridge, Lord Scroop and Sir Thomas Grey in terms that seem to allude to the legal idea of the deed ‘engrossed’. Henry considers the written evidence to be truth ‘as gross / As black on white’ (2.2.103-4). In the next Act of the same play, allusion to legal documentation acquires something of a testamentary sense through the use of the word ‘attest’. Henry challenges his troops to ‘attest / That those whom you called fathers did beget you. / Be copy now to men of grosser blood’ (3.1.22-24). ‘Copy’ and ‘gross’ both refer to deeds in their final, and thus finest, form.

In *Julius Caesar*, when Antony speaks of ‘a parchment, with the seal of Caesar’ (3.2.129) and later produces ‘the will, and under Caesar’s seal’ (3.2.233),

there can be little doubt that he is holding a white parchment sealed with red wax. If the parallel sign of blood on Caesar's white toga and corpse does not confirm it, then it is confirmed by Antony's prophesy that if the plebeians were to read the will, they would 'go and kiss dead Caesar's wounds, / and dip their napkins in his sacred blood' (3.2.133-4). The motif of the napkin dipped in blood was not exclusive to tragedy. In Shakespeare's intensely testamentary comedy *As You Like It*, we have the curious incident of Orlando being delayed by a violent encounter with a lioness. He sends a bloodied handkerchief as proof of his valour and as an evidentiary explanation for his tardiness. *A Warning for Fair Women*, an anonymous domestic tragedy contemporary with both *Julius Caesar* and *As You Like It*, seems to have inspired elements of Shakespeare's plays or to have been inspired by them. In *A Warning*, the murderer Browne kills his lover's husband and dips his 'hankerchief in his blood' in order to 'send it as a token' to her (v. 1385-86).²⁶ Browne makes express what is only implied in Shakespeare's plays – that the stained handkerchief represents bloody performance: 'Upon this bloody Handkercher the thing, / As I did promise and have now performed' (1412-13). Subha Mukherji observes that 'in its statement of promise and performance, this gesture enacts a perverse marriage sequence'.²⁷ (As such, it reminds us of the inverted nuptials witnessed in the death tryst of Haemon and Antigone.) The resonance between *A Warning* and *Julius Caesar* is loudest where both plays refer to the speaking tongues of bloody wounds. In *Julius Caesar*, 'sweet Caesar's wounds' are 'poor poor dumb mouths' (3.2.218) and Antony wishes that his oratory could 'put a tongue / In every wound of Caesar'

²⁶ Charles Dale Cannon, *A Warning for Fair Women: A Critical Edition* (The Hague and Paris: Mouton, 1975).

²⁷ *Law and Representation in Early Modern England* (Cambridge: CUP, 2006), 120.

(3.2.221-2). In *A Warning*, Browne reports that ‘In ev’ry wound there is a bloody tongue, / Which will speake... / By a whole Jury I shall be accusde’ (1995-99). There is something more here than the mere evident sight of blood on white flesh. There is also the testimonial sound of speech. The playgoers are presented with a signal object as a thing to be seen, but also as a thing to be heard. A true case of hearing the evident.²⁸

As the mark of red on white is a stage property that signals tragedy, so the ‘ring’ is a stage property that signals comedy. The distinction is not strict, of course (we have already noted the bloody handkerchief in *As You Like It*, and the sealed bond in *The Merchant of Venice* is a tragic element in the context of a play that is formally comedic), but as a general rule the bloody mark is a tragic sign and the ring is a comedic symbol. In Chapter Three [of *Acts of Will*], we considered how the ring operates in comedy to symbolize the folly of willing submission to bonds (bands) and the folly of repeating errors in a never-ending circle of ‘here we are all over again’. I will only add here that the placement of the ring conceit within the plot of the comedic action is strikingly consistent across Shakespeare’s plays. Where a comedy contains confusion and tricks with rings, the relevant scenes nearly always come towards the end of the play. As such they speak of comedy’s cyclical errors – its errors without end. They also put a seal on the ‘testamentary performance’ (including the ‘deed’ or ‘action’ of the play) as a signet ring does. Examples of concluding or late scenes involving ring games and ring conceits include the following: *Comedy of Errors* (4.2-4.4, 5.1); *Two Gentlemen of Verona* (4.4, 5.4); *The Merchant of Venice* (5.1: in this play, ‘ring’ is the very last word); *The Merry*

²⁸ On judgment by sight and sound, see the discussion in Chapter Five [of *Acts of Will*].

Wives of Windsor (5.5); *All's Well That Ends Well* (5.3). *Twelfth Night, or What You Will* is the exception in which the ring game comes early in the play (1.5, 2.2, 3.1), but that comedy is sealed in the most poignant re-joining of twin brother and sister as if re-joining a signet ring to the counterpart of the wax seal. It is, I think, the most touching ending to any of Shakespeare's comedies, even before one conjectures that it might imagine the reunion of Shakespeare's own daughter Judith to the twin brother she had lost. With such an ending, it is little wonder that Shakespeare broke with his pattern and pushed the folly of the ring game to the beginning of the play.

In *As You Like It* we have no actual ring game, but the repeated reference to spring as a 'pretty ring time' in the stanzas of a song comes in Scene 5.3, which is exactly where we would expect it. Coming at the end of the play, the ring sets a seal on the comedy by focusing, not upon the mark made by the ring (as the fatal finality of a tragedy must), but by focusing upon the never-ending nature of the circle itself. In comedy, errors go on, but so does life. The ring in *All's Well That Ends Well* has a distinctively testamentary quality, but not in any morbid sense. The ring is testamentary in the sense that it had been 'Conferr'd by testament to th' sequent issue' (*AWW*, 5.3.196) down six generations. It is also testamentary in the fact that it performs an evidentiary function in the trial of Diana's virtue. Presented with the evidence of the ring, her accuser blushes red on his white cheeks (the comedic equivalent of Juliet's or Antigone's tragic 'blush'). The ring becomes the chief witness in this scene because Parolles, who was summoned as a witness to give oral evidence in the matter, cannot be relied upon on; he is 'So bad an instrument' (*AWW*, 5.3.201). There is a joke for the lawyers in this, for parol (oral) evidence is the exact opposite of the documentary evidence that an 'instrument' supplies.

Like the classical pairing of the mask of tragedy with the mask of comedy, the blood red wax of tragedy and the ring of comedy are two sides of the same

dramatic performance. We noted earlier that when Shakespeare was writing, the seal was usually created by pressing a signet ring or other matrix into the hot wax (*Ham*, 5.2.47-52). Taking this as our metaphor, we can say that the signet ring of comedy leaves its impression on the bloody wax of tragedy and that it succeeds as comedy because it has touched the tragic but come away untainted. Aristotle used the image of wax and signet to explain the unity of body and soul. He argued that the body is not of the same substance as the soul, but that body and soul are imprinted with the same identity: ‘Hence we need not ask whether the soul and body are one, any more than we need to ask this about the wax and the seal or, in general, about the matter and the thing of which it is the matter’.²⁹ The signet made of gold imparts its form to the wax, but does not impart its golden substance. Extending the allegory in the direction of Christian theology, we might say that during the life of a person the golden signet of the soul is pressed into constant contact with the wax of the earthly body, so that the waxen flesh bears the seal or identity of the soul. At death, the wax is melted and the same golden signet makes a new and more perfect impression on the new and more perfect wax of the eternal body.³⁰

As we perform our lives in flesh, so we perform ourselves in dress, including the material form of clothes. Parolles is considered to be an unreliable instrument because his soul ‘is his clothes’ (2.5.43-44), but even such stuff as clothes can bear the sincere imprint of our identity. The actor who played the courtly Parolles would very likely have been wearing the clothes that a dead gentleman or nobleman had left to the company or which had been sold to the company by a beneficiary of the

²⁹ Aristotle, *Peri psyches* (‘on the soul’), III.432b.

³⁰ 1 Corinthians 15:52 ‘...the dead shall be raised up incorruptible, and we shall be changed’ (Geneva Bible, 1599).

deceased man's testament.³¹ When Richard Burbage, playing Hamlet, pondered the material remains that the human soul leaves behind at death, did he pause to contemplate that his costume was (we can conjecture) a material remnant of another man's life?

Talking of material remnants brings us back to the glove or gage. We have noted that it is a sign of the hand's action in executing documents and performing all sorts of acts of will in the worlds of theatre and law. The glove also has a prior material connection to legal performance in the fact that gloves were made of the same stuff – animal skin – as the most important legal deeds. Skin is simultaneously the very definition of superficial and the very definition of a materially significant remnant of life. Shakespeare, whose father was amongst many other things a glove-maker and seller of skins, grew up in Stratford surrounded by material connections between hand and deed. Hamlet has just been discussing legal formalities at the graveside when he asks 'Is not parchment made of sheepskins?', we should not be surprised that Horatio's response is very precise: 'Ay, my lord, and of calves' skins too' (*Ham*, 5.1.107-108).

We will stay in Stratford-upon-Avon. It seems the proper place to conclude this study of testamentary will as we mark the four hundredth anniversary of Shakespeare's last will and testament. When most people think of Shakespeare's will, one thing comes immediately to mind. It is a thing that I have preferred to leave until last, as he seemingly did. I am referring of course to the solitary provision by

³¹ Peter Sallybrass, 'Worn Worlds: Clothes and Identity on the Renaissance Stage', in *Subject and Object in Renaissance Culture*, Margreta de Grazia and Maureen Quilligan and Peter Sallybrass eds (Cambridge: CUP, 1996), 289-320.

which Shakespeare made a bequest in favour of his wife (without actually mentioning Anne's name). The provision, added between the lines towards the end of his will, simply reads: 'Itm, I gyve vnto my wief my second best bed wth the furniture'. That bed has generated much entertaining speculation on the nature of Shakespeare's relationship to Anne.³² I will let them lie in it. My only suggestion is that Shakespeare was probably content to think that Anne would be looked after by their daughter Susanna and her husband Dr John Hall. If we have learned anything from our study of performance and will, it is that formal appearances are never the end of the matter. With legal forms, we must be especially careful to read between the lines, and beyond the lines. As Hamlet points out: 'They are sheep and calves which seek out assurance' in legal documents (*Ham*, 5.1.109-10). What he is saying is that to put one's hope in legal forms is to follow the flock. The legal suitor is on this view someone who pursues the sight of the form without questioning what lies behind it or where it might lead. I like to think that Shakespeare is mocking legalistic habits of unthinking formalism and all routine forms of behaviour that are devoid of imaginative acts of will.

Another interlineal addition to Shakespeare's will was an item describing gifts of money to Shakespeare's 'fellows' in the London theatre: John Heminges, Richard Burbage and Henry Condell. The money was given for the express purpose of purchasing rings to remember Shakespeare by. We now know that Heminges and Condell went a good deal further, for it is in large part down to their efforts that we

³² For a measured view see E. A. J. Honigmann, 'Shakespeare's Will and Testamentary Traditions', in *Shakespeare and Cultural Traditions*, Tetsuo Kishi, Roger Pringle and Stanley Wells eds (Newark: University of Delaware, 1994), 127–37.

have the First Folio edition of *Mr. William Shakespeares Comedies, Histories, & Tragedies*.³³

Shakespeare's son Hamnet, who had predeceased his father by almost twenty years, was nowhere expressly referred to in his father's will. It would have been most strange if he had been. There is nevertheless a sense in which the absent Hamnet is present in the will. Park Honan observes that the weak point of Shakespeare's own estate was 'its terrible lack of a male heir',³⁴ and the wording of the will, even allowing that it was a variation on a standard form, seems to strain to make up for that lack. It provides no less than seven times that the estate should pass by entail to 'heires Males of the bodie' of Shakespeare's daughters and their issue (on 'entail', see Chapter Three [of *Acts of Will*]). Hamnet is an absent presence in the will. Shakespeare explores something like this sense of absent presence in a passage in *King John*, written around the time of Hamnet's death. Constance speaks movingly of a parent's grief at the loss of a son:

Grief fills the room up of my absent child,
Lies in his bed, walks up and down with me,
Puts on his pretty looks, repeats his words,
Remembers me of all his gracious parts,
Stuffs out his vacant garments with his form (*KJ*, 3.3.93-97)

Perhaps these words reflect some of Shakespeare's thoughts on the loss of his son. That is what I hear, and I make no apology for taking the romantic view. John Dover

³³ London: Printed by Isaac Jaggard and Edward Blount, 1623.

³⁴ Park Honan, *Shakespeare: A Life* (Oxford: Oxford University Press, 1999), 233.

Wilson was of a very different opinion. For him this description of grief seemed ‘conventional and frigid’.³⁵ There can be no argument on matters of taste, but there may be some middle ground to be found in the fact that Shakespeare would surely not have intended the grief in this passage to be appreciated by the playgoers as a representation of his own grief. It is poetry intended to be performed on stage (and by the time of the First Folio, if not before, intended to be read on the page). As such, the passage demonstrates Shakespeare’s poetic capacity to animate material stuff (even the mundane ‘room’, ‘bed’ and ‘garments’) so as to make them humanly touching. This is poetry with testamentary power, for as it gives life to inanimate things it connects the world of the living to the world after death. It is with this power that Shakespeare still fills up the house.

³⁵ John Dover Wilson ed, *King John* (Cambridge: CUP, 1936), vii.

Chapter Three

Shakespeare on Proof and Fabricated Truth

[B]lessed he who has a skin and tissues, so it be a living one, and the heart-pulse everywhere discernable through it.¹

The imaginary English editor of Carlyle's *Sartor Resartus* observes that the imaginary philosopher Teufelsdröckh 'though a Sansculottist, is no Adamite'.² Commenting on this, Michael Carter explains that Teufelsdröckh (and, by implication, Carlyle) 'will have nothing to do with the notion that if we were to strip off our outer casings truth, equality and justice would blossom', for he knows 'that social being is "clothed-being"'.³ It is true that Carlyle wrote that man 'is by nature a *Naked Animal*; and only in certain circumstances, by purpose and device, masks himself in Clothes', but that observation was made in the context of comparing

¹ Thomas Carlyle, *Past and Present* (London: Chapman & Hall, 1843), Book II, chapter 17.

² Thomas Carlyle, *Sartor Resartus: The Life and Opinions of Herr Teufelsdröckh* (1833–4) (Boston: James Munroe and Co, 1836), Book I, chapter 9.

³ Michael Carter, *Fashion Classics from Carlyle to Barthes* (Oxford and New York: Berg, 2003), 5.

human zoological nature to the biological nature of plant and animal life.⁴ His point was only that the human is somewhat under-covered in its zoological nature compared to the almost complete covering that one sees on birds and most land-dwelling mammals. *Sartor Resartus*, Carter further elaborates, ‘was never a renunciation of clothes, or even a criticism of elaborate costume. It was a manifesto for authenticity’.⁵

In this chapter, we will examine early modern suspicion of superficialities and the corresponding early modern appreciation that the truths on which civil life relies may be fabricated things. The very phrase ‘naked truth’ was a poetic fiction coined in the early modern period by the Scottish poet Alexander Montgomerie,⁶ a favourite of King James VI of Scotland (James I of England). This chapter will reveal that ‘truth’, for purposes of legal proof, is as much a fabricated or ‘coined’ fiction as the contemporary poetic concept of ‘naked truth’.

Lorna Hutson has located *The Invention of Suspicion*⁷ in the early modern period, and she finds significant clues to a culture of suspicion in the creative, including theatrical, culture of England at that time. The focus of this chapter is specifically upon suspicion of dress in early modern England and the relation that this had to the trial of truth in society at large and in courts of law in particular. Significant indicators of that cultural connection are to be found within

⁴ Carlyle, *Sartor Resartus*, Book I, chapter 1.

⁵ Carter, *Fashion Classics*, 11.

⁶ ‘The Cherrie and the Slae’ (ca.1585) (Edinburgh: Robert Waldegrave, 1597), stanza 82. (Stanza 81 commences with a call to test a truth by confrontation ‘face for face’.)

⁷ Lorna Hutson, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford: Oxford University Press, 2007).

contemporary polemic (e.g. Phillip Stubbs complained in his *Anatomy of Abuses in England* that the ‘confuse mingle mangle of apparell’ had produced ‘general disorder’)⁸ and within literary and dramatic works, not least in the works of William Shakespeare (the son of a Warwickshire glove-maker and sometime lodger with a London wig-maker).⁹ Of course, suspicion, indeed cynicism, regarding proof and truth in courts of law was no new phenomenon. In Plato’s *Phaedrus*, the character of Socrates makes an observation that must have rung as true in Shakespeare’s day as it did in ancient Greece, as it does today:

[H]e who is to be a competent rhetorician need have nothing at all to do, they say, with truth in considering things which are just or good . . . For in the courts, they say, nobody cares for truth about these matters, but for that which is convincing; and that is probability, so that he who is to be an artist in speech must fix his attention upon probability.¹⁰

In the early modern period, general suspicion of an individual’s capacity to perform a false public persona was widespread, for this was the age in which the modern individual was beginning to emerge from the cocoon of collective social identity that had prevailed in the societies, guilds and feudal categories of the Middle Ages. Suspicion of evident forms was acute in the English law court, especially in relation to contractual and other documentary formalities in a world of increased monetary

⁸ Phillip Stubbs, *Anatomy of Abuses in England* (London: Richard Jones, 1583), sig. C2^v.

⁹ Charles Nicholl, *The Lodger: Shakespeare on Silver Street* (London: Allen Lane, 2007).

¹⁰ *Plato in Twelve Volumes* (trans. Harold N. Fowler), Vol. 9 (Cambridge, MA: Harvard University Press, 1925), 272d–e.

lending and mercantile trade, but it was nowhere more acute than in relation to individuals' physical appearance in an England gripped by suspicion of covert Roman Catholicism (including concealed Jesuit spies) and even of witches in disguise. The rising popularity of the 'masque' form of entertainment at the English court throughout the early modern period can be seen as an attempt by the ruling class to reassert respect for superficialities in the face of their diminishing reliability.¹¹

At the end of the sixteenth century, sumptuary laws were still on the statute books and dress was in theory supposed to be a trustworthy indicator of social role and social standing, but in practice the sumptuary laws were hardly enforced and dress was considered to be an increasingly unreliable indicator of social role, social rank and individual identity. There was great suspicion of dressing out-of-status, and that concern was particularly strong in relation to martial dress. In Shakespeare's *Henry V* when the herald from the King of France declared 'You know me by my habit' (3.6.87), he was declaring what was certainly true in London in the days of the historical Henry V but which had become much less certain in 1599 when Shakespeare first staged his play. Dress continued to operate in early modern England 'as a form of material memory' that 'incorporated the wearer into a system

¹¹ Jennifer Chibnall, "'To That Secure Fix'd State': *The Function of the Caroline Masque Form*", in David Lindley (ed.), *The Court Masque* (Manchester: MUP, 1984), 78–93, 80–1; Robert I. Lublin, "'Whosoever Loves Not Picture, Is Injurious to Truth': Costumes and the Stuart Masque", in Cynthia Kuhn and Cindy Carlson (eds), *Styling Texts: Dress and Fashion in Literature* (Youngstown, NY: Cambria, 2007), chapter 4.

of obligations',¹² but respect for dress prescriptions were in decline. As the force of collective dress codes was on the wane, so the freedom and responsibility to fashion oneself appropriately was on the rise. Jurists understood this. William Dugdale wrote of the contemporary lawyer that 'even as his Apparell doth show him to be, even so shall he be esteemed'.¹³ This same responsibility is expressed in the advice Polonius gave his son Laertes in Shakespeare's *Hamlet*:

Costly thy habit as thy purse can buy,
But not expressed in fancy; rich, not gaudy:
For the apparel oft proclaims the man,
...
This above all: to thine own self be true,
And it must follow, as the night the day,
Thou canst not then be false to any man. (1.3.73–5, 81–3)

The irony is that the theatre was a prime forum for the performance of falsehood. Indeed, the growing popularity of theatre served to heighten general mistrust of dress as an indicator of social status, not least because actors sometimes wore garments handed down from their noble patrons.¹⁴ (Although it has been observed that 'when characters in Shakespeare's plays change their clothes, and hence their status, they

¹² Peter Stallybrass and Ann Rosalind Jones, *Renaissance Clothing and the Materials of Memory* (Cambridge: Cambridge University Press, 2000), 22.

¹³ William Dugdale, *Origines Juridicales* (London: F and T Warren, 1666), fo. 197.

¹⁴ Peter Stallybrass, 'Worn Worlds: Clothes and Identity on the Renaissance Stage', in Margreta de Grazia, Maureen Quilligan and Peter Stallybrass (eds), *Subject and Object in Renaissance Culture* (Cambridge: CUP, 1996), 289–320.

never of their own (represented) volition disguise up the social scale'.¹⁵) Meanwhile, courtiers were accused of dressing like actors.¹⁶ In the martial context, a significant contributor to the culture of mistrust was the fact that, although early Tudor militia regulations had communicated the debt of service 'inherent in the king's coat' and had defined the ways in which it 'covered men's legal status',¹⁷ the modern idea of military uniform did not yet exist.¹⁸ It was therefore expedient for vainglorious individuals to employ dress to make an outward but empty show of valour. It is with such doubts in mind that in Shakespeare's *Henry V* the Duke of Orleans and the Constable of France take opposing sides in a mock trial of the Dauphin's valour. Orleans argues that the Dauphin's valorous virtue is obvious, to which the Constable contradicts that 'never anybody saw it but his lackey. 'Tis a hooded valour' (3.7.80–1). On the eve of The Battle of Agincourt, Henry, disguised at this point as a common soldier, prays that God will 'steel' his soldiers' hearts (4.1.245). Earlier he had directly summoned his soldiers to '[d]isguise fair nature with hard-favoured

¹⁵ Susan Baker, (1992) 43.3 'Personating Persons: Rethinking Shakespearean Disguises' *Shakespeare Quarterly* 303–16, 313.

¹⁶ Thomas Nashe railed against 'England, the players' stage of gorgeous attire, the ape of all nations' superfluities'. (*Christ's Teares Over Jerusalem* [1593] [London: Longman, 1815], 135.)

¹⁷ Vimala C. Pasupathi, 'Coats and Conduct: The Materials of Military Obligation in Shakespeare's Henry Plays' (2012) 109.3 *Modern Philology* 326–51, 366.

¹⁸ In the Middle Ages, sumptuary laws had been passed in an attempt to prevent wealthy lords from kitting out private armies of retainers in their livery: Jane Ashelford, *The Art of Dress: Clothes and Society, 1500–1914* (London: National Trust, 1999), 289.

rage' (3.1.8), just as their fathers had proved themselves in war and thereby been made 'war-proof' (3.1.18). Such language indicates the widespread contemporary suspicion that fair and feint nature was all too often concealed in martial disguise, not only at war, where one might find a 'counterfeit cowardly knave' (5.1.51), but more especially in the counterfeit valorous dress adopted in peaceful civil life. Certain false or misleading indicators of martial prowess, such as the doublet (originally the comfortable second or 'double' layer worn under a breastplate) and slashed cloth were even items of general fashion at this time, and not just for men. The problem of false representation of martial valour was exacerbated by the fact that real soldiers, if we can read a contemporary complaint into Shakespeare's line, had savage manners and dressed in 'diffused attire' (5.2.61).

One of the recurring themes of Shakespeare's plays is that even the ceremonial vestments of kings are no sure proof of true kingship. The premise of Shakespeare's *Henry V* is that the King of France rules under a false title; that his title is founded on mere 'shows of truth' (1.2.74). At the start of the play, King Henry invites his counsellor, the Archbishop of Canterbury, to outline Henry's true title to France, and in doing so the king warns the archbishop to speak truthfully – not to 'fashion', 'colour' or 'suit' falsely (1.2.15–19). Having been reassured as to his own true title to France, Henry sends the Duke of Exeter to France, where he demands that the French king should 'divest' himself and 'lay apart . . . / all wide-stretched honours that pertain / By custom and the ordinance of times / Unto the crown of France' (2.4.82, 86–8). The metaphor represents the royal title of the French king as a stretched-out layer of 'costumary' title with which he has been falsely invested. The dress dimension of Shakespeare's notion of kingship is confirmed later in the play when King Henry, reflecting on the nature of a king, observes that 'his ceremonies / laid by, in his nakedness he appears but a man.'

(4.1.96) and wonders to himself if a king's ceremony is anything other than 'place, degree and form / Creating awe and fear in other men?' (4.1.200–1). All of which recalls the moment when he became king of England and donned the 'new and gorgeous garment majesty' (2 *Henry IV* 5.2.45).¹⁹ In Shakespeare's *King Lear* we see how naked a king may become when he divests himself of his invested authority.²⁰

What does it mean to 'prove' a title? What qualifies as 'proof'? The word 'proof' is nowadays used to indicate material that withstands physical trial (we talk of 'bulletproof' and 'waterproof' clothing) and to indicate material evidence that withstands legal trial. When Shakespeare was writing, proof as a quality of clothing and adjudicatory proof as a quality of legal evidence were associated by a shared suspicion of appearances and a shared desire to employ processes of probation (processes of 'probing') to discover hidden things. The witch trials that were pervasive in the Old World and the New World throughout this period are terrible testimony to the force of this concern, for they were focused to a large extent upon the skin of alleged witches. One preferred mode of proof was to 'prick' or 'to probe'

¹⁹ We might say that 'kingship itself is a disguise, a role, an action that a man might play': David Scott Kastan, "'The King Hath Many Marching in His Coats': Or, What Did You Do in the War, Daddy?," in Ivo Kamps (ed.), *Shakespeare Left and Right* (New York: Routledge, 1991), 241–58, 252. Compare the passing of the royal robes to the biblical King David, Israel (1 Sam. 18.4).

²⁰ In the 2007 Royal Shakespeare Company production, directed by Trevor Nunn, Sir Ian McKellen in the title role made the point by baring himself completely below the waist.

the suspect's skin at the site of so-called devil's marks.²¹ What makes this relevant to us today is that an awareness of Shakespeare's (and other early modern) insights into proof can serve to cultivate a critical appreciation of the fabricated nature of modern legal notions of truth.

In *Othello*, we find what is surely the most famous of Shakespeare's references to proof. It occurs when Othello challenges Iago to provide incontrovertible evidence of Desdemona's marital infidelity: 'Be sure of it: give me the ocular proof . . . / Make me to see't, or at the least so prove it / That the probation bear no hinge nor loop / To hang a doubt on, or woe upon thy life!' (3.3.398, 403–5). Othello demands proof through direct physical witness of Desdemona's betrayal (so-called ocular proof). This is the sort of proof that we have when someone is caught 'in the act' or, which is the next-best thing, caught 'red-handed'. When someone is caught red-handed, the staining of the skin with blood is deemed to obviate the need to probe any deeper to find the truth of the offence. This idea of the marked hand as (literally) 'manifest' proof goes back to antiquity; Cicero, for example, refers to *facinus manifesto compertum* ('clear and manifest crime') in his *Defence of Aulus Cluentius Habitus*.²² As it happens, Othello will settle for a lesser standard of material evidence of Desdemona's infidelity, provided it admits of no relevant doubt

²¹ Heikki Pihlajamäki, "'Swimming the Witch, Pricking for the Devil's Mark": Ordeals in the Early Modern Witchcraft Trials' *The Journal of Legal History* 21.2 (2000), 35–58. See, further, Orna Alyagon Darr, *Marks of an Absolute Witch: Evidentiary Dilemmas in Early Modern England* (Farnham: Ashgate, 2011). Darr describes other skin-focused practises, including 'scratching'.

²² *Pro A. Cluentio Habito* XIV.41. Michael Grant (trans.), *Cicero: Murder Trials*, rev. edn (London: Penguin, 1990), 121, 145.

(what he calls ‘probation’ that will ‘bear no hinge or loop’). When we understand what is meant when Othello refers to ‘probation’ without ‘hinge’ or ‘loop’, we will have fashioned a key to unlocking the significance of the idea of proof, not only in the works of Shakespeare but also in the world of law.

In the notes to his 2001 Arden edition of *Othello*, E. A. J. Honigmann relies on the Oxford English Dictionary entries for ‘hinge’ and ‘hang’ to support the view that Othello is referring to something that swings or pivots, so that Othello is demanding proof so secure ‘that doubts will not move it’.²³ As an explanation, this is insufficiently precise. In the 1958 Arden edition of the play, M. R. Ridley had observed that Othello’s metaphor of ‘hinge’ and ‘loop’ is very unusual in Shakespeare’s works, and that ‘we have therefore to start from scratch’ in discerning its meaning. Ridley continues: ‘it is not easy to see what the force of the figure is’, observing that it is not like Shakespeare ‘to combine in one picture incongruous specific concrete details’, and, significantly:

This may all seem to be making a fuss about nothing, since the ‘general sense’ is clear; but with an artist of Shakespeare’s vivid pictorial imagination we should never, I think, be easily satisfied with ‘general sense’ and a consequently woolly apprehension when he himself is being concretely specific.²⁴

It is submitted that the hitherto mysterious signification of Shakespeare’s supposedly mixed metaphor of ‘probation’, ‘hinge’ and ‘loop’ is to be found in the technical

²³ William Shakespeare, *Othello* (E. A. J. Honigmann ed.) (London: Arden Shakespeare, 2001), 232.

²⁴ William Shakespeare, *Othello* (M. R. Ridley ed.) (London: Arden Shakespeare, 1965), 115.

terminology of military dress. ‘Probation’ is an allusion to the process by which medieval and early modern armourers tested or ‘proved’ their finished work for weaknesses, a process which required the armour to be, quite literally, ‘probed’ by a range of weaponry. The ‘hinge’ and ‘loop’ in Othello’s quote refer to the weak points in a suit of armour – these are, as Othello puts it, the main sites of ‘doubt’. No suit of armour could function without the loops or buckles by which it was strapped together, and in certain places sections of armour were joined by metal hinges. As Charles Ffoulkes writes:

It is almost superfluous to mention the straps which join the various portions of the suit. These are always placed, where possible, in positions where they are protected from injury; as, for example, on the jambs they are on the inside of the leg, next to the horse when the wearer is mounted, and the *hinge* of the jamb being of metal is on the outside.²⁵ (emphasis added)

Thus Othello’s image of ‘probation’, ‘hinge’ and ‘loop’ is not an inconsistent mix of metaphors, but a single extended metaphor, and one that he, as a military general, would naturally employ. The metaphor also fits perfectly well with Othello’s express concern to establish adjudicatory ‘proof’. Armour that passed the process of probation (the process of being proved) was said to qualify as ‘proof’. This sequential process is paralleled in an earlier part of Othello’s narrative, where he says: ‘I’ll see before I doubt; when I doubt, prove; /And on the proof, there is no more but this: / Away at once with love or jealousy’ (3.3.213–15).

In the medieval and early modern periods an armourer’s proof found distinctively physical expression in the very surface of his work. The armourer would shoot arrows and crossbow bolts to establish the thickness of his armour and

²⁵ Charles Ffoulkes, *The Armourer and His Craft* (London: Methuen, 1912), 54–5.

the resulting ‘proof marks’ would be left on display (and sometimes decorated) deliberately to demonstrate the impenetrable quality of the metal.²⁶

As early as the end of the fifteenth century, firearms were in frequent use and several pieces of armour from this period ‘show a proof mark: a bullet “bruise” in some inconspicuous place, by which the armourer had proved that the plate could withstand the shot of handguns’.²⁷ The armourer’s practice of probation and proof continued to be current and widespread in Shakespeare’s lifetime.²⁸ Proof was frequently made by bullet or crossbow bolt, but it could also be made by the stroke of a sword. Ffoulkes observes that ‘as late as the seventeenth century we have evidence that armour was proved by the “*estramaçon*” or sword blow’,²⁹ noting that armour was graded as ‘full proof’ (*à toute épreuve*) or ‘half proof’ (*à demi épreuve*) according to its resistance to different types of weapon. Such gradation of proof is highly reminiscent of those theories of legal proof (which had prevailed in the Civil Law of mainland continental Europe since the early medieval period), that distinguished ‘full proof’ (*plena probatio*) from ‘half proof’ (*semiplena probatio*).³⁰ Thus the language for describing the quality of legal proof established by degrees of ocular and other evidence developed in a culture in which remarkably similar

²⁶ Ibid., 55.

²⁷ Stephen Slater, *The Illustrated Book of Heraldry* (London: Hermes House, 2006), 21.

²⁸ Harold Arthur Dillon, ‘A Letter of Sir Henry Lee, 1590, on the Trial of Iron for Armour’ (1888) 51 *Archaeologia* 167–72.

²⁹ Ffoulkes, *The Armourer and His Craft*, 62.

³⁰ See James Franklin, *The Science of Conjecture: Evidence and Probability before Pascal* (Baltimore: The Johns Hopkins University Press, 2001), 15–23.

language was taken to indicate the quality of material proof as evidenced by the marks which armourers inflicted upon the surface of their work. A similarly close cultural relationship existed between legal and material proof in England, which should not surprise us when we consider that trial by battle had been a normal method of disposing of legal disputes in England after the Norman Conquest, and that it survived as an occasional novelty (but latterly without actual combat) until it was finally abolished in 1819.³¹

We can be confident that it is a military and metallic metaphor of proof that Othello is applying to the evidence of Desdemona's infidelity when he refers to probation without a 'hinge' or 'loop' of doubt. Elsewhere in *Othello* we find frequent clues to the fact that Othello (and, by extension, Shakespeare) has in mind an idea of proof that measures the quality of external evidence by its thickness, as if it were clothing, armour or some other thing that covers the unclothed state that is optimistically imagined to be the 'naked truth'. When Roderigo makes a pass at Cassio with his sword, the undercoat to Cassio's armour protects him from injury. Presumably Cassio had been struck between the joints of his armour. If so, he seems, like Othello, to conceive the joint as a site of doubt. Thus he emphasizes Roderigo's inability to know if he (Cassio) is protected beneath his metal outside: 'That thrust had been mine enemy indeed, / But that my coat is better than thou know'st: / I will make proof of thine' (5.1.24–6). Early in the play, when Othello's own probity is called into doubt, the weakness of the evidence against him is directly compared to the thinness of clothing: 'To vouch this is no proof, / Without more wider and more overt test / Than these thin habits and poor likelihoods / Of modern seeming do

³¹ Stat 59 Geo III c46. See James Bradley Thayer, *A Preliminary Treatise on Evidence* (Boston: Little, Brown, & Co, 1898), 7–46.

prefer against him' (1.3.118–21). It is fitting, then, that when Iago presents Othello with the final damning piece of 'evidence' to establish Desdemona's supposed infidelity, it takes the form of a thin piece of cloth. Desdemona's strawberry-spotted handkerchief (Othello's first gift to her) is the thin material which, added to the rest, will, as if it were armour, at last attain the thickness of sufficient 'proof'. As Iago puts it: 'this may help to thicken other proofs / That do demonstrate thinly' (3.3.473–4). Significantly, and tragically, we know that this fabricated 'proof' did not provide an authentic account of Desdemona's conduct, even though it was taken to be a sufficient show of truth.³²

As we noted earlier, when Shakespeare was writing and staging his plays, fashionable dress had a distinctly military feel. The fact that the doublet was worn by Queen Elizabeth at once confirmed and confused its military pretensions. The culture of suspicion or doubt concerning external martial appearances coincided with a concern to discover the quality of a person's inner metal. Central to this concern was a renaissance of Plato's metaphorical categorization of citizens in his mythical Republic according to different types of metal.³³ A version of Plato's idea was reprised by Barnaby Rich (the same who supplied the immediate narrative source for Shakespeare's *Twelfth Night*) in his 1578 work, *Allarme to England*.³⁴ In another publication of 1578, Walter Darell's treatise *Concerning Manners and Behaviours*, we find the earliest reference in the English language to inner 'metal' or 'mettle' as a

³² On forging, fabrication and the weaving of lies in *Othello* see, further, Catherine Bates, 'Weaving and Writing in Othello' (1993) 46 *Shakespeare Survey* 51-60.

³³ Plato, *The Republic* III.4 (trans. D. Lee), 2nd edn (Harmondsworth: Penguin, 1974).

³⁴ Barnaby Rich, *Allarme to England foreshewing what perilles are procured, where the people liue without regarde of martiall lawe* (London: Henrie Middleton, 1578).

quality of character that is resistant to a probe (and which would therefore qualify as ‘proof’ of character). Darell’s complaint is that he sees too many gloriously adorned courtiers who ‘like tender mylkesops that can beare no brunt: or that, / beside a glorious outside, haue not mettall inough in / them to abide a flea byting’.³⁵ Shakespeare’s late drama, *Cymbeline* (1610), treats a number of the motifs that concern us here, including false proof of female infidelity, cross-dressing and disguise. In its final act we find a speech of Posthumus Leonatus which precisely echoes *Walter Darell’s* concern to expose the deceit inherent in the fashion for glorious garb:

Let me make men know
More valour in me than my habits show.
Gods, put the strength o’th’Leonati in me!
To shame the guise o’th’world, I will begin
The fashion, less without and more within. (5.1.29–33)

Sir John Falstaff is a Shakespearean archetype of the fashion for false outward show of martial valour. In *The First Part of Henry IV*, when Falstaff claims he is ‘no coward’ (2.2.48), Prince Henry’s short response is most meaningful when we appreciate that outward appearance and inner character are connected by material considerations of probation and metallurgy. Henry simply says: ‘We’ll leave that to the proof’ (2.2.49). Later in the play, Falstaff employs the language of false form (‘counterfeit’) to describe the action of faking his death on the battlefield in order to save his life: ‘to counterfeit dying, when a man thereby liveth, is to be no counterfeit, but the true and perfect image of life indeed. The better part of valour is discretion.’

³⁵ Walter Darell, ‘Concerning Manners and Behaviours’, in *A Short Discourse of the Life of Servingmen* (London: Ralphe Newberrie, 1578), 56.

(5.3.116–17). Another Shakespearean exemplar of the type is the character of Sir Andrew Aguecheek in *Twelfth Night*. Sir Toby Belch advises Sir Andrew, ahead of his encounter with Cesario (the disguised Viola), to set up an outward show of martial prowess as a false proof of the inner metal which in truth he lacks:

[S]o soon as ever thou see'st him, draw, and as thou draw'st swear horrible, for it comes to pass oft that a terrible oath, with a swaggering accent sharply twanged off, gives manhood more approbation than ever proof itself would have earned him. (3.4.132–5)

Yet another example is Parolles, a follower of Bertram in *All's Well That Ends Well*. In one scene, Bertram defends Parolles as a soldier of 'very valiant approof', but Lafeu does not trust the outward appearance of the man: 'there can be no kernel in this light nut. The soul of this man is his clothes. Trust him not in matter of heavy consequence' (2.5.33–4). The name 'Parolles' would have amused the lawyers and landed gentry in Shakespeare's audience, for they will have been aware that title to land could be proved by formal deed or by non-documentary (parole) evidence.³⁶ The typical non-documentary evidence was word of mouth supported by public performance of transfer known as livery of seisin.³⁷ The joke is that the form and deeds of Parolles, the liveried follower of Bertram, present contrary evidence for the state of his character. It is significant, therefore, that at the end of the play Parolles is called by the king to act as a witness in the trial of Bertram's character.

³⁶ It was generally said that a person is not permitted to 'create an uncertain estate in land by parol' (quoted in Sir Edward Coke, *The First Part of the Institutes of the Laws of England* [1628], III.299).

³⁷ Samuel E. Thorne, 'Livery of Seisin', in *Essays in English Legal History* (London: The Hambledon Press, 1985), 31–50.

For all the orthodox associations that are made between men and martial metal, it is the women in Shakespeare's plays who supply some of the most interesting studies in the probation of appearances and the proof of inner matter. This is in part because of the layering inherent in the fact that the women in Shakespeare's plays were originally young male actors dressed in female garb. It is also, in related part, because Queen Elizabeth portrayed herself as a palimpsest of military man concealing woman's flesh concealing a man's heart. The 'Virgin Queen' invited public probation to the point of her inner metal, most famously at Tilbury Docks when she addressed the troops assembled to repel the Spanish Armada of 1588: 'I know I have the body of a weak and feeble woman, but I have the heart and stomach of a king, and a king of England too.'³⁸ In *Twelfth Night*, when Viola asks, in reference to Sir Andrew Aguecheek, 'what manner of man is he?', Fabian's (mocking) reply cuts straight to the point of form and substance; of clothing and proof: 'Nothing of that wonderful promise, to read him by his form, as you are like to find him in the proof of his valour.' (3.4.199–200). In her reply, Viola admits that she is not martially inclined but is one who would 'rather go with sir priest than sir knight'; adding, crucially, 'I care not who knows so much of my mettle' (3.4.203–4).

Shakespeare explores in numerous places women's potential to demonstrate proof of inner metal. In *Hamlet*, it is demonstrated negatively where the Prince

³⁸ 'Queen Elizabeth's Armada Speech to the Troops at Tilbury' (9 August 1588), in Leah S. Marcus, Janel Mueller and Mary Beth Rose (eds), *Elizabeth I: Collected Works* (Chicago: University of Chicago Press, 2000), 326. See Carla Spivack, 'The Woman Will Be Out: A New Look at the Law in *Hamlet*' (2008) 20 *Yale J L & Human* 31–60, 46.

complains that his mother should have a heart that is penetrable and human rather than of impenetrable proof metal: ‘let me wring your heart, for so I shall, / If it be made of penetrable stuff, / If damnèd custom have not brazed it so / That it is proof and bulwark against sense’ (3.4.40–3). In *Julius Caesar*, it is demonstrated positively where Brutus’s wife, Portia, employs the yielding frailty of her flesh to demonstrate the fortitude of her character; piercing the surface of her skin to prove herself and to leave a proof mark in the form of a scar:

Tell me your counsels, I will not disclose ‘em.
I have made strong proof of my constancy,
Giving myself a voluntary wound
Here in the thigh: can I bear that with patience
And not my husband’s secrets? (2.1.310–14)

Even today, men and women seek to prove their mettle by their mode of dress. The painful and permanent marking of tattoo is an especially potent form of wound or mark by which to prove individual character and social allegiance. Prisoners and gang members are frequently marked out this way. Prison officers are also marked out by distinctive dress. Like the members of many other uniformed services, prison officers must pass through a probationary period as part of their ritual initiation into the uniformed corp. Probation is an intriguing liminal state in which the probationer has been set apart from the general polis but has not yet been fully admitted to the role of its protector. The probationary process can be observed in most uniformed professions, perhaps most notably in the military, where servicemen and women are often admitted to their corps by the appropriation of coloured headdresses – red berets, green berets and so forth. When police cadets in New York City pass their

probation, they change from probationary grey uniforms to the standard blue.³⁹

Similar probationary processes existed in the ancient world; indeed the word ‘probation’ alludes to the requirement that a man be shown to be of good quality (*probatus*) before admission as a legionary in the Roman Army. We still ‘decorate’ soldiers who prove their martial metal in time of war, by awarding them a piece of metal (a medal) to be worn on their uniformed chest where once upon a time they would have borne an armoured breastplate.

As Shakespeare’s *Othello* establishes the connection between proof of an accusation and proof of armour, so Shakespeare’s *Twelfth Night, or What You Will* connects these concerns to early modern preoccupation with documentary proof and procedural proof in courts of law. It has been said of Shakespeare’s *Twelfth Night* that the ‘plot is a pretext’ and the ‘theme of the play is disguise’.⁴⁰ Disguise is introduced as an important theme at the very outset of the play. In the second scene, when the freshly shipwrecked Viola conceals herself in the clothing and outward form of her brother Sebastian, whom she fears has died in the wreck, she invites the ship’s captain to assist in her concealment and she employs the language of disguise to express her confidence in the captain’s character: ‘I will believe thou hast a mind that *suits* / With this thy fair and *outward* character . . . / *Conceal me* what I am, and be my aid / For such *disguise* as haply shall become / The *form* of my intent’ (1.3.52–3, 55–7) (emphases added). The theme of disguise makes a brief appearance even as early as the short opening scene of the play, where we are told that the lady Olivia will not entertain the suit of Orsino, Duke of Illyria, but instead, in mourning

³⁹ See, generally, Nathan Joseph and Nicholas Alex, ‘The Uniform: A Sociological Perspective’ (1972) 77.4 *American Journal of Sociology* 719–30.

⁴⁰ Jan Kott, *Shakespeare Our Contemporary* (London: Methuen, 1965), 207.

for her recently deceased brother, 'like a cloistress . . . will veiled walk' (1.1.29). Later in the play, the lady Olivia also declines to entertain the suit of her steward Malvolio, who is tricked into proving his affection for his mistress by appearing before her in cross-gartered yellow stockings. The lady Olivia, in turn, spurned by the disguised Viola (masquerading as the gentleman Cesario). When Olivia falls for Viola's seeming masculinity, Viola muses: 'Fortune forbid my outside have not charm'd her! . . . / Disguise, I see, thou art a wickedness, / Wherein the pregnant enemy does much' (2.2.13, 22–3). The central theme of the play is disguise, but the theme of disguise can also be read as a theme of proof. Consider the scene in which Viola, disguised in her brother Sebastian's outward form, is mistaken for him by Sebastian's rescuer, Antonio. Viola naturally translates the language of dress and disguise into the language of proof:

Prove true, imagination, O, prove true,
That I, dear brother, be now ta'en for you!
. . . even such and so
In favour was my brother, and he went
Still in this fashion, colour, ornament,
For him I imitate. O, if it prove,
Tempests are kind and salt waves fresh in love. (3.4.296–7, 301–5)

When Sebastian is finally reunited with his twin Viola (she disguised as the man Cesario), he probes the apparition of himself with a salvo of questions: 'Do I stand there? . . . what kin are you to me? / What countryman? What name? What parentage?' (5.1.211, 215–16). In early modern England, this quick-fire form of interrogation was a standard method for proving ('probing' or 'testing') facts in the context of legal and ecclesiastical inquisition. In the religious context, the orthodoxy of an adherent's faith was proved through catechism, and in the Court of Chancery,

which was originally an ecclesiastical court, the concern of the court was to interrogate the conscience of the party, to which end it employed a method of serial questioning which seems to have been inspired by the methodology of religious catechism.⁴¹ W. J. Jones notes that the Court of Chancery asked such questions as: ‘do you not know or have you not credibly heard or are you not fully persuaded in your conscience that it was the true intent, will and meaning of the said Nicholas Bristowe, deceased, that . . . ?’⁴² Elsewhere in *Twelfth Night*, Shakespeare makes express reference to proof by catechism and to proof by constant question. On both occasions the process of proof appears, as we would now expect, in the context of a related concern to probe through the external coverings of dress.

The first instance appears in the witty interchange between Olivia and her licensed fool, Feste, in which, through diverse probations, he attempts to persuade his mistress to cast off her mourning veil. It begins with Feste’s aside in which, making an apostrophe to ‘Wit’, he asserts that ‘[t]hose wits, that think they have thee, do very oft prove fools’ (1.5.25–6). The relevant passage deserves to be quoted at length for the way in which it shows how Feste employs processes of testing or probation (including syllogism and catechism) to demonstrate the unreliability of external appearances presented in the form of clothes. The text of the passage is a tapestry in which themes of probation and proof are interwoven with textile references to the fool’s official garb (the motley), to sartorial processes of patching

⁴¹ Oliver W. Holmes, ‘Early English Equity’ (1885) 1 *Law Quarterly Review* 162–74, 162 n.1. Citing Rot Parl 84; 3 Hen V pt 2 46, No23.

⁴² William J. Jones, *The Elizabethan Court of Chancery* (Oxford: Clarendon Press, 1967), 238; cited in Dennis R. Klinck, *Conscience, Equity and the Court of Chancery in Early Modern England* (Farnham: Ashgate, 2010), 84.

and mending and to the maxim *cucullus non facit monachum* ('a hood does not a monk make'). The stimulus for the scene is Olivia's request that her servants should take away the 'fool':

FESTE

. . . bid the dishonest man mend himself. If he mend, he is no longer dishonest; if he cannot, let the botcher mend him. Anything that's mended is but patched: virtue that transgresses is but patched with sin, and sin that amends is but patched with virtue. If that this simple syllogism will serve, so. If it will not, what remedy? As there is no true cuckold but calamity, so beauty's a flower. The lady bade take away the fool: therefore, I say again, take her away.

OLIVIA

Sir, I bade them take away you.

FESTE

Misprision in the highest degree! Lady, *cucullus non facit monachum*: that's as much to say as I wear not motley in my brain. Good madonna, give me leave to prove you a fool.

OLIVIA

Can you do it?

FESTE

Dexteriously, good madonna.

OLIVIA

Make your proof.

FESTE

I must catechize you for it, madonna. Good my mouse of virtue, answer me.

OLIVIA

Well, sir, for want of other idleness, I'll bide your proof.

FESTE

Good madonna, why mourn'st thou?

OLIVIA

Good fool, for my brother's death.

FESTE

I think his soul is in hell, madonna.

OLIVIA

I know his soul is in heaven, fool.

FESTE

The more fool, madonna, to mourn for your brother's
soul being in heaven. Take away the fool, gentlemen.

OLIVIA

What think you of this fool, Malvolio? Doth he not mend? (1.5.33–55)

The themes of this passage anticipate the scene later in the play in which Malvolio, who has been 'misprisioned' (arrested) and wrongfully imprisoned on a charge of madness, is visited by Feste disguised as a priest. On that occasion, Malvolio submits to probation by interrogation, saying 'I am no more mad than you are. Make the trial of it in any constant question' (4.2.34–5). What we see in the scene between the lady Olivia and the fool Feste is the fool's attempt to prick a hole in the formality of his lady's mourning as represented in the form of her veil. He does so by means of logical (syllogistic) probation and by catechism-like interrogation. Today we might describe his efforts by means of another sartorial metaphor used in legal contexts: 'picking holes' in an argument.

Of the classical rhetorical proofs that will still persuade a court today, one of the most significant is the commonplace proof. Judges will accept without trial or

probation that ‘apples fall down’, that ‘rain makes wet’ and that ‘night follows day’. They are said to take ‘judicial notice’ of such things. They hold, as the drafters of the *United States Declaration of Independence* once held, that certain truths are ‘self-evident’. Shakespeare places an example of commonplace proof in the mouth of the provincial judge, Justice Shallow, in *The Second Part of Henry IV*: ‘Certain, ‘tis certain, very sure, very sure: death is certain to all, all shall die . . . ’ (3.2.26–7). Another example appears in *Twelfth Night* where, demonstrating yet another aspect of the play’s central concern with proof, Viola observes ‘‘tis a vulgar proof / That very oft we pity enemies’ (3.1.104–5).

There is, though, a wide range of facts that the law will not accept as proof unless they are established by a certain documentary form or by a process of trial. The law will not always accept the factual evidence – the evident outer appearance of proof – but will sometimes demand that a claim be clothed or armoured in a certain pre-approved form or will demand that unfamiliar facts be proven, like unfamiliar armour, by process of trial. Take the fact of an oral promise. If I orally promise to make a gift to you, the promise is not enforceable against me in the absence of an actual transfer of the subject matter of the gift.⁴³ The same is true of a voluntary promise to enter a bargain. If the other party makes no promise to give or do something in exchange, my promise is considered to be a ‘bare’ promise. Writing in 1530, Christopher St German put it this way:

What is a nude contract, or naked promise, and whether any action may lie thereon

⁴³ It is said that there is no equity to perfect an imperfect gift (*Milroy v. Lord* [1862] 4 De G F & J 264).

Student: . . . a nude contract is, when a man maketh a bargain, or a sale of his goods or lands without any recompence appointed for it: as if I say to another, I sell thee all my land, or else my goods, and nothing is assigned that the other shall give or pay for it . . . no action lieth in those cases, though they be not performed . . . for it is secret in his own conscience whether he intended for to be bound or nay. And of the intent inward in the heart, man's law cannot judge, and that is one of the causes why the law of God is necessary, that is to say, to judge inward things.⁴⁴

The discovery of inner truth under outward signs is, of course, a perennial theme, and the human need of divine assistance in that process of discovery figured especially prominently in the theology of Thomas Aquinas (1225–74). As Lorna Hutson has observed, the passage from St German, just quoted, expresses a ‘Thomist commonplace’.⁴⁵

St German rationalizes the problem posed by a bare promise (*nudum pactum*) as a problem of proof. The reason the law will not enforce the promise is because the law has no means to probe inner conscience. What the law requires, therefore, is that intent should be clothed by some outward form that will withstand the law's probation and thereby qualify as sufficient proof. Even today in English law, a unilateral voluntary promise (i.e. a promise not made in exchange for a benefit promised by the other party) is not binding on the promisor, whereas the same promise made in the documentary form of a deed is regarded as a binding

⁴⁴ Christopher St German, *Doctor and Student* (1530) (Theodore F. T. Plucknett and J. L. Barton eds) (London: Selden Society, 1974), 228–31.

⁴⁵ Hutson, *The Invention of Suspicion*, 55.

covenant.⁴⁶ It is significant that legal suspicion of mere words and legal insistence upon proper documentary form reached a peak (though by no means its only peak) at precisely the time that Shakespeare was writing and first staging *Twelfth Night*. The first known performance of *Twelfth Night* occurred on 2 February 1602 in the Hall of the Middle Temple (one of the ‘Inns of Court’), and the important litigation in *Slade’s Case*, which had been running since 1596, finally concluded in November 1602.⁴⁷ The essential question in *Slade’s Case* was whether an action for debt had to be pursued by an exceedingly formal writ of debt in the Court of Common Pleas, or whether a claim in debt might be expedited by the less formal action of *indebitatus assumpsit* in the court of King’s Bench under which the plaintiff would put it to a jury that the debtor’s oral promise to pay amounted to a binding assumption of liability. The case concerned basic questions about the enforceability of contracts, and it therefore became famous beyond the walls of the lawyers’ world.⁴⁸ The uncertainty caused by the case as it progressed through various courts had an impact on commercial practice. The legal historian David Ibbetson notes that ‘[t]he records of the King’s Bench for 1600 show a significant shift away from the use of *assumpsit* in place of debt’.⁴⁹ Eventually the judges decided that debt could be pursued on *assumpsit* as an alternative to the old form of action in debt, and thereby

⁴⁶ Patrick S. Atiyah, *Introduction to the Law of Contract* (Oxford: Clarendon Press, 1961), 22–3.

⁴⁷ *Slade’s Case* (1602) 4 Co Rep 91 (Court of Exchequer Chamber).

⁴⁸ William J. Jones, *Politics and the Bench: The Judges and the Origins of the English Civil War* (London: Allen and Unwin, 1971), 49–50.

⁴⁹ David Ibbetson, ‘Sixteenth Century Contract Law: *Slade’s Case* in Context’ (1984) 4.3 *Oxford Journal of Legal Studies* 295–317, 303.

opened the way to a modern flexible law of contract. The following extract from the report of the final judgment emphasizes that one of the major sticking points in *Slade's Case* was the question of proof:

And as to the Objection which hath been made, that it shall be mischievous to the Defendant . . . forasmuch as he might pay it in secret: To that it was answered, That it shall be accounted his folly that he took not sufficient witnesses to prove the paiment he made.⁵⁰

Twelfth Night was written during the period in which (as Professor Ibbetson notes) there was a 'significant shift away from *assumpsit*', so we should expect to find that if the play alludes to *Slade's Case*, it will do so by casting doubt upon words unsupported by formal documentation. We do indeed find such doubts expressed in the play, notably when Feste laments that 'words are grown so false, I am loath to prove reason with them' (3.1.17–18). For the lawyers in Middle Temple Hall who constituted the first known audience for the play, there could hardly have been an issue of greater topical interest than that of doubtful words. The documentary evidence for the first performance on 2 February 1602 is an entry in the diary of John Manningham, a student barrister at the Middle Temple. It is notable that Manningham fixes upon the significance of a counterfeit document:

A good practice in it to make the steward believe his lady-widow was in love with him, by counterfeiting a letter as from his lady, in general term telling him what she liked best in him and prescribing his gesture in smiling, his apparel, etc. and then, when he came to practice, making him believe they took him for mad.

⁵⁰ *Slade's Case* (1602) 4 Co Rep 91 at 92b, 95a.

As we have seen, there was a side to the debate in *Slade's Case* that was resistant to the avoidance of the old documentary formalities and that emphasized the unreliability of mere spoken words. Here the student lawyer picks up on the fact that Shakespeare was playing on the equally unreliable nature of documentary evidence. In the scene where Malvolio scrutinizes the counterfeit letter and satisfies himself as to its meaning and import, he concluded that his interpretation of the document was 'evident to any formal capacity', before admitting, a little later, that his interpretation does not stand up to 'probation' (2.5.90, 98). How deep must have been the resonance of these lines with Shakespeare's audience of lawyers, who, when they weren't feasting and watching plays, would have been mooting the points of *Slade's Case*. The dress aspects of the play would also have appealed to them. Student barristers were infamous for their obsession with fashionable dress. *An Act for the Reformatory of Excesse in Apparayle* (1533),⁵¹ which was the last statute to lay down sumptuary laws in the reign of Henry VIII, had been relatively indulgent to students of the Inns of Court or Chancery. It allowed them to wear doublets and partlets of satin, damask and camlet or jackets of camlet, if received as gifts. They were not permitted to wear crimson, purple, scarlet or blue, but they could wear marten and black rabbit fur.⁵² Apparently the Inns of Court indulged the students within the licence of the law, provided that their apparel indicated 'no lightness or wantonness in the wearer'.⁵³ That licence must have been stretched to snapping point

⁵¹ Statute 24 Hen VIII c13.

⁵² Maria Hayward, *Rich Apparel: Clothing and Law in Henry VIII's England* (Farnham: Ashgate, 2009), 38.

⁵³ John H. Baker, 'History of the Gowns Worn at the English Bar' (1975) 9 *Costume* 15–21, 16.

by the time of the vainglorious fashions of the 1580s, for in the period 1580 to 1600, the various Inns of Court introduced strict orders concerning the wearing of gowns.⁵⁴ No doubt the rules were followed as a matter of form, but they did nothing to suppress the students' passion for fashion. Sir Thomas Overbury complained that student barristers were more concerned with their luxurious clothes than with their legal cases.⁵⁵

In civil (non-criminal) cases, including cases of contract law, the required standard of proof is proof established 'on the balance of probabilities', which is sometimes called proof that is 'more likely than not' or proof based on a likelihood of at least 51 per cent. In criminal matters, the defendant is presumed innocent until proven guilty and the defendant should be acquitted unless the jury is 'sure that the defendant is guilty'.⁵⁶ The traditional formulation of being 'sure' is that the jury is satisfied of the defendant's guilt 'beyond reasonable doubt' (variously expressed as 'beyond a reasonable doubt', 'beyond any reasonable doubt' and 'beyond all reasonable doubt'). Recall Othello's willingness to waive his demand for positive

⁵⁴ These sumptuary regulations might represent an effort 'to represent in visual terms the polity of the Protestant State' (Paul Raffield, *Images and Cultures of Law in Early Modern England: Justice and Political Power, 1558–1660* [Cambridge: CUP, 2004], 161).

⁵⁵ Sir Thomas Overbury, *His Wife* (1614) (London: Robert Allot, 1628), sigs K4^r–K5^r; quoted in Emma Rhatigan, "'The Sinful History of Mine Own Youth': John Donne Preaches at Lincoln's Inn", in Jayne Elisabeth Archer, Elizabeth Goldring and Sarah Knight (eds), *The Intellectual and Cultural World of the Early Modern Inns of Court* (Manchester: MUP, 2011), 90–106, 91.

⁵⁶ *R v. Majid* [2009] EWCA Crim 2563.

‘ocular proof’ in favour of a lesser degree of proof that will, in a negative sense, ‘at least’ be proof against doubt. Consider how close that formulation is to the legal standard of ‘proof beyond reasonable doubt’. Neither formulation is concerned to establish fundamental truth. Each formulation is concerned only to remove evident doubt.

There is a lively academic debate concerning the nature of the early modern origins of the concept of ‘proof beyond reasonable doubt’.⁵⁷ To that debate we can now add a new and material layer. Barbara Shapiro has convincingly argued that the process of proof beyond reasonable doubt aimed to establish practical satisfaction or moral comfort as inquirers found it increasingly hard to discover the absolute truth of facts within the complexities of the early modern world.⁵⁸ We can now see how closely this parallels early modern notions of proving armour. Armour was never required to be absolutely impenetrable. It would be nonsensical to suppose that armour could be made to resist all the weapons of the age in all contexts of conflict, and in fact armour died out precisely because attempts to make it proof against increasingly sophisticated weapons eventually required such a thickness of metal

⁵⁷ See, for example, Barbara J. Shapiro, ‘The beyond Reasonable Doubt Doctrine: “Moral Comfort” or Standard of Proof?’ (2008) 2.2 *Law and Humanities* 149–73; James Q. Whitman, ‘Response to Shapiro’ (2008) 2.2 *Law and Humanities* 175–89.

⁵⁸ Barbara J. Shapiro: *A Culture of Fact: England, 1550–1720* (Ithaca, NY: Cornell University Press, 2000); *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships between Natural Science, Religion, History, Law, and Literature* (Princeton, NJ: Princeton University Press, 1983); *Beyond Reasonable Doubt’ and ‘Probable Cause’: Historical Perspectives on the Anglo-American Law of Evidence* (Berkeley: University of California Press, 1991).

that soldiers were no longer able to bear it. Armour was never required to be positively invulnerable to any possible assault; it was merely required to offer sufficient practical protection and comfort against reasonably likely attack. Proof of armour was not proof as an absolute truth; it was merely proof to the point of practical satisfaction. The same was true, and is true, of legal proof. To sum up, we can say that the concept of satisfactory legal proof in early modern England was formulated in the context of a wider cultural appreciation of proof as a material quality of clothing and of armour in particular. With this in mind, the conclusion we reach is this: that legal proof beyond reasonable doubt is proof with holes in it, but with holes too small to allow the inquirer to probe to a deeper reality and too small, therefore, to admit injury. When such reliable outward proof is established, the law is then content to presume that it has probed to the point of a person's inner mettle and to the point of truth. An eighteenth-century preacher once said in a sermon addressed to judges that righteousness is necessary, but outward judgment is 'perhaps more useful'. He described private righteousness as a silver-embroidered vest and public judgment as a gold-fringed robe.⁵⁹ It is said that the law requires, not only that justice must be done but also that it should be seen to be done. One wonders, though, whether the law might not be content for justice to be seen to be done according to its processes regardless of whether it is actually done in fact.

When Pontius Pilate asked, 'what is truth?' in the course of the most significant show trial in history,⁶⁰ he no doubt appreciated that the purpose of legal

⁵⁹ Bunker Gay, *The Accomplished Judge; or, A Compleat Dress for Magistrates* (a sermon preached at Keene, at the first opening of the Inferior Court, in the county of Cheshire, 8 October 1771) (Portsmouth, New-Hampshire: D. Fowle, 1773), 16.

⁶⁰ Jn 18.38.

trial is not to discover truth but rather to cover the case in such a way that public onlookers will be satisfied. An argument of the present book is that legal processes of trial, right up until the present day, are still concerned to cover cases with a satisfactory semblance of truth. To express the point in terms of clothing, we can say that legal processes of trial do not seek to discover or uncover layers of lies that might be obscuring naked truth, but rather that they endeavour to cover each case in a way that will deflect doubt. Something similar has been observed by ethnographers investigating local conceptions of what counts as being socially unclean. They have found that ‘purity is not simply about following rules but also about the strategic capacity to project a virtuous public image. In other words, one must *appear* to follow the rules’.⁶¹ The dominant metaphor for truth – the *discovery* metaphor – is misleading. The truths that most concern us for the purposes of civil life are not discovered from hidden depths, but fabricated before our eyes. Agamben sees this dynamic at work in the legal context: ‘The ultimate aim of law is the production of a *res judicata*, in which the sentence becomes the substitute for the true and the just.’⁶² Scott was right when he said that we ‘weave’ when we ‘practice to deceive’,⁶³ but it is also the case that we establish forms of truth through processes of fashioning and fabrication.

⁶¹ Adeline Masquelier, ‘Introduction’, in Adeline Masquelier (ed.), *Dirt, Undress and Difference: Critical Perspectives on the Body’s Surface* (Bloomington and Indianapolis: Indiana University Press, 2005), 1–33, 11.

⁶² Giorgio Agamben, *Remnants of Auschwitz* (1999) (trans. Daniel Heller-Roazen) (New York: Zone Books, 2002), 18.

⁶³ Sir Walter Scott, *Marmion* (1808) 6.17.532–3.

To some extent I am agreeing with Warwick and Cavallaro where they observe that ‘fashion’s penchant for obfuscating the very distinction between deception and truthfulness’ renders ‘the boundary between “telling lies” and “telling truth” . . . precarious and uncertain’⁶⁴ and where they argue that truth may reside *in* ‘superficial phenomena’.⁶⁵ However, where Warwick and Cavallaro posit the latter possibility to the exclusion of the existence of absolute truth, I would argue that it is entirely compatible with the possibility of absolute truth. Indeed, fabricated truth may be regarded as a counterfeit of, or pragmatic approximation to, absolute truth. Satisfactory proof established by evidence for the practical purposes of civil life is one thing; absolute truth may be quite another thing. Even scientific method, properly-so-called, does not aim to discover underlying truth. It is merely concerned to prove (i.e. to ‘probe’ or test) working hypotheses.⁶⁶ A scientific theory is never ‘true’. It can, at best, have the status of being ‘not disproved’. Likewise, when a judge makes a finding of fact on disputed evidence in a legal case, the effect is to create a fact where previously there had been merely conflicting theories. The judge in this sense makes a reality in legal terms that is satisfactory for legal purposes. Science operates in the same way. It identifies scientific ‘facts’ in terms that are satisfactory for scientific purposes. Indeed, the ‘fic’ in ‘scientific’ is a clue to the fact

⁶⁴ Alexandra Warwick and Dani Cavallaro, *Fashioning the Frame: Boundaries, Dress and the Body* (Oxford and New York: Berg, 1998), xviii.

⁶⁵ *Ibid.*, 133.

⁶⁶ For Francis Bacon, ‘penetration’ was a preferred metaphor for the ‘discovery’ of knowledge about nature (see, for example, Francis Bacon, *Novum Organum* [London: John Bill, 1620], Aphorism XVIII). The metaphor has proved controversial with some feminists because Bacon personifies nature as a female.

that scientific proofs comprise knowledge (*scientia*) that is fashioned (*facere*). The word ‘fact’ is also an etymological clue to the fact.

When Warwick and Cavallaro assert that ‘dress, by encouraging us to make and remake ourselves over and over again, renders the very idea of essence quite absurd’,⁶⁷ they are making a statement which, in its absolutism, is essentialist in itself. In any case, the fact that there is variety in the nature of particular forms of dress does nothing to indicate that there is no essence to dress. It may be that for certain practical purposes we do not need to identify an essential truth, but this does not mean that there isn’t one. No matter how we dress, the essential fact is that we do dress. Warwick and Cavallaro make a similar mistake when, having observed that the language of dress may assist us to question such metaphysical categories as true and false, they go on to claim that it also has the potential to subvert all such ‘binary mythologies’.⁶⁸ Actually, talking dress confirms such truths as the truth that we all, for some reason, go dressed in public. Talking dress therefore confirms the binary distinction between dress and non-dress. If any myth is threatened by the timeless cultural category of dress, and such cognate categories as law, it is the postmodern conceit that there are no such categories anymore. Warwick and Cavallaro eventually seem to admit as much, when they confess that ‘[a]s a moulding agency, dress may seal the body’s subjection to invincible collective mythologies’.⁶⁹ They also acknowledge, likewise, that the social subject’s ‘vestimentary envelope will inexorably carry traces of its primordial fantasies of self-realization and pre-linguistic expression, which challenge the requirements of the adult domain of laws

⁶⁷ Warwick and Cavallaro, *Fashioning the Frame*, 116.

⁶⁸ *Ibid.*, xxiii.

⁶⁹ *Ibid.*, 5.

and institutions’.⁷⁰ Warwick and Cavallaro are right to suggest that dress allows for ‘playful experimentation’ with categorical boundaries, but it is an error to think that this playfulness is a threat to the essential existence of those boundaries. On the contrary, playing with a boundary is a mode of making it; just as lawyers’ practice of playing with laws contributes to their creation.

There is a painting hanging in the main criminal courtroom of the *Palais de Justice* in the town of Montpellier in the South of France which seems to me sum up the fact that lawyers conceive of truth as a fabricated thing. Arrayed within a series of paintings in classical style depicting various virtues of legal process, it depicts the naked female figure of *Veritas*;⁷¹ except this figure of truth is concealing much of her nakedness by means of a book held in one hand and a drape of cloth held in the other. Her right breast is exposed, as is the entire contour of her right side – foot, leg, hip and torso – but she is essentially ‘decent’, as the law requires. The Montpellier image of *Veritas* can be read as an acknowledgement of law’s cultural affinity with the layer of cloth and a confession that the true nature of legal trial is not to discover naked truth, but to produce a certain satisfactory proof in the form of textile and text. The covering, not the content, is the heart of the matter in the worlds of dress and law alike. In short, law prefers fabricated truth to the naked variety.

Occasionally the law has gone out of its way to cover up the naked female figure of Justice. The huge statues standing in the Great Hall of the Robert F. Kennedy Department of Justice Building in Washington, DC – the female figure

⁷⁰ Ibid., 41.

⁷¹ The painting, dating to around 1878, is by the Montpellier-born artist Ernest Michel.

I am grateful to Professor Nathalie Vienne-Guerrin and to Ms Dominique Santonja of *La Cour d’Appel de Montpellier* for assistance in identifying the artist.

Spirit of Justice (which has one breast exposed) and the bare-chested male figure *Majesty of Law*⁷² – were for a time concealed behind curtains, allegedly on the orders of the former Attorney General John D. Ashcroft.⁷³ One wonders what he would make of the statue *Verity* by Damien Hirst, which was unveiled on the pier of the English seaside town of Illfracombe on 17 October 2012. Standing more than 20 metres tall and weighing more than 25 tonnes, the naked pregnant female figure is an allegory for truth and justice. She holds the Sword of Justice erect in her left hand and with her other hand she holds the skewed Scales of Justice behind her back. She stands on a plinth of books, so there is some contact with text, but there is no textile in sight. Far from being covered up, even her skin is peeled away along the entire front of her right-hand side above the knee. Her skull, the tissue of her breast, her muscle fibres and her unborn child are all displayed in detail. This is how truth might appear if stripped of the curtain of censorship and the artifice of law. The fact is, though, that the arts of law are not as free as other arts. We cannot throw off the artificial fabrication of truth, and nor should we wish to. Fabrications are the nearest thing we have to satisfactory truth for the purposes of law, order and civil life. Still, it will be no bad thing if we dare to doubt the evidence of our eyes and to probe continually the proofs that are placed before them. As Professor Teufelsdröckh

⁷² 1933–6, C. Paul Jennewein (sculptor).

⁷³ Dan Eggen, ‘Sculpted Bodies and a Strip Act at Justice Dept’, *Washington Post*, 25 June 2005.

informed us: 'The beginning of all Wisdom is to look fixedly on Clothes, or even with armed eyesight, till they become transparent.'⁷⁴

⁷⁴ Carlyle, *Sartor Resartus*, Book I, chapter 10. On transparency and judgement, see Thomas Docherty, *Confessions: The Philosophy of Transparency (Wish List)* (London: Bloomsbury Academic, 2012).

“The Law of Dramatic Properties in *The Merchant of Venice*”

Chapter Fifteen

in

Paul Raffield and Gary Watt (eds), *Shakespeare and the Law*

(Oxford: Hart Publishing, 2008)

‘*The Merchant of Venice* is a fairy tale. There is no more reality in Shylock’s bond and the Lord of Belmont’s will than in Jack and the Beanstalk’.¹ The opening words of Granville-Barker’s commentary on *The Merchant of Venice* serve as a warning to lawyers who might be tempted to mine the play for technical references to law. Yet the play is not mere fairy-tale. There is a tangible reality to the dramatic properties or ‘props’ which appear in the play—including rings, bonds, seals and scales—and these same props were significant in the law of Shakespeare’s England. There may be no more reality in the world of law than in the world of the play, but there is at least a real connection between those worlds. Props make the bridge. This chapter will examine props which have one foot on the shore of the play and one foot on the shore of law. It will be shown that despite the different ways in which they perform, the props are constant to one thing on both shores. This constant, which we might call a law of dramatic properties, is the use of a part to signify the whole: *partem pro toto*. This ‘law’ of props is, of course, a subset of the rhetorical trope synecdoche, just as synecdoche is a subset of metonymy, and as such it must be significant that synecdoche occupies the very heart, or more properly the very head, of English law. In the law of England there is nothing higher than ‘the Crown’. The Crown is

¹ H Granville-Barker, *Prefaces to Shakespeare* (London, BT Batsford Ltd, 1958) vol I, 335.

synecdoche for the monarch in Parliament, and the monarch in Parliament is representative of the people. It is hardly surprising, then, that the crown as prop forms a well-trodden bridge between the worlds of stage and law in Shakespeare's plays.² In *The Merchant of Venice* we will discover bridges less travelled.

A PLAY FRAMED BY PROPS

At the start of Shakespeare's *The Life of King Henry V*, the chorus invites the audience to imagine that the small stage and the small band of actors and the small span of the play can convey the full time and space and properties of France:

² When the 'crown' prop takes centre stage in Shakespeare's plays and is expressly referred to as being part of the present scene, it is surprising how rarely it symbolises the attainment or maintenance of royal authority. It does occasionally, of course (*Henry VI Part 1*, 4.1.1–2; *Henry VIII*, 4.1.42; *Titus Andronicus*, 1.1.18), but sometimes with unease (*King John*, 5.1.3; *Richard II*, 4.1.176–98), and once jovially (*Pericles*, 2.3.12: the dominant view is that George Wilkins wrote most of the first two Acts of this play; see FD Hoeniger (ed), *The Arden Pericles* (London, Methuen, 1963) ln–lvi). When the crown prop is at its most central to the stage action it is usually employed to represent the *loss* of royal authority (eg *Richard III*, 5.3.365–6; *Henry IV Part 2*, 4.2.195–280; *Henry VI Part 3*, 4.3.50; *Hamlet*, 3.2.112–11; *Antony and Cleopatra*, 5.2.316, 358–9) or to mock pretension to royal power (*Henry VI Part 3*, 1.4.95–6). References throughout this chapter are to the new 'RSC edition': J Bate and E Rasmussen (eds), *William Shakespeare: Complete Works* (Basingstoke, Macmillan, 2007), unless otherwise stated.

Into a thousand parts divide one man / ... Turning th' accomplishment of many
years / into an hourglass. (Prologue 24–31)

Parallel language (right down to the duplication of 'hourglass') is employed with parallel purpose at the very beginning of *The Merchant of Venice*. Salerio, imagining himself in Antonio's place, muses:

I should not see the sandy hour-glass run, / But I should think of shallows
and of flats, / And see my wealthy *Andrew*, docked in sand, / Vailing her
high-top lower than her ribs / To kiss her burial; (1.1.26–30)³

Salerio's musings imply an invitation to the audience to join him in imagining that a great matter, a shipwreck, may be figured in a small thing, here the sand in an hourglass. They also introduce the significant metaphoric and allegorical use of the wrecked ship to indicate Antonio's wrecked body (the wooden 'ribs' of the ship's hull presage the ribs from which Shylock threatens to take the pound of flesh). As *The Merchant of Venice* begins with the warning that a small thing can portend the ruin of a man, so the play ends with the same warning. The final lines are Gratiano's: 'while I live I'll fear no other thing / So sore as keeping safe Nerissa's ring'.

(5.1.324) The final word is a prop, and its physicality serves to bring the play full circle. It may be that Gratiano and Bassanio have learned their lesson (we doubt that they have), but clearly Antonio, who claims in the opening lines of the play that he 'will learn', has learned nothing. Having put his flesh to hazard at the outset, at the end he hazards his soul: 'I dare be bound again, / My soul upon the forfeit'.

³ The wealthy *Andrew* referred to here is reputed to refer to the Spanish ship the *San Andrés*, captured during the English expedition to Cadiz in 1596.

(5.1.265–6) Ring-like, the Belmont circle of friends are bound within the confines of their closed world (from which, crucially, Shylock is shut out). There are other significant rings in the play, including the ring that Shylock received from his wife Leah which Jessica is alleged to have taken and sold (the text says that Shylock received it when he was ‘a bachelor’ (3.2.80), inviting comparison with the ring that Portia gives to Bassanio). There is also the signet ring which we can assume that Antonio pressed into the blood-red wax of the bond. In such auspicious company, Nerissa’s ring might seem a surprising choice on which to end, but the musings of the common man Gratiano upon the ring of his commonplace wife bring home the message to the common man in the audience, that he should take care of what he values in life and not risk losing it. Read in this way, the final line sounds more like the moral at the end of a fairy-tale than the ‘obscene pun’⁴ that can be read into it. Yet it is Portia’s ring, the one she gave to Bassanio, that signifies most.

PORTIA’S RING

Portia’s ring exemplifies the principle *partem pro toto*. Bassanio says of the ring, ‘[t]here’s more depends on this than on the value’ (4.1.443),⁵ and it turns out that a very great deal is conveyed by this one small prop. Portia’s ring is nothing less than the symbolic representation of her whole person and of all of her property too. Portia

⁴ Karen Newman, ‘Portia’s Ring: Unruly Women and Structures of Exchange in *The Merchant of Venice*’ (1987) 38(1) *Shakespeare Quarterly* 19, 32. It cannot be denied that Gratiano favours a sexually suggestive strand of synecdoche, as when he threatens to “mar the young clerk’s pen” (5.1.249).

⁵ This line might also be a ‘metatheatrical joke’, given that the ‘gold’ ring prop was probably made of copper or other cheap metal (see C Ronan, ‘Anatomizing Shakespeare’s Jewelry’ (2006) 23(2) *Discoveries* (online)).

expresses as much when she declares to Bassanio: ‘This house, these servants and this same myself / Are yours, my lord. I give them with this ring’ (3.2.173–4).

As a gesture of largesse the declaration seems plain enough, but ‘there’s more depends on this’. For one thing, Portia is usurping her father’s patrimonial authority over her. The whole point of the casket test was to convey Portia in the form of the portrait prop in the leaden casket, but here Portia purports to convey herself in the form of another prop; and, crucially, Portia’s choice of prop is more figurative and therefore more totemic. The transfer of the portrait obviously symbolises the transfer of the whole, but a portrait is just *too* obvious. It lacks the figurative dimension that one associates with a genuine instance of synecdoche. A miniature picture of the whole leaves very little to the imagination as compared to an abstract prop that symbolises the whole, so the portrait lacks the dramatic force of *partem pro toto*. It does not obey the law of dramatic properties, and, compared to the ring, it suffers for it. The conveyance of Portia’s ring is the truly powerful conveyance in terms of its representational power and its place in the plot. Portia complains in her first scene that her will has been ‘curbed by the will of [her] dead father’. (1.2.16–17) This subjection to her father’s will provides the dramatic tension for the first part of her story. Later, immediately the casket test is concluded, she takes matters into her own hand by voluntarily conveying herself by the ring. We will see that by the transfer of this prop she pays formal lip-service to the legal world of men while in substance subverting it; and this provides dramatic tension for the second part of her story.

The name Portia has a number of candidate etymologies. One derives from the Latin *porcus* meaning ‘pig’,⁶ which confirms a stark opposition to the Jew Shylock, whom she brings to ruin. Another alludes to the *lex Porcia*, a name given to a number of pre-Christian Roman laws which forbade scourging of Roman citizens and placed significant restrictions on the capital punishment of Roman citizens; because the *lex Porcia* was a law of mercy, it evokes Portia’s rhetoric of mercy and her legalistic intervention to spare the flesh of the citizen Antonio.⁷ However, the most obvious significations for the name Portia, and the most pertinent for present purposes, are not etymological at all. They are the senses ‘portion’ and ‘porter’ which are evoked by the very sound of her name. These senses are pertinent because Portia is a whole transported as a part or ‘portion’ of the whole. The word-play culminates in the fact that Portia is represented as a ‘portrait’, and there may even be an oblique reference to the financial ‘marriage portion’ that a wife brought to an Elizabethan marriage by way of dowry.⁸ But Portia is not merely the transported ‘portion’; she is also the ‘porter’ who carries and conveys herself with great purpose through the play. Her name captures her conflicting characteristics of independent self-determination and vulnerable subjection. When, in her opening line, Portia

⁶ The name Portia is said to derive from the Roman clan, the *Porcii*, who were breeders of pigs (Newman, n 4 above, at 23 n17).

⁷ However, just as the *lex Porcia* showed no mercy to non-citizens (including, significantly, Jesus of Nazareth), so too the ‘lex Portia’ extended no mercy to the non-citizen Shylock. In this respect the Jew Shylock is more Christ-like than the Christian Antonio.

⁸ L Engle, “‘Thrift is Blessing’: Exchange and Explanation in *The Merchant of Venice*” (1986) 37(1) *Shakespeare Quarterly* 20, 33.

confides in Nerissa that her ‘little body is weary of this great world’ (1.2.1) she objectifies herself and alienates herself from the body, the small frame, that she carries and is conveyed by others. Crucially, though, she is aware that her weariness is attributable to the fact that she is a portion bound to be conveyed in the merchant world of men. We recall that Antonio, in his opening lines, felt the same weariness, but, unlike Portia, lacked awareness to see its source: ‘In sooth, I know not why I am so sad. / It wearies me, ... / And such a want-wit sadness makes of me / That I have much ado to know myself’. (1.1.1–7) It takes his friends to point out that his weariness (like Portia’s) is caused by the work of great forces upon his small frame. Salerio informs Antonio that his ‘mind is tossing on the ocean’ bound up with his ‘argosies with portly sail’. (1.1.8–9) To which Salanio adds, ‘had I such venture forth, / The better part of my affections would / Be with my hopes abroad’. (1.1.15–17) From the perspective of transporting portions and the principle *partem pro toto*, phrases like ‘portly sail’ and ‘better part’ suggest new significance.

But now to the law.

Portia’s line, ‘[t]his house, these servants and this same myself / Are yours, my lord. I give them with this ring’ (3.2.173–4) appears in a passage containing the terms ‘in gross’ and ‘converted’, both of which carry technical significance in the law of property,⁹ so we should not be surprised to find that the line itself contains legal

⁹ Where a property right exists ‘in gross’ it exists independent of any need to show that it is derived from a greater title. Portia gives herself ‘in gross’ in the sense that she gives herself as an independent whole. ‘Converted’ carries a similar meaning in law to that which it carries in religion. It denotes a fundamental change of substance even though the outer form remains unaltered. According to the ‘doctrine of conversion’, ‘equity will in certain circumstances regard personal property as real

allusion. Indeed, it is from a legal perspective that Portia's giving of the ring achieves its real power and its supremacy over her father's capricious casket test. When Shakespeare was writing, the public giving of a ring was a well-known method of transferring title to freehold land. It was a symbolic method, a piece of legal theatre, but its effect was real. It is, of course, physically impossible to transfer legal title to land or even to transport the land itself (even if all the soil were moved, the physical space that is the land would remain), so a ritual was devised (known as 'livery of seisin') by which title to land could be transferred by the public, symbolic delivery of a physical part: *partem pro toto*. Frequently the part was a sod or turf cut from the land with a knife (as one might cut a pound of flesh) or a twig was cut from a tree growing on the land. As William West puts it in *Symboleography*, published shortly before Shakespeare wrote *The Merchant of Venice*:¹⁰

we may well define Liverie of seisin to be a Ceremonie in our law, used in the conveying of lands or tenements ... The usuall maner of deliverie of seisin of houses, lands, tenements is, that the feoffor and feoffee if they be present ... do come to the house or place whereof seisin is to be delivered: And there in the presence of Sundry good witnesses openly reade, or cause to be read, the deed of feoffement, and letter of Atturney thereof, or to declare the verie effect thereof before them in English: Which being so done, the

property': G Watt, *Trusts and Equity* (3rd edn, Oxford, Oxford University Press, 2008) 545; *Fletcher v Ashburner* (1779) 1 Bro CC 497, per Sir Thomas Sewell MR at 499. The audience is prompted to imagine a similar alchemical transformation when Portia hands over the ring.

¹⁰ See n 35 below.

feoffor or his Attorney must take a clot of earth, or a bough, or a twig of a tree thereupon growing, or the ring or hasp of the doore of the house, and deliver the same with the said deed unto the feoffee or his Attorney, saying: I deliver these unto you in name of possession and seisin of all the landes and tenements contained in this deed to have and to hold according to the forme and effect of the same deede. *If the feoffment be without deed (as it may well be) then at the time of the deliverie of seisin, must bee expressed the very estate which the feoffee must have thereby.*¹¹ (emphasis added)

In the first part of his *Institutes*, Sir Edward Coke says that the feoffor may go on the land and take ‘the ring of the doore or turfe or twigge of the land and deliver the same upon the land to the feoffee in name of seisin of the land’;¹² citing Bracton’s phrase ‘*per ostium et per haspam vel per anulum*’.¹³ Portia’s words, spoken on the soil of her Belmont estate, are clearly reminiscent of the livery ceremony, but the

¹¹ W West, *Symboleographie, which May be Termed, the Art, or Description, of Instruments and Presidents* (revised edn, London, Richard Tottle, 1592) Part I, Book II, 251.

¹² Sir Edward Coke, *The First Part of the Institutes of the Lawes of England* (1628) 59, 60.

¹³ ‘[B]y the door, the hasp, or the ring of the house’: Henry de Bracton, *De Legibus et Consuetudinibus Angliae* li 2 ca18 s 12.

authors of *The Law of Property in Shakespeare and the Elizabethan Drama*¹⁴ seem confident that ‘Shakespeare does not refer to [livery of seisin] at all’¹⁵ and another author is equally confident that Shakespeare ‘never mentions the subject’.¹⁶ It is true that the words ‘livery of seisin’ do not appear in Shakespeare’s works, but Portia’s reference is express enough, and at least one other author thinks so.¹⁷ But will a finger ring suffice or must it be the ring of the door to the house? Holdsworth recorded that ‘a sod from the churchyard will do, or a knife without any sod, or a

¹⁴ PS Clarkson and CT Warren, *The Law of Property in Shakespeare and the Elizabethan Drama* (New York, Gordian Press, 1968). This is the corrected reprint of the 1st edn (Baltimore, John Hopkins Press, 1942).

¹⁵Ibid 113

¹⁶ Arthur Underhill, ‘Law’ in S Lee and CT Onions (eds), *Shakespeare’s England: an Account of the Life and Manners of his Age* (Oxford, Clarendon Press, 1916) 381 at 404.

¹⁷ AG Harmon, *Eternal Bonds, True Contracts: Law and Nature in Shakespeare’s Problem Plays* (Albany, State University of New York Press, 2004): ‘The significance of the contractual token, the ring, is more than symbolic in these terms. It becomes a requirement to the contract’s solemnization. Similar to English land transactions of Medieval and Renaissance times’ (at 92); ‘it entailed the delivery of a clod of earth, a twig, a hasp of the door or—most significantly, for my purposes—its ring, which symbolized the whole of the land conveyed’ (at 12).

glove, or indeed any small thing that lies handy'.¹⁸ The fact that a knife or glove will suffice indicates that the token of transfer needs no direct connection to the land. The knife is merely a prop to symbolise the cutting of land and the glove is nothing more than a token (unless it is meant to symbolise the 'handing over' of the land). Could a gold ring perform in a similar way? Apparently it could. In his book *The Seisin of the Freehold*, Joshua Williams observes that '[i]t was not ... necessary that the article delivered should be anything concerning the land ... the delivery of a parchment deed or of a gold ring in the name of seisin, was quite sufficient for the purpose'.¹⁹ As authority for this observation Williams cites a case decided towards the end of Shakespeare's lifetime.²⁰ In fact, the case he cites makes no reference to a gold ring. It does, however, mention that a piece of gold or silver will suffice (which seems highly appropriate given how closely gold is physically bound up with land),²¹ and it is plausible to suppose that a gold ring, being gold in a readily available and easily

¹⁸ WS Holdsworth, *A History of English Law* (London, Methuen, 1923) (rewritten 3rd edn of vols II–III) 86, cited in SE Thorne, 'Livery of Seisin' in *Essays in English Legal History* (London, The Hambledon Press, 1985) 31–50.

¹⁹ Joshua Williams, Esq, 'The Seisin of the Freehold' in *Twelve Lectures Delivered in Gray's Inn Hall* (London, H Sweet, 1878) 99.

²⁰ *Thoroughgood's Case* (1611/12) 9 Coke's Rep 136b, 137b, in the Court of Wards (also reported at 77 Eng Rep 925).

²¹ See Carolyn Sale, "'The King is a Thing": The King's Prerogative and the Treasure of the Realm in Plowden's Report of the "Case of Mines" and Shakespeare's *Hamlet*' in Paul Raffield and Gary Watt (eds) *Shakespeare and the Law* (Oxford: Hart Publishing, 2008) 137-57.

retainable form, was sometimes used. Portia's giving of her estate by the ring now makes perfect sense. If it is an allusion to any legal rite, it is an allusion to livery of seisin. Certainly it makes more sense, in terms of legal symbolism, than to regard it as a simple betrothal ring. Leaving aside the fact that the ring was passed from the woman to the man, a betrothal ring would not have been intended to pass legal title to real estate; and a wedding ring, which did entail a moral (though not a legal) transfer of property (the Tudor ceremony contained the words 'With thys ring I thee wed: Thys golde and siluer I thee geue: with my body I thee wurship: and withal my worldly goodes I thee endoew'),²² was of course not passed until the marriage ceremony itself. The play makes it clear that Portia's transfer of the ring precedes her marriage.²³

Nor should we doubt that livery of seisin was a common public spectacle in England during Shakespeare's lifetime. Its popularity had decreased somewhat after the Statute of Uses (1535) permitted conveyance by deed in certain situations, but formal documentary conveyance was not a requirement until the Statute of Frauds (1677).²⁴ It must still have commanded popular recognition and respect in 1583, because public delivery of a twig and turf was the very method chosen by the colonists at St John's Harbor to perform the first English settlement of the New World.²⁵ And it must still have been well known in 1616 when Ben Jonson

²² *Prayerbook of Edward VI.*

²³ 3.2.310.

²⁴ Even then, livery could be used alongside the deed. Livery of seisin was finally abolished in 1926, by the Law of Property Act 1925, s 51(1).

²⁵ Sir Humphrey Gilbert 'had delivered unto him (after the custom of England) a rod [small twig] and a turf of the same soil': Richard Hakluyt, *The Principall Navigations*,

mentioned it in *The Devil is an Ass*,²⁶ and in 1623 when *The Devil's Law Case*, John Webster's play of merchants and lawyers, was first published. In that play the merchant Romelio has the line 'Keep your possession, you have the door by th' ring; / That's livery and seisin in England'. (1.2.117–18) Thus Webster makes express what Shakespeare implies. Of course, Webster does not get the expression quite right. The law is 'livery of seisin' not 'livery and seisin', but Webster was in good company in this respect. Edmund Spenser made the same mistake in Book VI of *The Faerie Queene*,²⁷ published around the time Shakespeare was writing *The Merchant of Venice*.

The case for livery of seisin is clearly made out, but we should not forget that the transfer of Portia's ring was not merely, or primarily, a stage rendition of legal theatre, it was also the passing of a prop intended to denote the figurative passing of Portia's whole person, *partem pro toto*. As Bassanio says: 'when this ring / Parts from this finger, then parts life from hence'. (3.2.186–7) Yet Portia's words are not as generous as at first they seem:

Myself, and what is mine, to you and yours

Voiages and Discoveries of the English Nation (Hakluyt Society Publications, Glasgow, 1904 (1598–1600)) vol VIII, 53–4; cited by P Seed, 'Taking Possession and Reading Texts: Establishing the Authority of Overseas Empires' in Stanley N Katz *et al* (eds), *Colonial America: Essays in Politics and Social Development* (5th edn) (New York: McGraw-Hill, 2001) 19, 20–1.

²⁶ Fitz-Dottrell says 'get the Feoffment drawn, with a Letter of Attorney, / For Livery and Seisin' (4.5.16–17).

²⁷ (1596) Book VI, iv, 37.

Is now converted. But now I was the lord
Of this fair mansion, master of my servants,
Queen o'er myself, and even now, but now,
This house, these servants and this same myself
Are yours, my lord. I give them with this ring,
Which when you part from, lose, or give away,
Let it presage the ruin of your love
And be my vantage to exclaim on you. (3.2.169–77)

Portia confirms that, up until this moment, she has been 'lord', 'master', 'Queen o'er myself'. Despite formal subjection to her father's will, she lacks no confidence in her own authority and independence. It is fitting, then, that the outward *giving* of herself by the ring turns out to be in substance a *taking* of Bassanio by the ring. The dynamic is one of taking by giving.²⁸ Shakespeare allows Portia the advantage of dramatic foresight to anticipate the loss of the ring and she anticipates her entitlement to berate her lover in that event. The result is a subversion of the outward show of gift and with it a subversion of the legal world of men (a subversion which will shortly be perfected in her courtroom performance as the lawyer 'Balthasar'). The moment Bassanio accepts Portia's 'gift' of her ring, he is bound to her;

²⁸ The same dynamic operates when Shylock lends money without interest. It is a shame that Antonio did not follow the example of 'Father Abraham' of the Old Testament. Abraham (and Shylock, it can be assumed) understood the danger of accepting a gift from a member of a foreign tribe (see Genesis 23:13–16, discussed in G Watt, 'Breed of Metal and Pound of Flesh: Faith and Risk in Metaphors of Usury' (2007) 2 *Polemos* 95, 112).

paralleling the way in which Antonio's 'gift' (the loan) to Bassanio binds Bassanio to Antonio, and Shylock's 'gift' (the waiver of interest) in favour of Antonio binds Antonio to Shylock. Portia's ring on Bassanio's finger, no less than Antonio's signet ring with which he sealed the bond, forms a link in the chain of enthrallment that runs through the play.

THE SCALES

When Bassanio says 'beauty [is] purchased by the weight' (3.2.90–1), he perfects the equation of Portia and wealth, and, further emphasising the play's broad theme of 'human as commodity', his words can be read as an allusion to the Roman ceremony of *mancipatio*, by which property (including slaves) was purchased by striking a weight of copper (*aes*) against a set of scales held by the *libripens* in the presence of five adult witnesses (*cives*).²⁹ The copper weight symbolised the purchase price, but apparently was not actually handed over, being purely symbolic of the real payment to follow. This is where *mancipatio* differed from *traditio*. *Traditio*— which is the etymological origin of two central and conflicting themes in *The Merchant of Venice*: 'trade' and 'tradition'—involved an actual handing over of the 'prop', the symbol of conveyance (hence Bracton identified livery of seisin as a direct descendant of the Roman *traditio*).³⁰ When Shylock appears in the courtroom carrying a knife and a set of scales he is no doubt a parody of the iconic goddess Justitia (she with *sword* and scales), but now we can also see in his props a symbol of Roman slavery (the scales) and of English land transfer (the knife). It is doubtful

²⁹ WW Buckland, *A Manual of Roman Private Law* (Cambridge, Cambridge University Press, 1928) 121.

³⁰ Henry de Bracton, *De Legibus et Consuetudinibus Angliae* li 2 ca 18.

that Shakespeare had the latter signification in mind, but allusion to *mancipatio* of slaves is hinted at in Shylock's line 'You have among you many a purchased slave, / Which, like your asses and your dogs and mules, / You use in abject and in slavish parts, / Because you bought them' (4.1.91–4). It is tempting to suppose that 'asses' was chosen because Shakespeare sub-consciously recalled the 'aes' from the *mancipatio* ceremony. More plausibly, we can find a joke in the line: Shylock is alluding to the fact that the so-called 'free' citizens of Venice, Antonio and Portia included, not only trade in slaves but also trade themselves as if they were slaves.

THE POUND OF FLESH

Shylock's security is, as he tells Antonio, 'an equal pound / Of your fair flesh, to be cut off and taken / In what part of your body pleaseth me'. (1.3.141–3) The pound is, as Shylock says, only a *part* of the whole, but we know as well as he that the part represents the whole. This becomes clearer when Shylock chooses for the allotted part the flesh nearest Antonio's heart. The pound *is* Antonio, *partem pro toto*. The choice of the word 'pound' emphasises the synecdoche: it tells us that Antonio is figuratively 'made of money'; Antonio admits as much when he exclaims 'my purse, my person' (1.1.140). Of course Antonio's person, and presumably his purse, are both visible on stage, but his pound of flesh never is. It perhaps follows that the pound of flesh cannot qualify as a prop *stricto sensu*, but in some ways its invisibility, through corporeal occlusion, serves actually to enhance its dramatic power. An object is created in the imagination by outlining an empty space in the mind into which that object, and that object only, can fit. Thus, absence can create a

stronger sense of presence than presence itself. The rhetorical device of *ellipsis* operates in the same way.³¹

We have already observed that from the very start of the play, Antonio's body is paralleled with the physical form of his absent ships. In this way Shakespeare captures the imagination of the audience from the outset through the drama of anticipation: either Antonio's ships must 'appear' or his pound of flesh must. When we hear the rumour that Antonio's ships are wrecked off-stage, our expectation is heightened that we will soon see Antonio's body wrecked on stage. Antonio's discomfiting associates, Salerio and Solanio, develop the rumour at the end of Act 2 scene 8, and in the very next scene the casket game resumes at Belmont. This juxtaposition of the 'shipwreck' scene with the quest to reveal Portia's hidden portrait heightens the expectation that Antonio's hidden pound of flesh will shortly make an appearance on stage. Two short scenes later, Portia's portrait is at last discovered and Antonio's letter reaches Belmont with the news that Antonio's ships have all been wrecked. So the moment Shakespeare sates our appetite to see the hidden part that represents Portia's all (the portrait in the casket), he intensifies our appetite to see the hidden pound of flesh that represents Antonio's all. Bassanio's language reveals that his imagination has already foreseen the worse: 'Here is a letter, lady, / The paper as the body of my friend, / And every word in it a

³¹ A pound of animal flesh can be employed as a prop in the play. An example appears in the opening scenes of the 2004 film production starring Al Pacino as Shylock, where he is shown purchasing a weight of animal flesh at market. The use of flesh as a prop can assist in the imaginative process of substantiating Antonio's pound of flesh, but the risk is that the prop will usurp the imaginary space reserved for Antonio's pound of flesh and thereby defeat its dramatic object.

gaping wound, / Issuing life-blood'. (3.2.268–71) Obedient to the law of dramatic properties in the play, Bassanio is blatant in using the letter *prop partem pro toto* as synecdoche to embody Antonio's utter ruin.

It is not only Antonio's friends who see Antonio embodied in his ships.³² Antonio makes the link himself. The letter read out in Belmont reports that his 'ships have all miscarried' (3.2.322) and that word 'miscarried' he later applies to his own body: 'I once did lend my body for thy wealth; / Which, but for him that had your husband's ring, / Had quite miscarried'. (5.1.263–5) The purse, the letter and the pound of flesh are parts which represent Antonio's whole in accordance with the dramatic law of *partem pro toto*, but the ship might be said to function as a more mundane form of metonymy. At first sight there is no synecdoche, no part representing a whole, but this is where the law comes in again.

Shakespeare borrowed the 'pound of flesh' bond, as he borrowed so much of the plot of *The Merchant of Venice*, from a medieval Italian tale in Ser Giovanni's, *Il Pecorone*,³³ hence the undeniable fairy-tale qualities of the play. Just as the Italian tale was drawing on folk-memory of the flesh-bond in early Roman law,³⁴ so

³² See above.

³³ *The Pecorone of Ser Giovanni* (WG Waters (trans, London, Lawrence and Bullen, 1897).

³⁴ *The Twelve Tables* provided for creditors to take shares in the corpse of an insolvent debtor: '*tertiis nundinis partes secanto: si plus minusque secuerunt, se fraude esto*' ('on the third market day let them cut the shares. If they have cut too much or too little, be it free from blame', RW Lee (trans)). Lee makes the point that the last words 'anticipate and avoid' Portia's unreasonable assertion that Shylock would have to die if he took so much as a hair's weight too much of Antonio's flesh (4.1.330–8). See

Shakespeare drew upon the nature of legal bonds ancient and modern. It would be a mistake to attempt an exact identification of the Antonio-Shylock bond with any particular form of legal bond, but it has similarities with several that were current at the time the play was written. First published in 1590, William West's *Symbolæography* appeared as a corrected second imprint in 1592,³⁵ around six years before Shakespeare finalised the text of *The Merchant of Venice*.³⁶ West's book was, amongst other things, a handbook on forms of legal instruments, and it describes several forms of bond. Some are reminiscent of Antonio and Shylock's transaction before the notary, especially a form of bond known as 'Statute Merchant':

A Statute is a Bond of Record sealed, testifying the Debtor to ow unto the Creditor a certaine summe of mony, And the same Bond is knowledged before such persons & in such manner as is appointed by Statutes in that behalfe made. And thereof bin such bonds termed Statutes, & they be of two

RW Lee, *The Elements of Roman Law* (4th edn, London, Sweet and Maxwell, 1956) 428.

³⁵ West, *Symbolæography*, n 11 above.

³⁶ Henslowe's *Diary* refers to 'the venesyon comodey' performed on 25 August 1594, which may have been an early version of Shakespeare's *The Merchant of Venice*. Even so, we can be fairly sure that certain elements were not added until 1596 (see eg, the reference to the ship *The Andrew*, discussed in n 3 above) and it is reasonable to assume that the play was corrected right up until it was submitted for printing on 22 July 1598 (it is entered in the *Stationer's Register* on that date: Arber's Transcript, vol iii, 122). Of course, the play might even have received further minor amendment prior to its actual print publication in 1600.

sorts, that is to say, Statutes Marchant, and Statutes Staple. A Statute Merchant is a Bond knowledged before one of the Clerkes of the Statutes Merchant and Maior or chiefe Warden of the Citie of London, or two Marchants of the said City for that purpose assigned, or before the Maior, chief Warden or Maister of other cities or good towns, or other sufficient men for that purpose appointed, And sealed with the Seale of the debtor ... The execution upon Statutes Merchant is first to take the bodie of the debtor if he be lay & can be found, if otherwise, then upon his lands and goods.³⁷

There are also parallels between the Antonio-Shylock bond and an Elizabethan maritime bond; parallels which have hitherto escaped scrutiny. The bond is known as the ‘bottomry bond’.³⁸ The essence of the bottomry bond is that the owner of a ship borrows money in some emergency and grants the keel or bottom of his ship as security for the loan. If the bottom is lost, so is the ship. If the ship is lost, so is the loan. The great risk taken by the lender is offset by exemption from the normal rules against usurious rates of interest. The bottomry bond and the ‘pound of flesh’ bond are in no technical sense the same (for one thing, the Antonio-Shylock bond was interest-free), but they have striking features in common. Both operate *partem pro toto* and in both cases the lender derives no material benefit from possession of the security: a lender with a bottomry bond does not want the bottom of a wrecked ship, and neither is there benefit to Shylock in Antonio’s flesh (1.3.155–9)—apart,

³⁷ West, *Symboleography*, n 11 above, Part I, Book II, 151.

³⁸ The bottomry bond is no longer used in practice, but in theory it remains a part of the jurisdiction of the Admiralty Court. The Supreme Court Act 1981, s 20(2)(r) refers to ‘any claim arising out of bottomry’.

perhaps, as bait for fish (3.1.37). Another point in common is that the borrower in both cases retains possession of the security (the boat and the pound of flesh respectively) even after the bond is sealed.³⁹ Parallels between the fictional bond and the bottomry bond are made possible because Shakespeare had the idea (he did not derive it from *Il Pecorone*) of employing Antonio's ships as metonymy for Antonio's body. There is no evidence to suggest that Shakespeare had actually heard of the bottomry bond, but we do know that the *bodemerij* bond was widely used in Holland in the 1590s,⁴⁰ by which time it was already very well established there,⁴¹ so

³⁹ In other words, the security takes the form of hypothec rather than pledge.

⁴⁰ J I Israel, *Dutch Primacy in World Trade 1585–1740* (Oxford, Clarendon Press, 1989) 76–7. Israel notes that the interest on bottomry loans for voyages to Russia in the 1590s was around 15 per cent (citing Simon Hart, *Geschrift en getal* (Dordrecht: Historische Vereniging Holland, 1976) 299–300). He refers to one loan made in 1598 (the year *The Merchant of Venice* went to press) that was at 44 per cent interest (GA Amsterdam NA 80, fs 134–5). For recent commentary, see W Fritschy, 'Holland's Public Debt and Amsterdam's Capital Market 1585–1609' in C Sanz Ayán and BJ García García (eds), *Banca, crédito y capital. La Monarquía Hispánica y los antiguos Países Bajos (1505–1700)* (Madrid, Fundacion Carlos de Amberes, 2006) 39–59.

⁴¹ Bottomry is listed in the Amsterdam archives many years before modern-style insurance is mentioned. JP Vergouwen notes that 'In the ... Amsterdam *Ordonnantie* (mid-15th century), bottomry, or an early form of bottomry, is mentioned. Insurance is not mentioned in any way'. (*De Geschiedenis Der Makelaardij in Assurantiën Hier te Lande Tot 1813* (Zuid-Hollandsche Uitgevers Mij. 's-Gravenhage, 1945) 13 n 2). The same author makes a similar observation in relation to an Amsterdam ordinance of 26 January 1579 (Municipal Archives of Amsterdam, By-laws, Book C, f

it must have come to the attention of London merchants by the time Shakespeare wrote the play. The bond is recognised in an English court report in 1614 (though not by name),⁴² and it must have been very well known to English merchants by 1622, when Malynes wrote his seminal text on merchant law, *Consuetudo vel Lex Mercatoria*. By then it had been Anglicised as ‘Bottommarie’ and had enjoyed an extensive commercial history. Malynes records that it had already been associated with widely varying interest rates:

The name Bottommarie is derived by the Hollanders from the Keele or
Bottome of a ship ... The money so taken up by the master of the ship, is

191). Vergouwen states, at 29, that ‘in the quite elaborate list of brokers’ fees, as determined by the Amsterdam by-law of 26th January 1579, bottomry is listed, but insurance is not’. Another author has found an ordinance issued by the Heeren van de Gerechte (municipal authorities) dated 28 October 1578 which states that a broker will not lend on bottomry to shippers (masters/captains) ‘whom they know to be broke and to have spent too much, or of whom they have such suspicions’ (‘De maekelaers (art 4) zullen geene schippers, die sij weten berooyt ende de beurs ten achteren geteert te hebben, ofte daervan wij sulx vermoeden hebben, helpen aan eenige bodemerij’, from Th Stuart, *De Amsterdamsche Makelaardij* (Amsterdam, 1879). He states that the ordinance is to be found in the *Keurboek* (Municipal Archives of Amsterdam, By-laws) Book F, f 160, of 28 October 1578. For finding and translating these sources, I am most grateful to Sabine Go, a graduate student of the Vrije Universiteit, Amsterdam.

⁴² *Bridgeman’s Case* (1614) Hob 11, and 1 Roll Abr 350 [(C)], pi 2; 80 Eng Rep 162.

commonly done upon great necessitie ... the use payed for the same is verie great, at 30, 40, and 50 pro cent. without consideration of time.⁴³

The notion of taking the ship itself as security was not a new one; it goes at least as far back as the Romans.⁴⁴ What was new was the language of taking the keel or bottom of the boat and by the time Blackstone comes to define bottomry in his *Laws of England*, he makes express the fact that the keel or bottom of the ship is offered 'partem pro toto'.⁴⁵ When Antonio boasts that his 'ventures are not in one bottome trusted' (1.1.43) the word 'bottome' was certainly being used as standard Elizabethan vernacular for boat (indeed the whole phrase 'in one bottom' is later used by a number of Elizabethan and Jacobean dramatists, and by Malynes himself, to indicate dangerously undiversified risk), but Shakespeare might also have had the bottomry bond in mind. Even if he did not, it is highly likely that merchants in his audience did.

At the end of the courtroom scene in Act 4, Shylock finds himself in the position in which he had imagined Antonio. By taking Antonio's pound of flesh he would have killed Antonio, *partem pro toto*. Now with the threat that his house will be taken from him, Shylock anticipates that his life will pass with his house, *partem pro toto*: 'You take my house when you do take the prop / That doth sustain my house. You take my life / When you do take the means by which I live'. (4.1.382–4) In Tudor England, the props were the wooden foundations upon which the whole

⁴³ Gerard Malynes, *Consuetudo vel Lex Mercatoria* (London, Adam Islip, 1622) 171.

⁴⁴ Dig 22, 2 Code, iv; Dig 45.I.122.I.

⁴⁵ Sir William Blackstone, *Commentaries on the Laws of England* (1765–69) Book II, cap xxx.

house was built; so just as Antonio's life was built upon the wooden bottoms (the 'ribs') of his ships, so Shylock's life was built upon the wooden foundations of his house; in both cases *partem pro toto*, in accordance with the law of dramatic properties.

In summary, we can see that the bridge between the play and the law is built out of 'properties' or 'props' in multiple senses of the word. The 'dramatic properties' (props) have the dramatic property (quality) of synecdoche, which is to say that they obey the dramatic law of *partem pro totem*, and by this property they link the play to the law of property that governs such things as rings and ships. Finally, the whole world of the play from Shylock's house to Antonio's ships, even the stage itself, is built upon wooden props.

ACT 6 OF THE MERCHANT OF VENICE

It is all too easy for lawyers to treat Act 4 scene I of the play as if it were the whole play. Andrews' book falls into this trap.⁴⁶ Taking a wider view, Weisberg stresses the need for lawyers in particular to rediscover the significance of Act 5,⁴⁷ and Kornstein invites us to imagine an Act 6.⁴⁸ Just as the play begins and proceeds with

⁴⁶ ME Andrews, *Law Versus Equity in The Merchant of Venice* (Boulder, University of Colorado Press, 1965).

⁴⁷ Richard Weisberg, *Poethics* (New York, Columbia University Press, 1992) 94–104.

⁴⁸ Daniel J Kornstein, *Kill All the Lawyers?: Shakespeare's Legal Appeal* (Princeton, Princeton University Press, 1994) ch 4. In his 'Act VI' he posits an appeal by Shylock to a modern court.

an invitation to imagine the progress of Antonio's ships off-stage, so it concludes in a way which forces us to contemplate the action off-stage after the play's conclusion. The imagination is compelled to this by the total and profound absence of Shylock from Act 5. So if we accept the invitation to imagine Act 6, what do we find? We find that the most significant action of Act 6 is Shylock's forced conversion to Christianity, in accordance with the cruel condition that Antonio set upon the commutation of Shylock's capital sentence. (4.1.393–4) The forced conversion is significant in many ways, mostly because it contains a chill echo of the Venetian inquisitions⁴⁹ and the first Jewish ghetto (with the terrible significance which that now carries for the modern reader), but also because it obeys the law of dramatic properties that runs through the play, the law of *partem pro toto*.

The conversion of Shylock would have entailed two of the most significant public rituals in Elizabethan England: Baptism at the font, followed by the Eucharist. If we assume that Shylock did indeed submit to the sentence of conversion he would, in receiving the sacraments of Baptism and the Eucharist, have received what Sir Francis Bacon called the 'seals to the covenant'.⁵⁰ Thus, Shylock's faith in the resilience of the wax seal on Antonio's bond (4.1.141) comes back to haunt him in the form of a truly inviolable seal. In his book, *The Stage Life of Props*, Andrew Sofer, calls the Eucharist wafer the 'ur-prop of post-classical Western drama'.⁵¹ It is certainly a candidate for that label, and in the course of this chapter we have

⁴⁹ See B Pullan, *The Jews of Europe and the Inquisition of Venice 1550–1670* (London, IB Tauris, 1997) 264 (reprinted edn of the 1st edn, 1983).

⁵⁰ *The Advancement of Learning* (1605) cap XXV.

⁵¹ A Sofer, *The Stage Life of Props* (Ann Arbor, University of Michigan Press, 2003)

discovered why. The Eucharist wafer is the embodiment of synecdoche as it is the embodiment of Christ. 1577 saw the publication of Christoph Rasperger's Roman Catholic pamphlet, *Ducentae Paucorum*,⁵² which comprises an annotated catalogue of Protestant interpretations of Christ's words 'this is my body'. One interpretation is listed as '*corpus scilicet accipiendum esse pro pane et corpore simul, partem pro toto*' ('the body is of course accepted to be in essence bread and flesh at the same time; a part for the whole').⁵³ Antonio is not convincingly Christ-like at heart, but he is figured to represent or parody aspects of the New Testament account as Shakespeare's audience would have understood it, including taking on another's debts to the point of laying down his life at the hands of a Jewish adversary and an 'Italian' judge. It follows that when Shylock is forced to eat the Eucharist wafer, and is therefore eating the body of Christ (figuratively or really depending upon one's theology), he is also eating Antonio's flesh insofar as Antonio was intended to portray Christ. The audience watching Act 6 will see Shylock acquire the pound of flesh at last, and with it the desolation of Antonio's life: *partem pro toto*. Antonio is sad at the start of the play, and Shylock takes his sadness at its conclusion. This is no 'fairy-tale' ending.

⁵² *Ducentae paucorum istorum, et quidem clarissimorum, Christi verborum: Hoc est Corpus meum.*

⁵³ Cap VI *interpretatio* lxxix.

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- (2014) *Living in a Law Transformed* (Michigan University Press), with J Etxabe.
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Books (edited, forthcoming)

- (2018) *Cultural History of Law* (Bloomsbury) General editor (six-volumes).

Journal (founding co-editor)

- (2007-present) co-founder and co-editor of *Law and Humanities* (Oxford, Hart).

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