Shakespeare's
Legal Ecologies

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Law and Distributed Selfhood

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Knowledge Unlatched

For Pauline and Stone

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I'm still a bit shocked by how much I enjoyed writing this book, and especially by how consistent that enjoyment has been over the last seven years. There's a good explanation, though. Unlike my first book, a largely solitary undertaking, *Shakespeare's Legal Ecologies* has developed at every stage out of conversation and exchange. It's a pleasure finally to be able to thank some of these interlocutors here.

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Shakespeare's Legal Ecologies is dedicated to Pauline and Stone, and they deserve the biggest thanks of all. It's not easy living with an academic. A bad writing day can plunge us into the depths of despair while one decent transition sentence can propel us into a state of euphoric elation. Both are hard to explain or justify. I'm very lucky to have two people who can coax me out of this strange universe from time to time and remind me how wonderful life is on the other side.

Shakespeare's Legal Ecologies

Imagine York's surprise when in act 2 of *Richard II*, the recently exiled Henry Bullingbrook shows up in England to claim his inheritance in the wake of his father's death. The situation is unimaginable: Bullingbrook is "a banish'd man" and it is "before the expiration of [his] time" (2.3.110, 111).[1] But when York accuses him of "gross rebellion and detested treason" (2.3.109), Bullingbrook offers this simple rebuttal: "As I was banish'd, I was banish'd Herford, / But as I come, I come for Lancaster" (2.3.113– 14). Two legal facts underpin the retort: (1) Bullingbrook is, and has been, the Duke of Herford; (2) the death of his father makes him the new Duke of Lancaster. But whereas the most straightforward way of conceptualizing this change in legal identity is as a form of accumulation—the acquisition of more land, more titles, more goods—Bullingbrook presents it as a transfer, a slippage from one self into another, with a new name, a new title, and a new, *exile-free* past. For Bullingbrook, in other words, property law curates a mobile and amorphous version of selfhood, one capable of reconfiguring itself through time and in response to circumstance. Though his justification for returning to England is certainly based on legal technicalities, it is also rooted in more general metaphysical ideas about selfhood as it inheres in property—metaphysical ideas which he sees those legal technicalities expressing.

What are we to make of the many moments like this in Shakespeare's work when matters of law—property, obligation, crime, judgment— underwrite ideas about the nature of the self? What do we learn about Shakespeare's thinking on selfhood if we consider the topic from a legal perspective? And how, finally, might this line of inquiry help us reimagine what law offered Shakespeare as an imaginative resource? This book, the first sustained study of the relationship between law and selfhood in Shakespeare's work, sets out to answer these questions. My central claim is that Shakespeare's career-long interest in law also needs to be understood as an ongoing meditation on what it means to be a person— individually and collectively, intellectually and physically, and in relation to the world of things. More specifically, my argument is that law provided Shakespeare with a conceptual language for describing selfhood in distributed terms, as a product of interpersonal exchange or as a gathering of various material forces. Scenes that display these qualities I refer to

collectively as Shakespeare's "legal ecologies," representational environ-ments in which selfhood is both linked to and shaped by other human and nonhuman agents in a juridical setting. Shakespeare's legal ecolo-gies are important for two reasons. First, they mark a departure from the bounded and inward-looking selfhood of Augustinian and Cartesian thought and from the individualist political and ethical trajectories of those traditions. Viewed together, these scenes of distributed legal subjec-tivity show us Shakespeare's distinctly communitarian vision of personal and political experience, the way he regarded living, thinking, and acting in the world as materially and socially embedded practices. Second, these scenes demonstrate how Shakespeare leveraged his knowledge of law for intellectual and speculative ends that were not specifically legal; the way, that is, Shakespeare thought *with* or *through* law as opposed to simply thinking *about* it. What this book offers, then, is a new theory of Shake-speare's imaginative relationship to law and an original account of law's role in the philosophical and ethical work of his plays and sonnets.

A project like this has both historical and theoretical investments. Since Shakespeare's thinking about law is necessarily conditioned by the culture in which he lived and the time at which he wrote, readings of his plays and sonnets are frequently rooted in primary historical documents such as sixteenth- and seventeenth-century law books, legal reports, treatises, and assize-court records. However, if grounding Shakespeare's engagement with law in a specific past is important for this study, so too is showing how his writing opens the historical particulars of legal experience out onto larger, universal questions about being, agency, and the relationship between body and mind. Toward this end, *Shakespeare's Legal Ecologies* also treats the plays and sonnets as part of a genealogy of thought that extends beyond the early modern period to include mod-ern thinkers such as Maurice Merleau-Ponty, Hannah Arendt, Emmanuel Levinas, and Gilles Deleuze. Though they write in different forms and for different ends than Shakespeare, these philosophers nevertheless share with him an interest in thinking about selfhood from the outside rather than the inside, as something premised on collectivity, otherness, and the external life of the senses. By attending to both the early modern sources and the modern destinations of Shakespeare's legal imagination, this book is able to tell a new story about Shakespeare's unique place in the history of selfhood.

The following introduction focuses on three things. First, it describes the kind of legal knowledge that was available to Shakespeare in his own time and the distinctive ways in which that knowledge was put to work in his writing and dramaturgy. This discussion leads, in the second section,

to a consideration of selfhood in which I more rigorously define and theorize the notion of legal ecologies, taking special care to situate the concept in relation to other models of selfhood available in Shakespeare's time and our own. I conclude by turning to the particular ideas and legal scenes addressed in each chapter, overviewing the various arguments—about property, hospitality, criminality, and judgment—that weave themselves through the book.

Thinking with Law

As I mentioned above, Shakespeare thought with law. This sounds like a simple enough assertion, but it also raises some questions. Perhaps most importantly: what is the difference between thinking *with* law and thinking *about* law? Let me start with the latter. Thinking about law means engaging imaginatively with legal institutions, figures, and language, and even a cursory look at Shakespeare's works shows that he did a lot of this. One thinks immediately of Shylock's famous trial scene in *The Merchant of Venice* or the cruel magistrate, Angelo, of *Measure for Measure*. *The Comedy of Errors* opens with Egeon being condemned by the law of Ephesus while *A Midsummer Night's Dream* opens with Hermia being condemned by the law of Athens. Complicated legal questions about inheritance and property underpin the plots of *Richard II, 1 Henry VI*, and *Henry V*, while plays like *Othello* and *Hamlet* display a preoccupation with evidence and testimony. Shakespeare thought a great deal about law, and with good reason. Theaters drew a sizeable portion of their audiences, and even some of their playwrights, from the Inns of Court, the institution that trained young men for careers in law.[2] John Marston, for example, was a member of the Middle Temple in the 1590s, as was John Webster. John Ford was admitted in 1602. Ben Jonson did not attend the Inns himself, but he was close friends with prominent jurists such as John Seldon, with whom he corresponded about transvestism on the stage, and John Hoskyns, who was also a respected poet and wit. Not surprisingly, then, the plays themselves are teeming with legal terms, legal instruments, legal references, and characters drawn from the legal profession. The *Index of Characters in Early Modern Drama* lists 65 lawyers, 13 attorneys and pettifoggers, and 120 judges and justices, not to mention an array of clerks, bailiffs, constables, scriveners, solicitors, and other minor legal officials.[3]

However, it wasn't just the people in the theaters that made law such a touchstone in Shakespeare's drama. It was also the world around the

theaters. In a recently coedited volume, Bradin Cormack, Martha C. Nussbaum, and Richard Strier point out that "the law is everywhere in Shakespeare's plays because, most simply, it was everywhere in his culture."[4] This is no exaggeration. Courts, each with their own jurisdiction, abounded in early modern London: there were the common law courts of King's Bench, Common Pleas, and the Exchequer; the equity court of Chancery; the Court of Requests; the Admiralty Court; Star Chamber; the Lord Mayer's Court at Guildhall; and a variety of smaller guild courts.[5] Actual litigation increased drastically as well in the period. Between 1490 and 1640, cases in later stages in the Court of King's Bench and the Court of Common Pleas, the most important common law courts, rose from about 2,100 to almost 29,000.[6] Another source estimates that by the end of Queen Elizabeth's reign a total English population of about four million was involved in about one million legal actions per year.[7]

There are some specific reasons for this massive upsurge in legal activity. One is that by the sixteenth century, law offered a rare means for young men to ascend the social ladder, with the result that there were simply more people seeking legal careers. William Prest writes, "by the beginning of Elizabeth's reign the law had virtually replaced the church as the career open to talents, the ladder on which young men could climb to power and riches."[8] It's partly for this reason that legal activity was sometimes ridiculed as self-interested and roguish on the stage. In *King Lear*, Kent includes "action-taking" (prone to litigation) alongside "base," "proud," "shallow," "lily-liver'd," and "filthy" in his profuse condemnation of Oswald (2.2.15–24).

Another reason for the expansion of legal culture is the rise of print. During the sixteenth and seventeenth centuries, print made the actual disciplinary and practical knowledge of law available to a much broader section of the population than it ever had been before. The history of printed legal texts in England begins in 1481 with the publication of Thomas de Littleton's *Tenures*, a book that catalogs and describes the intricacies of English land law. However, it is in the sixteenth and early seventeenth centuries that printed, widely disseminated legal texts really begin to proliferate. Esteemed thirteenth- and fourteenth-century manuscript treatises on common law were printed for the first time in the sixteenth century: *Britton* in 1530; Glanvill's *Tractatus de legibus et consuetudinibus regni Angliae* in 1554; and Bracton's *De legibus et consuetudinibus Angliae* in 1569. The sixteenth century also saw the appearance of printed yearbooks, texts that gave basic overviews of trials, including the complainants' names, the legal questions at issue, and the judgment delivered. Starting in 1553, the printer Richard Tottel produced

over 200 editions of yearbooks, including various reprints and compila-
tions. The yearbooks were eventually overtaken by "reports," which were
initially based on the notes of students at the Inns of Court and later
produced by well-established jurists like William Bendlowes, William
Dalison, Richard Harper, James Dyer, Edmund Plowden, and Edward
Coke.[9] More than anyone else, Plowden, with his monumental *Commen-
taries* (1571), is associated with the formative age of law reporting and
with a new, more scholarly tendency to summarize all sides of a judicial
argument.[10] Yearbooks, reports, and venerable treatises became the core
of the standard legal reference library, and in printed form they were
available to nonprofessional readers, as well. In addition to this material,
there was an increasingly vast and diverse array of legal literature rolling
off the presses. This ranged from learned treatises and commentaries on
common law, such as Coke's four foundational *Institutes* (1628, 1642,
1644, 1644), to handbooks and abridgments intended for both profes-
sional and nonprofessional audiences. Included in this latter group are
texts such as *A New Boke of Presidentes in Maner of a Register* (1543),
which attempts to explain "for every man" "all maner of evydence and
instrumentes of Practyse" and *The Attourney's Academy* (1630), which
similarly bills itself as "intended for the publike benefit."[11]

Legal and cultural history helps us establish why, and to some extent
what, Shakespeare thought about law. But its explanatory power is limited
when it comes to addressing how Shakespeare used legal subject matter
to explore ideas about selfhood that are not themselves specifically legal.
In these cases, law is a tool or a map, a way to accomplish an intellectual
labor, get to an imaginative destination, or give form to a concept. Con-
sider as an example Macbeth's famous dagger soliloquy, which I discuss
in detail in chapter 3. "Is this a dagger which I see before me?" (2.1.33),
Macbeth asks, grasping at the air. He reflects on the evidence and makes
some speculations; eventually, he walks off stage to kill the sleeping King.
There's an immediate legal context for this scene—the crime of treason—
and a rich historical archive that can help us connect it to the legal culture
of Shakespeare's time. We might begin, for example, by noting that the
basic definition of treason in the sixteenth century—"when a man doth
compasse or imagine the death of our lord the king"—privileges the men-
tal conception of regicide over its material instantiation.[12] The dagger
scene, by staging the dynamics of thought, knowledge, and will that pre-
cede the criminal act, is rooted in this historically specific understanding
of treason as well as the various legal debates and revisions it gave rise to
over the course of the sixteenth and seventeenth centuries. Most would
agree, though, that it's not really the historical particulars of law that give

the dagger scene its imaginative and speculative charge. These aspects of Macbeth's soliloquy derive from the way it mobilizes fundamental questions about the nature of the relationship between body and mind and doing and thinking—questions that are at the conceptual heart of early modern treason but whose philosophical implications extend beyond any historically fixed aspect of law. While Macbeth's speech is occasioned by the event of legal transgression, it ultimately explores something different: the process through which thought and action develop out of sensory experience.

The dagger scene is an example of Shakespeare thinking *with* law because it takes the theoretical issues surrounding a particular kind of crime and uses them as shorthand for a larger set of questions about agency and intention. The scene presents a specifically theatrical version of something we would now call phenomenology. As this example should illustrate, law is of interest to me primarily for what it affords Shakespeare's plays and sonnets conceptually. Tracing this relationship requires an understanding of the historical particulars of early modern legal culture, but it also means that historical contextualization is not an end in itself. By contrast, much of the legally oriented scholarship in early modern literary studies has tended to deal with law in its concrete textual and institutional forms with the goal of connecting early modern plays and poems to some aspect of material, political, or legal culture. Influential scholarship in this vein includes work by Frances Dolan, Rebecca Lemon, and Subha Mukherji.[13] These studies cast new light on the textual and theatrical genres through which legal ideas circulated, the various ways in which early modern men and women experienced law at both the institutional and discursive levels, and the cultural ligatures that existed between the theater and the courtroom. For each of these scholars, "law" is something understood in the particular. It's approached largely at the local level of its various historical, political, and institutional instantiations—as specific laws, specific crimes, and specific procedures that are refracted through or encoded in the drama and literature. This way of thinking about law—let's call it law-in-the-particular—is rooted in the critical aspirations that helped give rise to the field of literature and law in the 1970s. During this formative period of the discipline, law was seen as crystallizing various aspects of the political real; it encoded authority, normative behavior, and various forms of inequality. In this way, law seemed to offer literary criticism a way to be topical, socially engaged, and finally to achieve the political urgency and immediacy that many literary scholars were seeking.[14] Literature, for its part, had the potential to humanize law, to awaken empathy and facilitate a kind of moral insight

and disciplinary self-critique typically absent from legal records and the formal procedures of the courtroom.[15] Scholars like Dolan, Lemon, and Mukherji do not necessarily share the programmatic commitments of first-wave legal-humanists, but a general link between law and the political real persists in their work, as it does in the work of many other early modernists.[16]

When it comes to addressing the relationship between law and selfhood, though, law-in-the-particular provides limited resources. As I have indicated, a study like this one requires engagement with both the cultural particulars of legal experience in Shakespeare's time *and* the way these particulars—institutional, textual, and experiential—iterate larger philosophical ideas that cannot necessarily be reduced to a specific time and place in history. Accordingly, while my investigations of law and selfhood in Shakespeare's plays and sonnets are frequently grounded in the archive, they are also responsive to the conceptual dimension of law—the ideas, assumptions, values, and habits of thought that underpin specific legal rules and practices and which intersect with primary questions about selfhood, such as: What are the sources of agency? What counts as a person? For whom am I responsible, and how far does that responsibility extend? What is truly mine? These are questions that are as fundamental to law as they are to metaphysics, ethics, and political theory, and Shakespeare remains creatively and intellectually committed to them throughout his career.

Some studies of early modern literature and law *have* been attentive to these kinds of questions. In this group, I would include the work of scholars such as Lorna Hutson, Luke Wilson, and Katharine Eisaman Maus, all of whom have shaped my own thinking on Shakespeare. Our projects differ, however, in some crucial respects. Hutson's *The Invention of Suspicion*, for example, addresses selfhood at a number of points, but because Hutson's concern is with the way forensic rhetoric endowed characters on stage with a sense of interiority, the book's main insights about law and selfhood have to do with the means by which legal ideas and language contribute to the formation of discrete, rational, and volitional subjects.[17] My project, by contrast, is to explore how law enabled Shakespeare to model communal, collaborative, and distributed forms of selfhood, and therefore places his legal imagination in a different philosophical tradition. Wilson's *Theaters of Intention* deals with one specific component of selfhood: the representation of agency on stage and in the courtroom.[18] I engage with agency, too, at various points, and as my notes indicate, I have learned a great deal from Wilson. But selfhood cannot be reduced to a discussion of agency. Thinking about selfhood also involves attending to

matters of embodiment, cognition, and social responsibility, all of which are issues I examine in this book. Finally, Maus has explored how law contributes to the articulation of interiority in early modern drama, and more recently she has analyzed how Shakespeare distinguishes between human subjects and material artifacts when he writes about property.[19] One of the things I hope this book calls attention to, though, is the fact that law provided Shakespeare with more than one language of selfhood. If ideas about interiority and singularity have legal coordinates in Shakespeare's work, so too do ideas about physical substance and sociality.

My aim in pointing out these differences is not to try to prove any of these scholars wrong. The kind of legal rhetoric that Hutson and Maus focus on, for example, really does contribute to a heightened sense of inwardness. But there are also elements of law premised on more communal, collaborative, and distributed forms of selfhood. Land law, for instance, curates complex relationships among people, animals, and objects and treats the human self as an assemblage of these various artifacts. This is something I explore in chapter 1. Or consider judgment, the topic of chapter 4, which was in Shakespeare's time a largely participatory practice relying on the collaboration of multiple parties, including jury members, justices of the peace, and various legal and bureaucratic officials. In modern philosophy, especially the work of Immanuel Kant and Hannah Arendt, judging entails stepping into a relational and inherently social mode of being. Even a concept like criminality, which is certainly understood in reference to discrete deviants, nevertheless requires a larger social and material environment to become phenomenologically intelligible, a topic I take up in chapter 3. There are also legal concepts that issue from outside the strictly juridical realm. The idea of hospitality, in its religious, philosophical, and social formations, is a good example of this. As I discuss in chapter 2, the laws of hospitality are premised on a radical ethics of otherness and the version of justice they posit is correspondingly resistant to self-sameness and individuality.

It's not correct to say that Shakespeare wasn't interested in what we understand as individuality, nor would it be accurate to claim that his engagement with law does not have something to tell us about that interest. But this book shows that law also offers a perspective from which we can redescribe Shakespeare's vision of selfhood in communal, embedded, and intersubjective terms, and make of him something more than "an author for a liberal individualistic culture," as Peter Holbrook has labeled him.[20] While it's true that Romantic individualists like Johann Gottfried Herder were fanatical Shakespeareans, it does not follow that they were balanced and careful readers. They did not, at any rate, attend closely to

the relationship between law and selfhood in his work, a relationship I'll begin to describe in more detail in the next section.

Legal Ecologies

Law afforded Shakespeare a conceptual language through which the self could be portrayed as part of a vital and interdependent world of things. Accordingly, in the plays and sonnets I examine, selfhood is not a fixed and bounded entity, but instead something better characterized as a *dynamic process* involving an assortment of human and nonhuman agents in environments of exchange.[21] In the twentieth century, the philosopher A. N. Whitehead used the term "actual entity" to describe something similar, the way seemingly discrete people and things are in fact in states of constant interaction and change. He explains, "An actual entity is a process, and is not describable in terms of the morphology of a stuff."[22] This idea of dynamic process—of a gathering of different, relationally evolving agents—is important because whether it takes the form of social (human-human) or material (human-environment) relationality, it entails a way of thinking about nonindividual selfhood that is distinct from the more rigidly object-oriented materialism that emerged in early modern studies in the 1990s. Work by scholars like Patricia Fumerton, Margreta De Grazia, Ann Rosalind Jones, and Peter Stallybrass, as well as slightly later studies by Natasha Korda and Julian Yates, critiqued the Burckhardtian commitment to interiority and emergent individualism that characterized the field. Instead, they argued that selfhood inheres entirely in things, "in bric-a-brac worlds of decorations, gifts, foodstuffs, small entertainments, and other particles of cultural wealth and show," to borrow Fumerton's words.[23] For these object-oriented materialists, selfhood is, contra Whitehead, precisely "describable in terms of the morphology of a stuff." I think Shakespeare's use of law shows us a different way out of individualism, one that includes objects but which ultimately embraces a much broader and more eclectic world of relational life. The term I use to indicate this distributed and dynamic version of selfhood is "ecology."

   Earlier, I defined Shakespeare's legal ecologies as representational environments in which selfhood is both linked to and shaped by other human and nonhuman agents in a juridical setting. As this definition suggests, my use of the word "ecology" aims at a more robust way of thinking about relationality than allowed by the term's narrowly biological or environmental meanings.[24] In this I follow the lead of a number of modern and contemporary thinkers, including some prominent ecocritics.

Timothy Morton, for example, uses the term to evoke a general sense of interconnection: "*The ecological thought*," he writes, "is the thinking of interconnectedness . . . It's a practice and a process of becoming fully aware of how human beings are connected with other beings—animal, vegetable, or mineral."[25] The political theorist Jane Bennett has argued that acknowledging this "interconnectedness" is necessary if we want to change public policy on issues like the environment, farming, and stem-cell research. The goal, according to her, is to recognize "a political ecology of things" existing on a horizontal, rather than a vertical and hierarchical, plane.[26] Bennett's project, as she points out, draws on an established philosophical history of vibrant matter that includes the writings of Spinoza, Nietzsche, Thoreau, Darwin, Adorno, Bergson, Whitehead, and Deleuze. However, in thinking about the way vibrant matter forms an *ecology* of association and exchange, she is responding even more specifically to John Dewey, who was interested in the "dependence of the self for wholeness upon its surrounding," and Bruno Latour, who pushed Dewey's ideas in a more assuredly materialist direction.[27] Bennett's notion of "political ecologies" might even be seen as a synthesis of Dewey's idea of "conjoint action"—the distributive, cooperative agency necessary to generate a public sphere—and Latour's rejection of the exclusive categories of "nature" and "culture" in favor of the "collective." As Latour explains in *Pandora's Hope*, "Humans, for millions of years, have extended their social relations to other actants with which, with whom, they have swapped many properties, and with which, with whom, they form collectives."[28] These collectives, or ecologies, are not simply the contexts in which a person exists. They need to be understood as a model for existence as such. "Who can say," asks Henri Bergson in *Creative Evolution*, another important contribution to this strand of thought,

> where individuality begins and ends, whether the living being is one or many, whether it is the cells which associate themselves into the organism or the organism which disassociates itself into cells? In vain we force the living into this or that one of our molds. All the molds crack. They are too narrow, above all too rigid, for what we try to put into them.[29]

Where does individuality begin and where does it end? Is the living being one or many? These are questions that Shakespeare's plays and sonnets pose too, though they do so through the formal language of theater and poetry and under the thematic auspices of law. When I use the term "legal ecology" to describe these moments in Shakespeare's work, I intentionally

make a connection between the playwright's legal imagination and a materialist strain of thought that assumes *process* rather than substance or form to be the fundamental structure of the world.

Returning to the early modern period, Shakespeare's legal ecologies can be seen as either moving with or working against the intellectual currents of his own time depending on the perspective from which you are looking. This is because there was no single, uniformly accepted way of understanding the self in the sixteenth and seventeenth centuries. Sweeping histories of selfhood from antiquity to modernity by scholars like Charles Taylor, Timothy J. Reiss, and Jerrold Seigel offer linear narratives that trace how one version of selfhood gradually evolved, or was cataclysmically transformed, into another, with the early modern and Enlightenment periods generally identified as key rupture points when communal forms of identity gave way to increasingly rational, interiorized, and individual ideas of selfhood.[30] But this is only partially accurate. On one hand, the notion that people possessed unique inner lives was widely available in the sixteenth and seventeenth centuries, as studies by Maus and Elizabeth Hanson have shown.[31] René Descartes provides the exemplary philosophical expression of this idea. In part 4 of *Discourse on the Method* (1637), Descartes famously writes, "*I think, therefore I am*," describing "this truth" as "the first principle of the philosophy I was seeking." He continues:

> Then, examining with attention what I was, and seeing that I could pretend I had no body and that there was no world nor any place where I was, I could not pretend, on that account, that I did not exist at all, and that, on the contrary, from the fact that I thought of doubting the truth of other things, it followed very evidently and very certainly that I existed; whereas, on the other hand, had I simply stopped thinking, even if all the rest of what I had imagined had been true, I would have had no reason to believe that I had existed. From this I knew that I was a substance the whole essence or nature of which is simply to think, and which, in order to exist, has no need of any place nor depends on material things. Thus this "I," that is to say, the soul through which I am what I am, is entirely distinct from the body and is even easier to know than the body, and even if there were no body at all, it would not cease to be all that it is.[32]

This is the opposite of self-as-ecology. For Descartes, the self "has no need of any place nor depends on material things." Dislocated and

disembodied, this is an "I" that exists in entirely self-referential terms. A vast and unbridgeable epistemological chasm yawns between the Cartesian "I" and the ultimately unknowable outer world of people and things. Milton's Lucifer said memorably, "The mind is its own place" (*Paradise Lost* 1.254).[33] For Descartes, the *self* is its own place.

Perhaps because of the power and the precision of his theory, Descartes is routinely either blamed for or credited with the next three to four hundred years of individualism and scientific skepticism. Yet for all its influence, Descartes's philosophy can hardly be taken as emblematic of early modern notions of the self. Richard Strier has even argued that the hermetic model of selfhood, based entirely on inner life and available in other forms in writings by Augustine, Martin Luther, and Montaigne, was exceptional rather than dominant.[34] It was at any rate only part of the total picture. Humoral theory, for example, described both physical and mental experience as dictated by the balance of four substances, or "humors," common to all people. These are black bile, linked to the qualities of dry and cold and prominent in those with a melancholic temperament; phlegm, linked to the qualities of wet and cold and prominent in those with a phlegmatic or stolid temperament; blood, linked to the qualities of hot and wet and prominent in those with a sanguine temperament; and yellow bile, linked to the qualities of dry and hot and prominent in those with a choleric temperament. Keeping the humors in balance depended on how one managed six external factors known as the "nonnaturals": air, food and drink, exertion and rest, sleeping and waking, retentions and evacuations, and emotions (or "passions").[35] Humoral theory was systematized by the Roman physician Galen and became deeply entrenched in both high and vernacular intellectual cultures in early modern Europe. One study estimates that between 1500 and 1700 there were approximately 590 different editions of the works of Galen published.[36] In stark contrast to Descartes, humoral theory is remarkable for the way it relates the body to the mind, and both to the environment. The inner world of emotions and thought, what we would call psychological states, are understood in material terms, as substances or fluids, in humoral theory.[37] And the dependence of those humors on external elements like food and drink, and activities like eating, excreting, and sweating, which cross the boundary between inner and outer, knit the self into a physical scene that extends beyond the threshold of the body and certainly beyond the threshold of the mind.[38] This is a form of selfhood that *does* "have need of . . . place" and certainly "depends on material things."

Humoral theory was just one of the languages available for thinking about selfhood in nonproprietary terms. The Dutch philosopher Baruch

Spinoza, for instance, argued vigorously that the world, its inhabitants, and even the thoughts generated by those inhabitants were formed of a single substance. This idea is the foundation of his seminal work, *The Ethics* (1677), and he devotes the first fifteen propositions of book 1 to proving it. Spinoza positioned himself against Descartes and the medieval-Platonic tradition from which Descartes's dualism derived. The notion that one could separate the body from the mind, one person from another, humans from animals, and anything from the larger natural environment was, as far as Spinoza was concerned, a metaphysical illusion. Thoughts, bodies, people, animals, plants, and rocks were, according to him, merely different *modes* of the same infinitely variable substance. He writes, "We are a part of Nature which cannot be conceived independently of other parts." This means, in the first place, that we are not autonomous. Instead, our actions, thoughts, and emotions need to be understood as the result of a collaborative form of agency that involves multiple minds, multiple bodies, and the whole of the material environment. "The force whereby a man persists in existing," Spinoza writes, "is limited, and infinitely surpassed by the power of external causes."[39] Selfhood in this account is a finite mode of a larger vital ecology.

Spinoza formulated this argument at a level of detail and with a degree of moral rigor that made *The Ethics* unique. But his basic ideas about the relationship between individual selves and the larger material world were not entirely new. Diverse examples of distributed selfhood could be found in early modern literature, for example. A poem like Henry Vaughan's "The Morning Watch," which opens, "O joys! Infinite sweetness! with what flowers, / And shoots of glory, my soul breaks, and / buds" (ll. 1–3), articulates a vitalism that is at once violent and exhilarating. The poet-speaker's soul, that immaterial entity "through which," in Descartes's *Discourse*, "I am what I am," is here shot through with roots and flowers and gloriously disfigured by buds. There is no hierarchy of substance in these lines and no privileged inner world; everything is democratically enmeshed in what Vaughan describes later in the poem as "the quick world" (10).[40] Another alternative to hermetic selfhood is found in the conventional early modern trope of two bodies—typically the bodies of two lovers—sharing one soul. I quote here from John Donne's "The Ecstasy":

> But as these several souls contain
> Mixture of things, they know not what,
> Love, these mixed souls doth mix again,
> And makes both one, each this and that. (ll. 33–36)[41]

These lines are interesting because they describe how love makes the souls of the man and woman "one" while also presenting the more challenging idea that each soul remains itself at the same time as it becomes something entirely distinct from itself (i.e., another soul): "each" is "this *and* that." There is a kind of monism at work here, but one that preserves, even highlights, the paradox of being both one thing and another thing. This is a kind of playfulness that programmatic philosophy like Spinoza's *Ethics* cannot afford to indulge in, but which poetry certainly can. The verb Donne coins slightly later in the poem, "interanimates," indicates more precisely the way the lovers' merged souls are to be imagined as forming a codependent life-world rather than simply a single substance.[42]

The trope of the merged souls, or merged selves, is one that Shakespeare is particularly fond of. We see it frequently in his sonnets, as I show in chapter 2, but it occurs in the drama as well. In *The Comedy of Errors*, for example, Adriana says to Antipholus of Syracuse,

> O, how comes it,
> That thou art then estranged from thyself?
> Thyself I call it, being strange to me,
> That, undividable incorporate,
> Am better than thy dear self's better part.
> Ah, do not tear away thyself from me;
> For know, my love, as easy mayst thou fall
> A drop of water in the breaking gulf,
> And take unmingled thence that drop again,
> Without addition or diminishing,
> As take from me thyself and not me too. (2.2.119–29)

The idea that one can be estranged from oneself might sound rather mundane to us, living as we do in a culture where people regularly profess not to be themselves, or insist on the need to pull themselves together or spend more time with themselves. Yet common as they may be, these expressions correlate to a way of thinking about selfhood that is scattered, mobile, and permeable.[43] So too does Adriana's concern about self-estrangement—the idea of somehow *being* apart from one's *self*—and her subsequent image of her metaphysical relationship to Antipholus of Syracuse as being like a drop of water in a "breaking gulf." This is a distributed and pointedly nonindividual version of selfhood; "a kind of self resides with you," as Cressida puts it in *Troilus and Cressida* (3.2.148).

I'm not interested in trying to link Shakespeare's legal ecologies to a particular early modern school of thought or to the work of a particular

early modern philosopher, though different thinkers and different aspects of early modern intellectual culture become relevant to my discussions at various moments in this study. What I want to emphasize at this point is simply that there was nothing about Shakespeare's world that would have hindered him from conceiving of the self in distributed terms. Quite the contrary: the intellectual and literary culture of his time provided multiple resources for questioning ideas of individuality and interiority. As the following chapters will show, for Shakespeare, law was very much among those resources.

The Chapters

Each of this book's four chapters is organized around a single keyword that denotes a concept or realm of experience in which ideas about law and ideas about selfhood intersect in particular ways. These keywords are "property," "hospitality," "criminality," and "judgment."

Chapter 1, "Property: Land Law and Selfhood in *Richard II*," explores the relationship between self and property in the context of sixteenth- and seventeenth-century land law. More than any other branch of early modern law, land law assumes the human subject to be inextricably bound up with a variety of other nonhuman entities, from material things like livestock, crops, mineral ore, tools, and houses, to nonmaterial things like estates, leases, and titles. Landholding, in other words, means being part of an ecology of animal, vegetable, and mineral life. It entails an open form of subjectivity that evolves and transforms in relation to other elements in the overall network. I illustrate this through careful analysis of a variety of legal documents, which I weave into a reading of Shakespeare's *Richard II*. These documents include assize court records; legal reports; and law books by Thomas de Littleton, John Rastell, and Edward Coke. *Richard II*, I argue, develops an account of selfhood from within these conceptual parameters, making a uniquely theatrical contribution to a line of monistic and vitalist thought that runs from Baruch Spinoza to Gilles Deleuze and Jane Bennett. We see this in Bullingbrook, for example, who mobilizes ideas about land use and ownership in order to reimagine his political and personal identity upon returning from exile. We see it, too, in Richard, whose gradual loss of property leads to a rediscovery of the basic social and material coordinates of being. What is most striking about *Richard II*, I suggest, is the way Shakespeare goes beyond mere legal reference to draw out the latent metaphysics of land law and make it part of the imaginative framework of his play. The result is an

unsettlingly volatile political world in which the contours of selfhood are keyed to ever-shifting configurations of property.

Chapter 2, "Hospitality: Managing Otherness in the Sonnets and *The Merchant of Venice*," considers how these two pieces of writing contribute to the intellectual history of hospitality. Texts discussed range from Genesis and Saint Paul's Epistle to the Romans to philosophical work by Immanuel Kant, Jacques Derrida, and Emmanuel Levinas. As I show, hospitality is always linked to a larger notion of justice—of what is right, or at least of what is required. Hospitality, that is, gives social form to various kinds of obligation. This obligation can be contractual or non-contractual, legislated or immanent, but it will always be rooted in basic questions about entitlement and responsibility: What do I owe? What are my prerogatives? What is yours? What is mine? Hospitality constitutes its own jurisdiction and to enter that domain—to follow the laws of hospitality—is to activate a precarious relationship between self and other, a legal ecology in which personal autonomy is always limited by the competing claims of guest or host. This dynamic takes a particularly extreme form in Shakespeare's sonnets. Sonnets 35, 49, and 88, in particular, I argue, explore an absolute, pre-contractual version of the hospitality relation, one in which justice is understood as the fulfillment of a primary and unconditional obligation to the Other. With sources in the biblical hospitality of Lot and a modern correlative in Levinasian ethics, the hospitality relations presented in Shakespeare's sonnets are rooted in sacrifice and selflessness. By contrast, *The Merchant of Venice* features two seemingly opposed forms of hospitality. On one hand, Shakespeare's Venice functions according to the mandates of "cosmopolitan hospitality," defined by Kant as "the right of a foreigner not to be treated with hostility."[44] This idea was already being celebrated in Shakespeare's time by writers like William Thomas and Lewis Lewkenor who lauded the virtues of the Venetian republic. Yet cosmopolitan hospitality has only limited success in the world of Shakespeare's play. It certainly does not survive the trial scene in act 4.1. Moreover, the founding act of the play—Antonio's riskily altruistic extension of "My purse, my person, my extremest means" (1.1.138) to Bassanio—looks more like absolute hospitality than cosmopolitan hospitality. It is a gesture as radically self-effacing as the scenarios of sonnets 35, 49, and 88. Ultimately, I argue, *The Merchant of Venice* asks us to think of hospitality in pluralistic terms, as a malleable form of social theater capable of ritualizing both rights and obligations, the demands of the self and the demands of the other.

In chapter 3, "Criminality: The Phenomenology of Treason in *Macbeth*," I consider how both the theoretical and procedural aspects of

determining criminal liability in cases of treason in early modern Eng-
land are premised on deeper beliefs about the nature of the relationship
between mind and body. Early modern English jurists inherited from
Henry Bracton a two-part model of infraction consisting of *mens rea*
(guilty mind) and *actus reus* (guilty act). Influential passages of scripture
in the period, such as Saint Paul's Epistle to the Romans and Christ's
Sermon on the Mount, presented similar formulations of disobedience as
anchored to a founding moment of cogito. Through an examination of
legal statutes, state trial transcripts, and a variety of legal treatises, I show
how ideas about the relationship between thinking and doing informed
cultural understandings of treason in the sixteenth and seventeenth cen-
turies. Shakespeare's representation of regicide in *Macbeth* grows out of
this context, but in translating treason into the medium of theater, he
also endows it with a phenomenological dimension that is only implicit
in his sources. Macbeth's experience of criminal becoming in the dagger
scene of act 2.1 is characterized by what Bruce Smith calls "a relational
way of knowing," one in which murderous thoughts are shaped by physi-
cal, sensual interaction with the perceived world—especially, in this case,
the dagger.[45] This is a version of criminality that cannot be adequately
described through rigid dichotomies of mind and body. Similar to the way
theorists of the passions in early modern Europe relied on a psychophysi-
ology that blurred the boundaries between inner and outer, Shakespeare
imagines treason in *Macbeth* not in sequential terms (first I think, then I
do), but in terms of a fluid, phenomenological exchange between mind
and matter to the extent that criminal thoughts and criminal acts are
often difficult to distinguish. The dagger scene tries to think slow some-
thing that typically gets glossed over or ignored: the way thoughts emerge
interactively from a larger sensory environment and the way imagination
functions as part of a material ecology that includes but also exceeds
the individual body. Shakespeare uses the resources of theater to present
treason as something Maurice Merleau-Ponty would describe as "a unit
of experience," a process involving both ideas and things in a way that
forces us to abandon the mutually exclusive categories of subject and
object.[46]

   Chapter 4, "Judgment: The Sociality of Law in *Hamlet* and *The Winter's
Tale*," reconstructs what I call the "culture of judgment" in early modern
England, a set of ideas and practices that included forms of legal adju-
dication, methods of discerning aesthetic value, and standards of social
decorum. I trace these ideas and practices not only in Shakespeare's plays,
but also in justice of the peace manuals, literary critical texts, and rheto-
ric handbooks. Common to all these versions of judgment, I suggest, is a

fundamentally collaborative and participatory structure. Judgment always involves orienting the mind within some sort of interactive environment, be it a court of law, a theater, or a conversation in St. Paul's churchyard. The first philosopher to theorize judgment in these terms was Immanuel Kant, though it was Hannah Arendt who developed the broader political and moral implications of his ideas. This chapter argues that Shakespeare, too, was preoccupied with the collaborative dimension of judgment. In Shakespeare's theater, judging is a communal and community-making act; it has more to do with establishing relationships than with advancing an individual decision. In *Hamlet*, a play rife with judicial observation, careful discernment, and methodical decision-making, judgment always takes place in social and theatrical spaces. These scenes of judgment offer a series of case studies in the sociality of thinking and the intersubjective grounds of moral agency. *The Winter's Tale* returns to these ideas but places them in a more overtly ethical frame. During the trial of Hermione in act 3.2, Leontes metes out judgment in a way antithetically opposed to the collaborative model. Ignoring the insights of advisers, the testimony of Paulina, and even the words of the Oracle of Apollo, Leontes pursues a recklessly egocentric mode of judgment, leading the whole community into pain, death, and despair. In *The Winter's Tale*, judgment provides a framework for showcasing the social and moral risks we take when we cease to think in, and through, the presence of others. And at the end of the play, it provides an equally compelling framework for thinking about how we might manage those risks.

An insistently ethical argument distinguishes *The Winter's Tale* from the other works discussed in this book, but as I explain in the "Coda" there is also a larger ethical vision that starts to emerge when we step back and consider Shakespeare's various legal ecologies together, as a whole. What does it mean to imagine, as Shakespeare does, alternatives to interiorized, bounded selfhood? What are the implications of looking outward instead of inward? A variety of modern philosophers have offered answers to these questions. For Levinas, for example, exteriority means purging Western metaphysics of the kind of systematic egotism that eventually leads to atrocities like the Holocaust.[47] For Charles Taylor, it means rediscovering the moral coordinates of human existence, something he argues was lost in the wake of Enlightenment science.[48] For Paul Ricoeur, looking outward rather than inward means creating the conditions whereby individuals "participate in the burdens related to perfecting the social bond."[49] Shakespeare's ethics of exteriority accrue from legally framed scenes of collective thought, interpersonal experience, and material embeddedness. They lack, as they should, the programmatic

specificity of philosophical argument, but the plays and sonnets I explore in this book nevertheless diagram a situated and relational form of being that Levinas, Taylor, Ricoeur, and others all take as prerequisite to responsible living. The core assumption of Shakespeare's ethics of exteriority—an ethics assembled, remarkably, through the conceptual language of law—is that there is no self prior to or separate from the world. The insight is simple but important, and perhaps especially so at a time when the greatest threats to our social and ecological well-being come shrouded in languages of absolute liberty and the claims of extreme individualism.

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Property: Land Law and Selfhood in *Richard II*

With a little good fortune and a bit of common sense, an early modern man or woman could live out their life without ever having to deal with criminal law. Not so with land law. Prior to the nineteenth century, land law was the principle arena for orchestrating just about every aspect of life. The legal historian S. F. C. Milsom writes, "From the earliest settlements to the industrial revolution, the economic basis of society was agrarian. Land was wealth, livelihood, family provision, and principle subject-matter of the law . . . land was also government and the structure of society."[1] In early modern England, land law governed the vast majority of human relationships, marshaling a variety of different forms of domestic, professional, economic, and political association, and to this extent both responded to and reinforced ideas about personal identity in the period. If we situate land law in the context of property more broadly, it enters a long philosophical tradition fundamentally concerned with questions of selfhood: Thomas Aquinas's doctrine of property forms part of his wider teachings on the nature of man; Hegel saw property as one means to fulfilling the will and, therefore, to becoming fully human; Jean-Jacques Rousseau and Thomas Jefferson understood property as a prerequisite to individual freedom, for them the essence of humanness. For figures like Thomas More, Gerrard Winstanley, and Karl Marx, on the other hand, private property was a *de*humanizing force that caused people to experience their surroundings and each other in unnatural ways. Property regimes are always expressions of ideas about selfhood, and any serious theory of property involves either explicit or implicit metaphysical assumptions.

This chapter explores the relationship between property and selfhood in the context of early modern English land law. Land law offers a particularly rich framework for thinking about selfhood because it orchestrates

a range of complex linkages among people, lived environments, objects, and animals. More than any other branch of early modern law, land law assumes the human subject to be inextricably bound up with a variety of other nonhuman actors, from material things like livestock, crops, mineral ore, tools, and houses, to nonmaterial things like estates, leases, and titles. Shakespeare's *Richard II* develops an account of selfhood from within these conceptual parameters. As I will show, the social, physical, and emotional experiences that Bullingbrook and Richard undergo in the play are never presented as private or solitary events, not even in the final act when Richard delivers his prison-cell soliloquy. Instead, Shakespeare imagines these experiences as scenes of interaction and exchange, negotiations between character and environment. *Richard II* is a play that uses the conceptual scaffolding of land law to model a distinctly mobile and distributed version of selfhood.

My argument will unfold in three parts. The first section of the chapter sets the scene by considering how John of Gaunt uses land law in act 2.1 to articulate a particular version of national belonging grounded in collectivity and obligation. The second section looks at how Bullingbrook invokes a range of personal possessions, both objects and geographic spaces, in order to reshape his political and personal identity upon returning from exile. The third section concentrates on Richard himself with special attention to the way the deposed king's gradual loss of property leads to a rediscovery of the basic social and material coordinates of being, rather than the austere and isolated introspection we might expect. At a number of points in the pages that follow, I examine key principles of early land law, frequently with commentary on particular cases or legal transactions. This material helps to illuminate the way a specialized vocabulary of possession, use, and jurisdiction gets woven into a language of distributed selfhood in *Richard II*; a language, that is, which describes the self as fundamentally linked to other human and nonhuman entities at the level of substance even while they remain distinct at the level of form. As this suggests, there are both historical and philosophical contexts for the treatment of land law in *Richard II*. While Shakespeare's imaginative sources are the legal reports, practices, and doctrines of early modern England, his conceptual fellow travelers are the latter-day innovators of monistic and vitalist thought, such as Baruch Spinoza, Gilles Deleuze, and Jane Bennett. In what follows, I will be entering these two contexts into conversation in order to craft an account of the play that is responsive to both its cultural referents and its theoretical insights.

Gaunt and Legal Identity

The first we hear of land law in *Richard II* is in act 2.1. John of Gaunt, lying in bed, dying, embarks on a eulogy of England that conceives both positive and negative versions of national identity in literally *grounded* terms:

> This blessed plot, this earth, this realm, this England,
> . . .
> This land of such dear souls, this dear dear land,
> Dear for her reputation through the world,
> Is now leas'd out—I die pronouncing it—
> Like to a tenement or pelting farm.
> England, bound in with the triumphant sea,
> Whose rocky shore beats back the envious siege
> Of wat'ry Neptune, is now bound in with shame,
> With inky blots and rotten parchment bonds;
> That England, that was wont to conquer others,
> Hath made a shameful conquest of itself. (2.1.50, 57–66)[2]

Gaunt identifies England and Englishness with land, using not only the word "land" itself, but also "plot" and "earth." We know from Richard Helgerson's influential work that the last quarter of the sixteenth century saw the appearance of "a cartographic and chorographically shaped consciousness of national power," one that "strengthened the sense of both local and national identity at the expense of identity based on dynastic loyalty."[3] In Gaunt's speech, however, something slightly different is going on. Here, Englishness is not simply identified with a vivid sense of place, but more specifically with the legal practices, roles, and artifacts involved in land transfer and use. It's described as "leas'd out" and likened to "a tenement or pelting farm." Tenancy is the situation of using but not actually owning a piece of land and a "pelting," or paltry, farm is a smallholding. Both terms are used pejoratively to project an image of England as post-splendor, depraved, corroded by a form of tyranny that violates the systems of reciprocity, interdependence, and mutual obligation that are managed and safeguarded by land law and which Gaunt understands as essential to all that is (or has been) glorious about England. Animated by the unique social, material, and economic geographies of early landholding practice, Gaunt's famous speech lies at the intersection of a legal and cartographic imaginary.

   It may seem surprising that something as inscrutable and specialized as land law could function effectively as shorthand for national identity.

However, there are specific cultural reasons for why this was so. The historian C. M. Gray offers a helpful analogy when he writes, "land law was to legal learning what the classics were to general learning. . . . Its rules were the lawyers' most special possessions."[4] Land law, in other words, was at the heart of the English legal establishment, and in the sixteenth and seventeenth centuries this would have lent it a great deal of political potency.[5] Because common law was generally understood to predate other forms of authority, monarchy included, landholding practices possessed an almost sacred quality. They were closely associated with English exceptionalism and deeply embedded in the genome of English national identity.[6] As late as 1772, William Blackstone in the case of *Perrin v. Blake* argued strenuously for maintaining time-honored, feudal notions of land in order to safeguard England's core national, cultural, and social values: "The law of real property in this country is now formed into a fine artificial system, full of unseen connections and nice dependencies, and he that breaks one link of the chain endangers the dissolution of the whole."[7] For Blackstone, as for Gaunt, the desanctification of real property led inevitably to the erosion of a much larger belief system and, finally, to the breakdown of the sociopolitical order.

There are also some internal characteristics of land law itself, the way it actually goes about the business of regulating real property, that connects it to English social values. One important example of this is the fact that the feudal notions at the heart of early modern land law had very little to do with what we would now think of as ownership. Instead, they were concerned with networks of relationship, both across and among various social tiers and through time. Apart from the monarch, there are no owners in medieval and early modern land law—only tenants. Land is something you "hold" rather than something you have dominion over. It's not a personal possession, but a conditional right, called a "seisin," dependent upon the rendering of services or money to the lord of whom your land is seised. In the case of the lords themselves, service or money is owed to the king or queen.[8] Within this basic framework, land mediates a variety of temporal forms of value and interpersonal forms of association. Value—the amount of interest one has in a given piece of land—is measured by time and referred to as an "estate." An estate, that is, is not (or not solely) a material thing, but more precisely a "quantum of interest which a tenant has in his land."[9] "An estate in land," so runs the classic definition from *Walsingham's Case* (1573), "is a time in the land, or land for a time."[10] For example, a "fee simple" estate is a landholding which is, in principle, infinite, bearing almost no restrictions on how or to whom it can be passed through inheritance. A "fee tail" estate, on the other hand,

is finite and subject to inheritance restrictions. It's lesser in duration and of fundamentally different quantitative value.

Separate from the estates system of classification is the doctrine of "tenure," a misleadingly simple category which can actually be disaggregated into a plethora of obscure forms of association, such as knight-service, grand sergeanty, petit sergeanty, socage, escuage, burgage, frankalmoin, frankmarriage, villenage, and so on. These different kinds of tenure denote different types of service for which land could be granted. They range from the provision of knights to the tending of falcons and dogs to the rendering of spiritual guidance. Most of these tenures were established in England after the Norman Conquest and were well out of use by the sixteenth century, replaced by various kinds of monetary payment. However, the basic principle of tenure—that landholding involves a cluster of dependent relationships between superiors and inferiors with reciprocal duties toward each other—remained at the core of the law of real property throughout the early modern period.[11] This is one reason we see Thomas de Littleton's *Tenures*, the seminal overview of early English land law first printed in 1481, go through seventy subsequent editions between 1483 and 1628, the same year Edward Coke took it as the subject of the first of his four monumental legal treatises, the *Institutes of the Lawes of England*.[12]

Land law gives expression to some of the deepest structures of social order, collective identity, mutual obligation, and political strength in England. Accordingly, when Gaunt invokes the image of "inky blots and rotten parchment bonds" in the passage quoted above, he is not simply referring to corrupted land charters. More to the point, he is drawing attention to how those corrupted documents symbolize the failure of a cultural project. Later in the scene, addressing Richard directly, Gaunt makes more pointed reference to the way the king has distorted the feudal landholding practices central to common law and the English social structure:

> Why, cousin, wert thou regent of the world,
> It were a shame to let this land by lease;
> But for thy world enjoying but this land,
> Is it not more than shame to shame it so?
> Landlord of England art thou now, not king,
> Thy state of law is bond-slave to the law, (2.1.109–14)

Richard has been levying taxes on landholders. This is an objectionably profit-driven use of authority, but that is not the primary problem. The

primary problem, as Gaunt makes clear, is that this practice turns Richard into a landlord rather than a king, and this changes his relationship to law. A king, Gaunt reminds Richard, is a source of law, not its subject. This is a point King James tried to make when, during the 1607 parliamentary debates on the proposed Union of England and Scotland, he referred to himself as "*Lex Loquens*," a "speaking law" whose powers of juridical conception placed him outside the legal system.[13] James's use of this legal doctrine to advance his British Union project was controversial (and ultimately unsuccessful) because it had economic and cultural implications that worried Parliament. But within the more general theoretical ambit of land law, the idea was firmly established: the monarch was the only true *owner* of land, which means both that he was at the top of the chain of property relations and also that he transcended the networks of material exchange inherent to those relations. In exploiting landholders for financial gain, Gaunt charges, Richard places himself within the economic network of property, making his "state of law" a "bond-slave to the law." This is the great "shame" that Gaunt returns to so insistently in the passage.

The remainder of *Richard II* unfolds in the shadow of Gaunt's pronouncements. Fittingly, it's Richard's unlawful seizure of Gaunt's own property—"His plate, his goods, his money, and his lands" (2.1.210)—that leads not only to the political abjection of rebellion, but also, ultimately, to the promise of political renewal in the person of Gaunt's rightful inheritor, Henry Bullingbrook.[14] What remains undeveloped in Gaunt's theatrical excursus on England is the way the landholding practices that occupy such an important place in his thinking on collective identity function at the more local level of selfhood. For that line of thought, we turn to Bullingbrook.

Bullingbrook and Distributed Selfhood

Let me begin this section by revisiting the passage I quoted at the opening of the "Introduction," the moment in act 2.3 when Bullingbrook, violating the terms of his exile, comes back to England to claim his inheritance. York accuses him of rebellion and treason for "braving arms against thy sovereign" (2.3.112) and Bullingbrook gives a reply at once legal and metaphysical:

> As I was banish'd, I was banish'd Herford;
> But as I come, I come for Lancaster.

And, noble uncle, I beseech your Grace
Look on my wrongs with an indifferent eye.
You are my father, for methinks in you
I see old Gaunt alive. Oh then, my father,
Will you permit that I shall stand condemn'd
A wandering vagabond, my rights and royalties
Pluck'd from my arms perforce—and given away
To upstart unthrifts? Wherefore was I born?
. . .
I am denied to sue my livery here,
And yet my letters-patents give me leave.
My father's goods are all distrain'd and sold,
And these, and all, are all amiss employed.
What would you have me do? 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. (2.3.113–22, 129–36)

I explained earlier that the first part of Bullingbrook's response draws attention to a change in legal and political identity: Bullingbrook is, and has been, the Duke of Herford; his father's death, according to conventional laws of succession and inheritance, makes him Duke of Lancaster. I also pointed out that while the most straightforward way of conceptualizing this change in legal identity is as an accumulation of *more* land, *more* titles, and *more* goods, Bullingbrook presents it as a transformation of one self into another, a transformation that brings a new name, a new title, a new past, and orients him toward a new political future. The rules of property, in other words, do more than simply underwrite Bullingbrook's claim to legal entitlement; they also form a language of selfhood that is rooted in ideas of connectivity and change. These ideas remain in play when Bullingbrook imagines York as a new iteration of his father. York's physical resemblance to Gaunt ("methinks in you / I see old Gaunt alive") means that, for a moment at least, he actually *is* Gaunt ("You are my father . . . Oh then, my father . . ."). With the "rights and royalties" that connect father to son and knit political communities together having been "pluck'd from [Bullingbrook's] arms," assurance is sought in other kinds of commonality: a shared bloodline and shared physical features. These are attributes that to Bullingbrook's mind make of him, York, and Gaunt a single, sprawled organism.

The exchange between Bullingbrook and York shows that the former's indignation arises from something more than just a technical investment

in the laws that guarantee his right to Gaunt's lands, chattels, and titles. Bullingbrook also believes quite genuinely that to a certain extent he himself *is* Gaunt, that instantiated in the material ecology of property held by Gaunt is a kind of Gaunt*ness*, as much a part of Bullingbrook through the future quantum of interest he has held in his father's property since birth as it is a part of Gaunt himself. Accordingly, what makes land law important to Bullingbrook's way of thinking is not so much the particular rules it puts in place, but rather the forms of human affiliation those rules generate over time. Garrett Sullivan reminds us that "the transition from precapitalist to capitalist conceptions of property is one that requires the move from seeing property as a *relation to* (others through) objects to seeing it *as* an object."[15] Having property in land, in other words, while certainly entailing a relationship between a proprietor and their territory, also means entering into a much larger scene of sociality. Katharine Eisaman Maus describes it like this:

> The concept of property works along two axes simultaneously: "vertically," so to speak, to designate a relationship between a thing and its owner, an "object" and a "subject," and also, at least as significantly, "horizontally" among human beings. Property rights are inherently social, asserted relative to other persons: to exclude trespassers, or designate heirs, or distinguish a hierarchy of claims by different persons to the same object or territory.[16]

Instead of managing a one-to-one relationship between person and property, early land law is really constructed to accommodate multiple interests in the same piece of land simultaneously. Gaunt's and Bullingbrook's concurrent interests in the duchy of Lancaster is a fairly straightforward example of this. There are also more complex examples involving a larger network of individuals. For instance, a proprietor may have a right in common with others to pasture his animals on someone else's land.[17] Alternatively, there may be various tenants holding the same territory by different tenures: a copyhold tenant may hold land of another tenant; part of that same land might be held of the copyhold tenant by a tenant for years (a fixed term of use or occupancy). Moreover, some of these tenants are entitled to establish conveyances, or property transfers, which means that in addition to the land being held in possession, a *present* interest, it is also held accordingly to *future* interests, such as reversion or remainder, terms which describe ways of inheriting land or land rights.[18] Bullingbrook's quarrel arises from an unrecognized future interest in the duchy of Lancaster. The squabble ends up having

sensational political consequences, but more mundane disputes about conveyances were common in the sixteenth and seventeenth centuries. Early modern law reports, from Robert Brooke's *Le Grand Abridgement* (1573) to Thomas Ireland's *Exact Abridgement of the Eleven Books of Reports of the Learned Sir Edward Coke* (1650), contain numerous records of clashes resulting from overlapping interests in land and questions about what sorts of things are transferable to others, and by whom. The system is as volatile as it is complex, but its defining feature is the way it knits people together in webs of intersecting duties and dependencies.

Of course *people* are only part of the picture. Landholding cannot be reduced to human relations. Part of what makes land law at once uniquely fascinating and uniquely complicated is the fact that property in land is not a single, unified entity, but instead is composed of soil, plants, trees, objects, and various mineral substances. This—the materially eclectic nature of property in land—is one context for Bullingbrook's excoriation of Bushy and Green, which he concludes with a brief inventory of the wrongs the prisoners have committed against him while in exile:

> . . . you have fed upon my signories,
> Dispark'd my parks and fell'd my forest woods,
> From my own windows torn my household coat,
> Ras'd out my imprese, leaving me no sign
> Save men's opinions and my living blood,
> To show the world I am a gentleman. (3.1.22–27)

At the end of the passage there is a direct assertion of self-identity: "I am a gentleman." But the statement actually punctuates an extended accrual of objects and environments, the full assemblage of which comprise the speaking subject. It is the accumulation of signories, parks, woods, windows, household coats, impresses, as well as "living blood," which constitutes the "I" and makes the "gentleman." The self in this context is not reducible to the ontological or biological situation of humanness. Instead, it emerges from a shifting network of humans and nonhumans—persons, places, and things.

Land law not only dictates the shape of this network, it also manages the transactions that take place within it. For example, when soil, plants, trees, or minerals were separated from the ground, their legal status changed from being part of the land to being an independent chattel. This seems sensible enough, but from the perspective of those seised of the land, it presents a number of potentially problematic questions about

ownership which land law has to provide answers to. To begin with, to whom does a tree, a plant, or a silver deposit belong once it has been detached from the earth? Land law responds, if the things in question have been lawfully severed, ownership is acquired by the person who severed them, and the status of that ownership is as a separate chattel. If the things in question have been unlawfully severed—by a trespasser, for instance—ownership reverts to the landholder. The landholder can also claim ownership if a thing which had previously existed as an independent chattel merges with the land, as would be the case with a planted tree or seeds.[19]

As firm as these principles were, the fact that "land" consisted of a collection of objects, substances, and materials, many of which were prosthetic to the actual soil, made it difficult to oversee legally. Edward Coke responds to a common problem when he stresses in a commentary note in *The First Part of the Institutes* (1628) that keepers are not allowed to remove any flora or fauna, dead or alive, from the parks they attend.[20] The *Calendar of Assize Records* for the reigns of Elizabeth and James are littered with cases of keepers—as well as other laborers and husbandmen—doing just this.[21] The majority of these sorts of cases in the *Assize Records* appear to be fairly straightforward—simple instances of trespass. Books of reports, though, present more complicated situations, where the material ecologies of land collide with the immaterial ecologies of qualitative and quantitative human interest that I have described above. What is the appropriate course of action if a piece of land has a mine and that land is held by more than one person—say, a lord and a lessee? Who is allowed to extract the coal and reap the financial benefits? Does it matter if the lord knew the mine was there or not? Does it matter whether the mine was already open or dug by the lessee? One sixteenth-century case determined as follows:

> If a man have Land, in part whereof there is a Cole-myne appearing, and he dismise the Land [i.e., transfer the estate] to another for life or yeares, the Lessee may dig for cole &c. And the reason is for that the Myne is open at the time of the demise, &c. and when he demyseth all his Lands, it shall be intended that his meaning was, that all the profit of the Land should passe, &c. but if the Myne be not open, but within the Bowels of the Earth, at the time of the demise 'tis otherwise.[22]

The lessee has a right to the coal from the mine—to extract it and use it as an independent chattel—if the mine was open at the time the lease

was formalized. If, on the other hand, the mine is not open, "but within the Bowels of the Earth," it belongs to the lord. A similar set of questions is addressed in another Elizabethan case, this time concerning corn. If a tenant plants corn (i.e., wheat) and dies before they can pick it, who of the various other people with future and present interests in the land gets the corn?

> Tenant for life, the remainder in fee, leaseth for yeares, the Termor is ousted, the disseisor leaseth for yeares, the lessee sowes the land, tenant for life dyes, he in the remainder enters, J.S. takes the Corne, he in remainder brings Trespas. The right of the Corne is not in the plaintiffe or defendant, but in the lessee for yeares of lessee for life, but the lessee of the disseisor had right against the plaintiffe by reason of the possession: and for that if he had pleaded that he had entered to take the Corne, this had been good, but because he pleaded *Non culp* the plaintiffe had judgment for the Entry, and was barred for the residue.[23]

The circumstances surrounding the corn are more complicated than those surrounding the coal, but the decisions in both cases juggle a variety of physical and metaphysical aspects of landholding, including multiple, overlapping interests in land and the relationship between land and chattels. In both cases, as well, land law curates an interactive scene, with various kinds of organic life—humans, soil, coal, corn—aggregated into something we could call an *agentive ecology*.

The term "agentive ecology" is my own, but to those conversant with modern theories of materialism it will have a familiar ring to it. Gilles Deleuze and Félix Guattari, for example, though not strictly materialist in their thinking, imagine something along the lines of an agentive ecology when they argue in *A Thousand Plateaus* that the source of human agency is always distributed among an "assemblage" of human and nonhuman components. They describe it as "an intermingling of bodies reacting to one another."[24] More recently, Jane Bennett has advanced this line of thought. In her book *Vibrant Matter*, she attempts to "sketch a style of political analysis that can better account for the contributions of non-human actants," things like food, trash, and cells, which exert a strong influence over the way we organize ourselves socially and politically and even, in the case of cells, establish the basic conditions of possibility for individual action and organismic life.[25] The term "actant," which derives from Bruno Latour, is key for Bennett's project since it "does not posit a subject as the root cause of an effect."[26] Rather, an actant can denote any

source of action, human or nonhuman, so long as it produces a concrete effect in the world. As Bennett explains:

> There are . . . always a swarm of vitalities at play. The task becomes to identify the contours of the swarm, and the kind of relations that obtain between its bits . . . this understanding of agency does not deny the existence of that thrust called intentionality, but it does see it as less definitive of outcomes.[27]

The agentive ecologies of early land law display precisely the kind of distributed efficacy that interests Deleuze and Guattari and Bennett. While the human subjects in the cases discussed above shape, open, add to, subtract from, and redesign the land in ways contingent upon the nature of the power relations between them, those power relations, and the forms of agency available to each human, are also impacted by the states of the nonhuman actants, such as the soil, the coal, and the corn: you *can* do such-and-such if the coal is exposed, you *cannot* do such-and-such if it's sealed beneath the earth; you *can* do such-and-such if the tree is uprooted; you *cannot* do such-and-such if it's integrated with the soil. In the thought-world of early land law, life is not parsed hierarchically into what Bennett terms "dull matter (it, things)" and "vibrant life (us, beings)."[28] Instead it exists as an interactive environment of human, animal, vegetable, mineral, and even purely conceptual forces. A vivid example of this is contained in the thirteenth-century conveyance of the manor of Berengar le Moigne to the Abbot of Ramsay, which transfers the property

> with the homages, rents, services, wardships, reliefs, escheats, buildings, walls, banks, in whatsoever manner constructed or made, cultivated and uncultivated lands, meadows, leys, pastures, gardens, vineyards, vivaries, ponds, mills, hedges, ways, paths, copses, and with the villains, their chattels, progeny and customs, and all that may fall in from said villains, merchets, gersums, leyrwites, heriots, fines for land and works, and with all easements and commodities within the vill and without.[29]

Although this medieval conveyance is denser and more verbose than most of its sixteenth-century equivalents, it shares with the Elizabethan cases of coal and corn a notion of land not as a static object, but rather as a vital constellation of corporeal and incorporeal actants. The eminent English legal historians Frederick Pollock and Frederic William Maitland

describe something similar when they define a land right as "a complex made up of land and of a great part of the agricultural capital that worked the land, men and beasts, ploughs and carts, forks and flails."[30] Pollock and Maitland are not interested in theorizing agency, of course, but they nevertheless describe something here that Deleuze and Guattari would recognize as an assemblage and Bennett would call a "human-nonhuman working group."[31]

To be a landholder, then, is to enter into a system of interlinked parts that affect each other in significant ways. For Bullingbrook this system includes "signories," "parks," "forest woods," a "household coat," "men's opinions," and "living blood." It also, very importantly, includes a certain mode of interaction among these things. For landholding involves more than mere possession. What it really requires is *use*. In the case of a rightful landholder like Bullingbrook, this means agriculture, forestry, and hunting. The unjust seizure of land, on the other hand, correlates to *mis*use: Bushy and Green have "fed upon" Bullingbrook's signories; they have "dispark'd" his parks; they have "fell'd" his forest; and they have "torn [his] household coat" from the windows. In both cases, whether as "gentleman" or usurper, legal subjectivity is presented as a species of doing rather than being, of practice rather than simple possession. This idea is fundamental to many of the medieval tenures. Grand sergeanty, for example, refers not to an amount or a kind of land held, but rather to the service that "must be done by the body of a man," while petit sergeanty has to do with objects rendered to the sovereign—"a Bow, or a Sword, or a dagger, or an Arrow, or diverse Arrowes"—in exchange for land.[32] Grand sergeanty and petit sergeanty designate, in the first place, certain kinds of material transactions and only secondarily imply a particular personal rank. Medieval and early modern natural-law theorists such as Thomas Aquinas and Hugo Grotius offer a philosophical context for these landholding practices. Though they differ on a number of fronts, both view property use as the essence of ownership and consider ownership itself to be an abstraction. Aquinas's doctrine of property maintains not only that social order depends upon the subordination of ownership to use, but also that "the ontological essence of property is its common use, not private ownership."[33] Man, in other words, has no *dominium* over material things—and that includes land. *Dominium* is reserved for God. What man owns is the ability to *deploy* or *transform* material things, a kind of instrumental autonomy practiced upon and realized through property. For Aquinas, this instrumental autonomy is part of what it means to be human.[34] Hugo Grotius, writing in the early seventeenth century, makes a similar point by way of an exploration of the original significance of the

term *dominium*. Though commonly taken to indicate a type of private ownership, *dominium*, Grotius maintains, technically "denotes the power to make use rightfully of common property." "Ownership," he concludes, "was inseparable from use" and remains essentially a use-right.[35]

The most influential reflection on the relationship between person, property, and use is John Locke's in *Two Treatises of Government* (1690). Locke works in the tradition of Aquinas and Grotius, but he goes further than them, arguing not simply that use and ownership are coextensive, but that use—specifically labor—actually creates property in the first place. He writes:

> As much Land as Man Tills, Plants, Improves, Cultivates and can use the product of, so much is his Property . . . God, when he gave the World in common to all Mankind, commanded man also to labour, and the penury of his condition required it of him. God and his Reason commanded him to subdue the Earth, i.e. improve it for the benefit of Life, and therein lay out something upon it that was his own, his labour.[36]

The idea Locke articulates here is known as the labor theory of property. It finds a correlative in the colonial landholding practices used by the English in the New World during most of the sixteenth and seventeenth centuries. Patricia Seed explains,

> Alone among Western European traditions, English law did not require a written procedure for claiming ownership of land until late in the seventeenth century. Until then, Englishmen could claim that they had acquired ownership of land simply by exchanging commodities and by doing physical labor on the land. Therefore English colonists overseas (in contrast with Europeans) understood actions such as handing over money, building a house, putting up fences, and planting crops (which they customarily called "labor") as establishing legal ownership of a terrain, just as they had in England.[37]

For Locke, as for many English colonialists, land use is a value-making activity, an appropriation of land by improving it. And the human ability to engage in this kind of appropriation—appropriation through labor—is, within Locke's vision of the divine scheme of things, what makes humans distinct from other forms of animal and vegetable life: "God and his Reason commanded him [Man] to subdue the Earth, i.e.

improve it for the benefit of Life." The need to labor is a punishment, of course—the result of original sin, something required by "the penury of [Man's] condition"—but it's also what makes us, in our postlapsarian state, who we are. This triangulation of labor, divinity, and selfhood is the hallmark of Locke's theory of property and an essential element in his political philosophy more broadly.[38]

Aquinas, Grotius, and Locke each think about property as an active, mobile set of relationships among people, land, and things rather than as an object or a space that is passively and abstractly possessed. Grotius and Locke, unlike Aquinas, take the additional step of arguing that private ownership grows naturally out of use. Locke, for instance, treats ownership as a process by which things in common (fields, forests) become private property by being mixed with things private, like the labor of the body of a particular individual.[39] At the core of these theories, though— Grotius's and Locke's no less than Aquinas's—is a notion of land as an environment of use and of ownership as a material transaction within that environment. These are ideas which in their essentials are rooted in the relational networks of early land law itself, even if they also, at least in the case of Grotius and Locke, provide platforms from which new, liberal ideas about property and personhood would develop. What Shakespeare does through the character of Bullingbrook in acts 2 and 3 is use these relational networks to raise questions about selfhood: inheritance gives you new things, but does it also make you a new person? Is the self something social (linked to "men's opinions"), essential (linked to "living blood"), or material (linked to "signories," "parks," and "forest woods")? Bullingbrook's answers are *yes* and *all of the above*. To him, landholding means being part of an ecology of different social, physiological, and material elements. It entails an open form of subjectivity that evolves and transforms in relation to other elements in the overall network. By the end of the play, Richard comes to share Bullingbrook's understanding of selfhood, but he arrives at it by a very different route and through a much more arduous process of loss. In the next section, we explore how this process unfolds.

Richard and the Question of Interiority

In his essay, "At Stratford-Upon-Avon," W. B. Yeats described King Richard as an "unripened Hamlet." By this he meant that Richard eventually displays the kind of inward-looking self-awareness that post-Romantic audiences and readers typically associate with the black-garbed Prince of

Denmark.[40] This idea, though not always attributed to Yeats, has stuck, and not without justification.[41] It's true that as Richard is gradually bereft of authority and material possessions, as he loses his identity as king, he grasps for some other, more essential version of selfhood. Striking instances of this include the deposition scene when he calls for a mirror and his prison-cell soliloquy at the end of the play. However, I will be showing in this section that when Richard looks inward and enters into conversation with himself, what he actually discovers is his inescapable connection to the material continuum of the world and a self that is, accordingly, both embedded and distributed. What's more, the most salient feature of Richard's selfhood is the way it's consistently imagined in terms of an evolving relationship with property, particularly land. We see this even (perhaps especially) at the character's most solitary and meditative moments.

To begin, let's return to Gaunt and consider the imagery he uses while reprimanding the King in the deathbed scene:

> A thousand flatterers sit within thy crown,
> Whose compass is no bigger than thy head,
> And yet incaged in so small a verge,
> The waste is no whit lesser than thy land. (2.1.100–103)

These lines contain the play's first example of a distributed account of Richard's royal self. Gaunt imagines Richard as a human collective. Flatterers are not merely hovering around him; they're actually perched within his crown, constituent parts of a self that functions as a creaky social assemblage. The idea takes on a legal aspect a few lines later with the word "waste," a technical term that denotes an uncultivated and commonly held piece of land. "Waste" describes Richard himself—a commons inhabited by "a thousand flatterers"—as well as the territory over which he reigns. In both cases, Gaunt also intends "waste" to evoke misuse and depletion of value.[42] Richard, Gaunt suggests, by not extricating himself from the common throng, has devalued England and devalued himself. The other ambiguously charged word in this passage is "verge," which again has two meanings: one, a measure of land between 15 and 30 acres; the other, the 12-mile radius around the king's person which is the official jurisdiction of the Lord Marshall.[43] Both meanings are essentially geographic, but one is a quantitative description of land itself while the other is a qualitative description of politicized space. The common thread that runs through these four lines—beginning with "A thousand flatterers" and ending with "The waste is no wit lesser than thy land"—is

a preoccupation with the relationship between self, land, and collectivity. The three ideas never come into clear alignment in the passage, but they move through a common imaginative orbit, shaping and qualifying each other as they do.

Gaunt punctuates his reprimand with an expression of regret: "O had thy grandsire with a prophet's eye / Seen how his son's son should destroy his sons, / From forth thy reach he would have laid thy shame" (2.1.104–6). This elegiac moment introduces a temporal dimension to distributed selfhood, primarily through the use of the word "son," which does two important things. First, it creates a tension between the individual and the collective. It's repeated three times in one line, stretched to its limit to contain in one word a number of different entities: Edward III; Gaunt, Gloucester, and the other male children of Edward III; Richard; and Richard's future male children. Second—and as a direct result of this tension between individual and collective—"son" brings to the lines what Jonathan Gil Harris has called an "explosive temporality," a temporality, that is, in which the present is ruptured by a bursting-through of both past and future.[44] The word "son" does not just denote multiple figures, but more particularly multiple figures extending through time. It manages to occupy the play's present while also reaching back into the past and forward into the future. This way of thinking about the temporality of selfhood is taken up in a specifically legal context only slightly later in the scene when York admonishes Richard not to confiscate Bullingbrook's inheritance:

> Seek you to seize and gripe into your hands
> The royalties and rights of banish'd Herford?
> Is not Gaunt dead? and doth not Herford live?
> Was not Gaunt just? and is not Harry true?
> Did not the one deserve to have an heir?
> Is not his heir a well-deserving son?
> Take Herford's rights away, and take from Time
> His charters and his customary rights;
> Let not to-morrow then ensue to-day;
> Be not thyself; for how art thou a king
> But by fair sequence and succession? (2.1.189–99)

York's argument is based on *epiplexis*, a rhetorical device consisting of questions that are posed in order to reproach rather than elicit answers.[45] Each question has a slightly different philosophical hue, but they lead into one another with a determined logic. York starts with a roundly

material question: "Is not Gaunt dead? and doth not Herford live?" This is followed by two moral questions: "Was not Gaunt just? and is not Harry true?" The next question is moral as well, but veers in the second line into the political: "Did not the one deserve to have an heir? / Is not his heir a well-deserving son?" This bundle of interrogatives, material-moral-political, leads to a conclusion: "Take Herford's rights away, and take from Time / His charters and his customary rights; / Let not to-morrow then ensue to-day." This final pronouncement has material implications for sure; it's also responsive to moral and political considerations. In the first place, though, it's an appeal to property law, one that, importantly, slides directly into a larger philosophical claim about the nature of time. Time provides a universal framework in these lines for thinking about the relationship between identity (material, moral, political) and property. Indeed, as discussed above, time is a concept without which the notion of property—inheritance, seisen, tenancy, fees of various sorts—is meaningless, and personal identity is intimately bound up with property in its temporal aspect, so much so that it becomes an existential issue of the first order: "Be not thyself," York cautions Richard, if you disrupt the transfer of lands and chattels from generation to generation. Just as their shared material legacy in the form of the duchy of Lancaster make Bullingbrook and Gaunt cohabitants of a larger political self, Richard's royal self, his very existence as "King Richard," is knit into a larger network of property relations in time. This two-pronged notion of temporal mobility and intersubjectivity is elegantly crystallized by Gaunt in his use of the word "son." To *be* thyself is to live within, and in deference to, property's shifting configurations, which is also to live within the eddies and flows of time.[46]

The admonishments of Gaunt and York are not amiss. By act 3, Richard is beginning to lose hold of authority and as this happens he offers the audience a running commentary on his own subjective transformation, which is consistently portrayed as an expression of his changing relationship to property. The first major instance of this occurs in act 3.3 as Richard's sarcasm crumbles into despair in the face of Bullingbrook's apparent political ascent:

> I'll give my jewels for a set of beads,
> My gorgeous palace for a hermitage,
> My gay apparel for an almsman's gown,
> My figur'd goblets for a dish of wood,
> My scepter for a palmer's walking-staff,
> My subjects for a pair of carved saints,

> And my large kingdom for a little grave,
> A little little grave, an obscure grave—
> Or I'll be buried in the king's high way,
> Some way of common trade, where subjects' feet
> May hourly trample on their sovereign's head; (3.3.147–57)

Maus observes of Richard, "what seems like maximum disempowerment and humiliation is also, from another perspective, a kind of subjective triumph."[47] Certainly, in this monarchical take on the Christian ascetic tradition, the gradual loss of royal identity clears the way for what looks like a more introspective form of subjectivity, signaled here through the semiotics of material simplicity (the "dish of wood," the "almsman's gown") and meditative religiosity (the "set of beads," the "hermitage," the "carved saints"). But the outer world of people and things never disappears from view. Indeed, the final image of "an obscure grave" in "some way of common trade, where subjects' feet / May hourly trample on their sovereign's head" charts a movement out of the absolute and singular proprietary space of sovereignty into a public space of common use. An inverted version of this movement appears in *Henry V* when Canterbury describes Henry's royal maturation as a process that was dependent on his "sequestration / From open haunts and popularity" (1.1.58–59). In Richard's speech, the embrace of "some way of common trade" is the last in a series of images in which a heightened sense of interiority is evoked through property transfer and exchange. We witness the jewels give way to beads, the goblets to a dish of wood, and the scepter to a palmer's staff, but there is no retreat from the material world—only an evolving relationship *to* it. It's the dynamic assemblage of property that makes interiority intelligible.

Even when all material objects are lost, when there is nothing prosthetic to the body that one can call one's own, Richard still views the body itself as something possessed, as a chattel of sorts. Observe his lament upon hearing of the deaths of Bushy, Green, and the Earl of Wiltshire:

> . . . of comfort let no man speak:
> . . .
> Let's choose executors and talk of wills;
> And yet not so, for what can we bequeath
> Save our deposed bodies to the ground? (3.2.144, 148–50)

Richard glimpses a near-future in which he has no lands and no goods, and therefore nothing to bequeath except his body, and that to the ground:

"Nothing can we call our own but death" (3.2.152), he concludes. The legal-theoretical idea at play here is the notion that one's person is a form of property, that what we *are* is also what we *have*.[48] For John Locke, this insight formed the foundation of a rights-based theory of individuality: "Every Man has a Property in his own Person," which "no Body has any Right to but Himself," he famously wrote in *Two Treatises*.[49] Shakespeare ends up taking the idea in a different, far more social direction. The deposition scene of act 4.1 offers an example. Presenting self-ownership in affective terms, Richard says to Bullingbrook, "You may my glories and my state depose, / But not my griefs; still am I king of those" (4.1.192–93). Throughout this exchange, Richard heightens emotional affect as property and title are relinquished. The point, however, is not to view one as taking the place of the other—emotional affect filling the gap left by lost property—but rather to acknowledge that these two things, property and emotion, are in a basic way very much the same: both are things possessed and both are constitutive of the subject who possesses.[50] Another thing that property and emotional affect have in common is the way they catalyze material and social linkages between discrete persons. After all, affect (grief included) is not just *in* the body. It's also a species of showing, performing, and doing; it's a border-crossing phenomenon that connects body and mind and environment, as well as multiple bodies and multiple minds. Melissa Greg and Gregory J. Seigworth assert, "Affect marks a body's *belonging* to a world of encounters."[51] It "arises in the midst of *in-between-ness*: in the capacities to act and be acted upon." They continue:

> Affect is an impingement or extrusion of a momentary or sometimes more sustained state of relation *as well as* the passage (and the duration of passage) of forces or intensities. That is, affect is found in those intensities that pass body to body (human, non-human, part-body, and otherwise), in those resonances that circulate about, between, and sometimes stick to bodies and worlds . . . Indeed, affect is persistent proof of a body's never less than ongoing immersion in and among the world's obstinacies and rhythms.[52]

Affect is one of the things that keep Richard tethered to the material and social world around him. We see this in act 4.1 and we see it, as well, alongside a more wide-ranging invocation of the physical body and material environment, at the end of his speech in act 3.2. He concludes, "I live with bread like you, feel want, / Taste grief, need friends: subjected thus, / How can you say to me I am a king?" (3.2.175–77). Richard defines his existence in physiological terms, as an effect of nutritive sustenance. His

desire, or "want," is something felt in the body, and his grief, not in the least abstracted, is a substantial sensory presence, something he tastes. Grief, as taste, and very much in line with Greg and Seigworth's comments on affect, takes shape by way of a material encounter between the sensing body and something outside it. These lines explain that it's through material exchange and the operations of the perceiving body that Richard is "subjected"; that is to say, not only afflicted or oppressed, but also *made a subject*.

When we look closely at the character of Richard, we begin to see something more complicated than an "unripened Hamlet" and an arch of development less tidy than the phrase "subjective triumph" would seem to indicate. Richard's inner life is not separate from the outer world of physiology, affect, and temperament. In fact, the deepening of the former repeatedly takes place on the conceptual terrain of the latter. In this respect, Richard emblematizes a larger preoccupation in the play with breaking down clear distinctions between interiority and exteriority, often through the language of property. Consider the use of a single legally inflected word in act 2.1: "possess'd." Gaunt tells Richard that "from forth thy reach" Edward III, Richard's grandfather, "would have laid thy shame, / Deposing thee before thou wert possess'd, / Which art possess'd now to depose thyself" (2.1.106–8). The repetition of the word "possess'd" functions as a chiasmus in which the meaning of the word, and the idea of property, is reversed between its first and second use. The first "possess'd" means *having*, or being *in possession*; that is, materially endowed with property. The second "possess'd" means *obsessed*, which is to say, taken hold of by an idea, or in some cases an evil spirit, but in any case to *be had*, to be, in a sense, the possession of something or someone else, rather than the possessor, as in the first instance of the word. The word "possess'd," therefore, maps out two rather different versions of property relations: one in which the person is an autonomous agentive being holding objects which are exterior to them and on the far side of a clear ontological divide, and another in which the person is part of a far more mobile ecology of possession where they move amphibiously from being the holder to being that which is held. A far cry from the Lockean doctrine that "every Man has a Property in his own Person" which "no Body has any Right to but Himself," this is an environment in which autonomy, agency, and individuality are much more difficult to locate.

The most involved negotiations between interiority and exteriority take place during Richard's sustained meditations on political and personal loss in the final two acts of the play. Here, addressing Bullingbrook, Richard uses the idea of property to plot a course between insides

and outsides and between self and other. He does so through a nuanced unfurling of the term "care":

> Your cares set up do not pluck my cares
> down:
> My care is loss of care, by old care done.
> Your care is gain of care, by new care won;
> The cares I give I have, though given away.
> They tend the crown, yet still with me they stay. (4.1.195–99)

There are three meanings of "care" at work here: care as obligation, care as worry or concern, and care as grief.[53] All of these versions of care are to be understood as forms of property. The conceptual density of the passage results from the degree to which these different strands of care-property are transferable and, also, the variations in where each of them falls on the sliding scale between inner and outer. For example, "My care is loss of care" means *my grief comes from being divested of monarchical obligations*, but also, more generally, *my emotional and affective disposition is coterminous with lost possessions*; that is, there is a relationship, a set of dependencies and correspondences, between inner and outer, that which is felt and that which is held. "Your care is gain of care" communicates a similar idea, though in the opposite direction. The keyword gains momentum as the passage progresses, pushing inner and outer more tightly together and forming lines that teeter on the brink of paradox: "The cares I give I have, though given away, / They tend the crown, yet still with me they stay." *What I part from*, Richard proposes, *I nevertheless keep*; *what is separate from me is also inside me*. This is because sovereignty, as Richard is coming to understand, is not (or not only) something essential, but instead something more usefully understood as a network of objects, affects, and persons existing in a certain configuration. Accordingly, though Richard hands over his crown and legally relinquishes kingship, the emotional and affective byproducts of that object and that status partly stay with him even as they also partly transfer to Bullingbrook. Richard has them even though he gives them; "They tend the crown," which he agrees to hand over, "yet still with me they stay." The royal self is less a single, hermetic, stable unit than it is a vital ether of objects and emotions enmeshing multiple agents.

Richard's relationship to property places him at the threshold between singularity and collectivity. Possessing a complex inner life yet still ensnared in an ecology of human and nonhuman beings, his character defies easy ontological or phenomenological categorization. Even on a

more fundamental existential level, property manages a disorienting collusion of presence and absence:

> Now, mark me how I will undo myself:
> I give this heavy weight from off my head,
> And this unwieldy sceptre from my hand,
> The pride of kings sway from out my heart;
> With mine own tears I wash away my balm,
> With mine own hands I give away my crown,
> With mine own tongue I deny my sacred state,
> With mine own breath release all duteous oaths;
> All pomp and majesty I do forswear;
> My manors, rents, revenues I forgo;
> My acts, decrees, and statutes I deny; (4.1.203–13)

This moment of absolute self-negation and self-denial is also the supreme performance of autonomy and personal agency. Richard surrenders all identity-making artifacts—from crown, scepter, and manors to oaths, pomp, and sanctity—but he does so, linguistically, through the anaphoric repetition of the phrase "mine own" and the word "I," turning a scene of erasure into an act of inscription. A similar irony obtains in the mirror scene that takes place only shortly after these lines are spoken. Richard's request for a mirror is his final monarchical act. He gazes into it—"no deeper wrinkles yet?" (4.1.277)—in a scene that, consistent with the doubleness of mirror iconography, seems at once emblematic of self-flattery and genuine introspection. His ultimate response to the mirror is the theatrical equivalent to the paradoxical verbal technique of using the rhetoric of self-assertion to narrate the loss of self: Richard smashes the mirror "in an hundred shivers," effectively destroying the "brittle glory" (4.2.289, 287) of his face—a sensational performance of will in the service of self-cancellation.

Interiority is not an illusion in *Richard II*. It manifests itself with increasing force as Richard struggles with material and political loss. But it's never more than part of the total model of selfhood the play assembles. Inner life cracks open and caves in in *Richard II*; it bleeds out into larger environments. Inside and outside, individual and ecology, dualism and monism are ideas that push against each other in the play. In some cases, they seem to settle into careful choreographies, configurations of balanced compromise, as in Richard's discussion of "care" or Gaunt's meticulous use of the term "possess'd." We see both—the tension and the balance—in Richard's powerfully meditative soliloquy in act 5.5, in which

the problem of self and world resolves into a vision of self *as* world. Richard wants to compare his prison cell to the world, but encounters a basic obstacle: "the world is populous, / And here is not a creature but myself" (5.5.3–4). How can a single person contain or convey the world? How can a distinct self be populous? This is the basic unit of tension at the opening of the soliloquy: self and world. Richard's initial response to the problem is "I cannot do it" (5.5.5). But he quickly arrives at a solution:

> My brain I'll prove the female to my soul,
> My soul the father, and these two beget
> A generation of still-breeding thoughts;
> And these same thoughts people this little world (5.5.6–10)

The "I" that at first "cannot do it," here finds the resources within itself to "people" a "little world." Richard is alone on stage, a solitary thinker, but he is also, by his own description, a corporate entity, a collectivity. His famous utterance later in the speech—"Thus play I in one person many people" (5.5.31)—is a realization that grows directly out of these circumstances. More than just a recognition of the performative underpinnings of identity, the line reinforces Richard's use of "world" as a conceptual tag for *self*. It's a breakthrough concept for Richard: "in one person many people." And the line captures epigrammatically the morphology of selfhood in the play more generally.

Is Richard self-reflective? Yes. Does he display a complex inner life? Yes. Is he an individual? No—at least not in the modern, liberal sense of that term. Indeed, both the character and the play fall decidedly askance of the liberal tradition, and this is a direct result of the particular way Shakespeare imagines the relationship between property and selfhood. Within liberal theory, proprietorship is closely connected to individualism. Two key propositions—(1) that one is not fully human unless one is free from dependence on the wills of others and (2) that this freedom allows one to refrain from entering into social relations that do not serve one's own interests—lead logically to a third: that the individual is essentially the proprietor of their own person and capacities, for which they owe society nothing. According to this model, as C. B. Macpherson has argued, human society consists of a series of market relations between sole proprietors.[54] In *Richard II*, by contrast, selves are mobile, compound entities which are often in a state of flux. Accordingly, proprietorship appears most frequently to be something conditional, temporary, and distributed among a range of subjects. When property is invoked, the emphasis is usually on transfer or loss. Consequently, proprietorship in

Richard II does not delineate legal subjects as free agents unhindered by obligation or need. Proprietorship is something that moves and changes in *Richard II*, tracing out the legal subject's wide range of dependencies and cohabitations and knitting the self securely into the world's varied scenes of social and material interaction.

Unlike the Lockean-liberal tradition which sought to distinguish humans from one another, and unlike the scholastic-Cartesian tradition of psychological dualism which sought to distinguish humans from the rest of nature, *Richard II*'s meditation on property and being assumes a unitary system, with the human self as an integrated element within a total natural and social complex. If Shakespeare looks forward to a major seventeenth-century philosopher in *Richard II*, it's not Locke or Descartes but Spinoza, for whom unity is the pervasive theme. Spinoza believes in interiority and self-knowledge, but he does so with an important qualification. As Seymour Feldman explains,

> On Spinoza's view, what makes a person an agent is self-knowledge; lacking such knowledge, an individual is merely a passive recipient of external and internal stimuli . . . Self-knowledge, however, means realizing that we are elements within a complicated and diverse system of modes.[55]

Spinoza, then—unlike Hobbes and the materialists—did not eliminate the mind from philosophical discourse. The mind, thinking, and self-knowledge are real things. But like people themselves, they are all finite modes of one infinitely various substance, two of whose attributes happen to be thought and material presence (or "extension," as Spinoza terms the latter). Mind and body are just two different ways of looking at the same thing; and bodies themselves, as Spinoza describes it, "are distinguished from one another in respect of motion and rest, quickness and slowness, and not in respect of substance."[56] As a result, and contra Locke and liberal theory,

> In the mind there is no absolute, or free, will. The mind is determined to this or that volition by cause, which is likewise determined by another cause, which is likewise determined by another cause, and this again by another, and so *ad infinitum*.[57]

Richard II imagines through questions of property a very similar worldview, in which an increasingly inward-looking, increasingly physically isolated king—a character on a journey of self-knowledge—also discovers,

slowly, the material, social, and emotional commonality of being that is acknowledged earlier in the play by Gaunt, Bullingbrook, and York. This monistic take on individuation is not contradictory within the Spinozist view. The inescapable connectivity of all things does not presuppose unique human minds and unique forms of self-knowledge; nor does it presuppose human forms that are—modally, at least—distinct from other humans and other forms of matter. The key is that a *modal* distinction is different from a substantive distinction. "We shall readily conceive," Spinoza avers, "the whole of Nature as one individual whose parts—that is, all the constituent bodies—vary in infinite ways without any change in the individual as a whole."[58] There is a base substance, in other words, a vital stream common to everything that can, nevertheless, arrange itself into different formal and conceptual configurations.

Deleuze, the most influential of Spinoza's modern philosophical disciples, summarizes Spinoza's basic vision of the world as "ontologically one, formally diverse."[59] Deleuze and Guattari's unmistakably Spinozist notion of "panmetallism" takes this premise as axiomatic: "Metal," they explain,

> is coextensive with the whole of matter, and the whole of matter to metallurgy. Even the waters, the grasses and varieties of wood, the animals are populated by salts or mineral elements. Not everything is metal, but metal is everywhere. Metal is the conductor of all matter. . . . And thought is born more from metal than from stone.[60]

The idea is not to do away with inner life or any of the things that make people unique. We are not in the world of object-oriented ontology, which undertakes to "oppose the long dictatorship of human beings in philosophy."[61] The idea, instead, is that humans (their bodies and their thoughts) and nonhumans (animal, vegetable, and mineral), for all their formal and experiential differences, are threaded together by chains of causality and exist in a single ecology of being. This, as Shakespeare perceives, is an assumption that lurks deep within the conceptual marrow of early land law. In *Richard II*, he draws these ideas out, producing a play that shows us with riddle-like sagacity that while the material world of people and things is tragically difficult to hold onto, it's also impossible to escape.

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Hospitality: Managing Otherness in the Sonnets and *The Merchant of Venice*

Like property, hospitality is a topic with a long and diverse intellectual history. We find the subject addressed in a number of biblical texts, including Genesis, Judges, and Saint Paul's Epistle to the Romans, and it's a key concept in major philosophical works by Immanuel Kant, Emmanuel Levinas, and Jacques Derrida. At its core, though, hospitality is always linked to a larger notion of justice—of what is right, or at least of what is required. Hospitality, that is, gives social form to various kinds of obligation. This obligation can be contractual or noncontractual, legislated or immanent, but it will always be rooted in basic questions about entitlement and responsibility: What do I owe? What are my prerogatives? What is yours? What is mine? Hospitality constitutes its own jurisdiction and to enter that domain—to follow the laws of hospitality—is to activate a precarious relationship between self and other, one in which personal autonomy must coexist with the competing claims of duty.

   In Shakespeare's work, hospitality takes a variety of forms. We see it operating socially and politically in a range of rituals, events, and human interactions. As David Goldstein and Julia Reinhard Lupton point out, scenes of greeting, feeding, entertaining, and providing shelter saturate Shakespearean drama and poetry.[1] My project in this chapter is to think about how the sonnets and *The Merchant of Venice* relate to the philosophical tradition of hospitality, especially the work of Kant and Levinas. At first glance, the sonnets and *The Merchant of Venice* seem like unlikely bedfellows since they approach hospitality in such strikingly different ways. In the sonnets, for example, hospitality is recklessly and irrationally self-sacrificial. Sonnets 35, 49, and 88, in particular, feature a poet-speaker committed to exonerating an unnamed addressee of an injustice committed against the poet-speaker himself. This exemplifies the kind of unconditional obligation to the other that Jacques Derrida refers

to as "absolute hospitality" and which Levinas places at the center of his ethics. By contrast, *The Merchant of Venice* features two seemingly opposed forms of hospitality. On one hand, Shakespeare's Venice functions according to the mandates of "cosmopolitan hospitality," defined by Kant as "the right of a foreigner not to be treated with hostility."[2] Kant insisted on the importance of a nationally and ethnically diverse culture of commerce, one defined by the constant arrival and departure of "visitors," for the maintenance of peace and economic prosperity. This, as we will see, is a view shared by the early modern writers who lauded the virtues of the Venetian republic. But cosmopolitan hospitality has only limited success in the world of Shakespeare's play. It certainly doesn't survive the trial scene in act 4.1, and even before that, Shylock's status as enemy and intruder is insisted on just as much as his status as enfranchised outsider. Moreover, the founding act of the play—Antonio's riskily altruistic extension of "My purse, my person, my extremest means" (1.1.138) to Bassanio[3]—looks more like absolute hospitality than cosmopolitan hospitality. It's a gesture as radically self-effacing as the scenarios of sonnets 35, 49, and 88. Taken as a whole, then, *The Merchant of Venice* is a play that asks us to think of hospitality in pluralistic terms, as a spectrum of socio-symbolic acts that extends from the ambit of absolute obligation to the ambit of rights and entitlements.

I'll have more to say about the differences between the sonnets and *The Merchant of Venice* later, but what will ultimately interest me most in this chapter is something the two works have in common: both are invested in exploring how otherness functions in the constitution of legal subjectivity. Otherness can take the form of a supplicant, a visitor, an alien, or an enemy, but whatever form it takes, the other in a hospitality relationship always demands some kind of acknowledgment. In what follows, I'll consider the precise shape these acts of acknowledgment take in the sonnets and *The Merchant of Venice*, paying close attention to their cultural sources, their philosophical contexts, and the larger ethical and aesthetic frameworks of which they are a part. Doing so will allow us to see how hospitality's complex economies of obligation trouble liberal notions of individual agency and self-authorship.

Absolute Hospitality

Shakespeare's sonnets have a lot to say about selfhood, not all of which contributes to the story this book tells. Think of the poet-speaker's assured reference to God addressing Moses in sonnet 121: "I am that I am" (9).[4]

Nothing could be further from an *ecology* of being; on the contrary, this is a paradigmatic statement of hermetic singularity.[5] My focus will be on the very different way we are invited to think about selfhood in sonnets 35, 49, and 88. In these sonnets, selfhood is shaped by the demands of absolute hospitality. As I indicated above, these poems have in common a peculiar legal conceit: in all three, the speaker acknowledges himself as the victim of a crime committed by the young man, but pledges to testify against himself on the young man's behalf. This is different from the more conventional idea of being both litigant and judge, which the Duke invokes in *Measure for Measure* ("Come, cousin Angelo, / In this I'll be impartial. Be you judge / Of your own cause" [5.1.165–67]) and Olivia invokes in *Twelfth Night* ("Thou shalt be both the plaintiff and the judge / Of thine own cause" [5.1.354–55]). These lines present ironic inversions of the common proverb, "No man ought to be judge in his own cause."[6] The idea in sonnets 35, 49, and 88, however—of arguing against yourself in court, of being both plaintiff and defendant—is more troubling since it separates the capacity to act from any core, guiding principle of self-preservation. My aim in this section is to show how Shakespeare's strange and disconcerting legal conceit is part of a tradition of radical selflessness that culminates in the twentieth century in Levinas's ethics.

Let me begin by establishing a clear sense of how sonnets 35, 49, and 88 engage law and how they configure legal relationships. I quote sonnet 35 in full:

> No more be grieved at that which thou hast done:
> Roses have thorns, and silver fountains mud,
> Clouds and eclipses stain both moon and sun,
> And loathsome canker lives in sweetest bud.
> All men make faults, and even I in this,
> Authorizing thy trespass with compare,
> Myself corrupting salving thy amiss,
> Excusing thy sins more than thy sins are:
> For to thy sensual fault I bring in sense–
> Thy adverse party is thy advocate–
> And 'gainst myself a lawful plea commence:
> Such civil war is in my love and hate
>   That I an accessory needs must be
>   To that sweet thief which sourly robs from me. (1–14)

In the opening line—"No more be grieved at that which thou has done"—two things happen: the speaker announces the young man's crime and he

offers a pardon for it. This explodes into a veritable galaxy of forgive-
ness with the speaker "Authorizing thy trespass," "salving thy amiss," and
"Excusing thy sins." The status of the unnamed wrong as a "sensual fault,"
along with the reference to the self-corrupting nature of minimizing the
transgression in line 7, tells us that the speaker is pardoning an offense of
which he has been the victim. This skewed relationship between speaker
and friend is placed within an overtly legal context in the last six lines of
the poem when the speaker declares, "Thy adverse party is thy advocate"
and will "a lawful plea commence" against himself. As plainly juridical as
the relationship between the speaker and the friend is, it's also juridically
preposterous. And so we are confronted with a distinct tension at the end
of the sonnet between recognition and defamiliarization, neither of which
seem quite capable of subsuming the other.

   Sonnet 49 distinguishes itself from sonnet 35 by focusing on a future
offense rather than a past one. The poem fashions itself as written

> Against that time when thou shalt strangely pass,
> And scarcely greet me with that sun, thine eye,
> When love, converted from the thing it was,
> Shall reasons find of settled gravity; (5–8)

The poem concludes, however, in a vein very similar to sonnet 35, with
speaker and friend entering into an asymmetrical juridical relationship
founded upon the speaker's unconditional abandonment of self-interest:

> And this my hand against myself uprear
> To guard the lawful reasons on thy part.
>   To leave poor me thou hast the strength of laws,
>   Since why to love I can allege no cause. (11–14)

Like sonnet 49, sonnet 88 anticipates bad news in the future, a time
"when thou shalt be disposed to set me light, / And place my merit in
the eye of scorn" (1–2). Undeserved as this may be, the speaker vows
that when the moment arrives, "upon thy side against myself I'll fight, /
And prove thee virtuous though thou art forsworn" (3–4). In the second
quatrain this role reversal is articulated in terms of evidence, testimony,
and incrimination as the speaker assures the young man of his ability to
win his case for him:

> With mine own weakness being best acquainted,
> Upon thy part I can set down a story

>Of faults concealed, wherein I am attainted,
>That thou in losing me shall win much glory. (5–8)

What can be said for sure is that all three of these sonnets are "legal" in a lexical sense. They set up broadly juridical relationships through the use of legal terminology: "party," "advocate," "lawful," "laws," "plea," "commence," "audit," "accessory," "cause," "allege," "attainted." But substantively, sonnets 35, 49, and 88 resist being situated within a legal context since, from the perspective of practiced law, the main thrust of the conceit—a man testifying against himself on the part of his accuser—is nonsense.

Consequently, the critic confronting these sonnets is presented with two options. One is to remark the sonnets' legal language as part of an argument about a nonlegal matter. When Michael Spiller, for instance, points to the use of legal terminology in sonnet 35, it's to demonstrate how "for the first time in the history of the sonnet, the desired object is flawed."[7] Paul Innes, on the other hand, posits that what is important about the legal vocabulary in sonnets 35 and 49 is the way it underlines a drastic difference in social rank between the speaker and the young man.[8] Alternatively, one might choose to focus on a rhetorical characteristic of the sonnets which accommodates the legal motifs but is not legal per se. Stephen Booth takes this approach when he identifies sonnet 35 as "a variation of Shakespeare's habits of damning with fulsome praise . . . and making flattering accusations," as does Dympna Callaghan when she cites sonnet 35 as an example of *paradiastole*, a figure of speech that transforms negative characteristics into positive ones.[9] I have no qualms with any of these readings, but a third way remains open: we can evaluate the legal trappings of sonnets 35, 49, and 88 on their own terms as exemplifying a coherent vision of justice, even if that justice is not one that manifested itself institutionally and procedurally in early modern England.

Doing this requires contextualization, but not of the sort afforded by legal history. The complete relinquishing of self-interest, the absolute accommodation of an other, the unconditional commitment to overlooking offenses: if this is justice it would not have been recognized as such by early modern jurists like Christopher Hales, Thomas Fleming, and Edward Coke. Nor does it make a coherent fit with the mainstream of Anglo-American legal philosophy. Desmond Manderson observes that within this tradition, criminal law, contract law, property law, and even constitutional law all start "with the assumed primacy of *I*," the *I* which is independent and autonomous, born with a set of natural, unassailable

rights to life, liberty, and property.[10] Both Thomas Hobbes and John Locke believed that humans were by nature independent and self-governing and that the first and most basic duty of any legal system should be to protect this primary freedom.[11] In *Leviathan* (1651), Hobbes referred to this as the "Right of Nature," which he defined as:

> The Liberty each man hath, to use his power, as he will himselfe, for the preservation of his own Nature; that is to say, of his own Life, and consequently of doing any thing, which in his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto.[12]

What makes a human a human is an essential right to self-preservation and a unique mental capacity—"Judgment," "Reason"—to know how to exercise that right. This includes self-defense when absolutely necessary, but also, more mundanely, the possession of various objects and consumables necessary for the perpetuation of life and well-being. Contract, for Hobbes, is merely the agreed-upon shifting of that right from one individual to another: "The mutual transferring of Right," he explains, "is that which men call Contract."[13] Locke describes "what state all men are naturally in" in the *Second Treatise* (1690), concluding that they occupy "a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit . . . without asking leave, or depending upon the will of any other man."[14] This basic acceptance of the primacy of the *I* persists in the most influential legal thought of our own time, too, linking together the otherwise very different work of theorists from John Rawls to Robert Nozick and Ernst Weinrib.[15] The legal and ethical structure of sonnets 35, 49, and 88, by contrast, is based upon the primacy of the *him*. The good of the *I* has nothing to do with it.

The question we are presented with, then, is: if Shakespeare's justice is not the justice of the early modern courtroom or the Anglo-American legal tradition, what kind of justice is it? Might we link it with the *lex amatoria*, or laws of love, described by Peter Goodrich?[16] It does, after all, seem to represent a triumph of the affective over the rational. The troubadour and courtly love poetry that comprise key sources for the *lex amatoria* resemble the sonnets in two important ways: both grant love legal standing, a certain jurisdictional authority, and both assume love to involve a set of binding obligations among the parties involved in a relationship. But none of the traditions Goodrich is concerned with include the motif of arguing against oneself which is so crucial to sonnets 35, 49, and 88. This extreme act of self-effacement exceeds the *lex amatoria* and even exceeds love itself. That is to say, while it issues from

within the generic and rhetorical structures of love poetry, the speaker's lack of self-interest is not strictly a performance of personal, particularized adoration, but rather, as I will argue in more detail below, a literary iteration of a more general ethics of otherness. This pulls the sonnets out of the world of the *lex amatoria*, where love constitutes its own body of law, and asks us, equally, to resist reading the sonnets as poems which ironically juxtapose law and love in order to show the impossibility of the former in the realm of the latter.[17] Shakespeare's strange justice may be born of both personal love and positive law, but it cannot finally be reduced to either.

As perplexing as the selfless law of sonnets 35, 49, and 88 would have been to early modern jurists, it probably would have made perfect sense to a biblical figure like Lot, and it certainly would have made sense to Levinas. These figures are associated with the theological and philosophical history of hospitality. Tracy McNulty describes hospitality as "coextensive with the development of Western civilization, occupying an essential place in virtually every religion and defining the most elementary of social relations: reciprocity, exogamy, potlatch, 'brotherly love,' nationhood."[18] McNulty's definition is useful because it speaks to both the cultural scope and conceptual unwieldiness of hospitality. It also captures hospitality's doubleness as at once a theo-philosophical concept and a social practice. In the world of theology and philosophy, hospitality embodies a singular, absolute law, an ethical imperative to welcome and serve the other regardless of one's own needs or desires. The biblical injunction to "love your neighbor as yourself" is in part a command to be hospitable. More arresting biblical parables of hospitality can be found in the story of Lot and his daughters and the Levite of Mount Ephraim.[19] Both of these stories feature hosts offering their virgin daughters to a violent, sexually ravenous mob in order to protect the strangers who are guests in their home. For Lot as for the old man who welcomes the Levite, hospitality is a law without condition, adherence to which is closely bound up with godliness. Clerical literature and conduct manuals in early modern England frequently reminded readers of the angels Abraham hosted unaware, admonishing them never to "forsake strangers . . . for the Lord loveth them and goeth with them."[20] Abraham's act of hospitality pays off when he gets advance warning about the fate of Sodom and Gomorrah. But payoff is not typically the measure of a successful hospitality relationship. The essence of hospitality is that it begins in earnest at the point where your interests end, a founding paradox which Tina Chanter has argued takes its darkest form in the "forced hospitality" experienced by modern Palestinians.[21] Thus to be hospitable, to embrace the laws of hospitality,

is also, in a sense, to be injured. As Saint Paul instructs, "[Be] given to hospitality. Bless them which persecute you,"[22] or, in the words of Jacques Derrida, it is "the one who invites, the inviting host, who becomes the hostage." The Latin word *hostis*, he reminds us, could mean either "guest" or "enemy."[23]

Hospitality has a social history, too, of course, though one which in our own time segues paradoxically into the commercially driven world of the so-called hospitality industry. In early modern England, hospitality was a moral principle, an integral part of the social and political fabric. The virtues of domestic benefice were repeatedly proclaimed from the pulpits with heads of independent households, in particular, being expected to "keep hospitality" for travelers and elite visitors.[24] As this tradition begins to erode with the movement of landed aristocracy into the city, we find King James issuing royal proclamations ordering all noblemen out of London and back to their country seats in order to maintain the time-honored practice of rural hospitality.[25] In all cases, whether lauded by king or cleric, hospitality was framed rhetorically in terms of the famous biblical exemplars as free, selfless, and absolute. But in reality it was very much implicated in a system of reciprocity which, though nonmonetary, was energized by the equally valuable assets of honor and alliance. The practice of hospitality, in Shakespeare's time as in our own, is dictated by laws of exchange, rank, and custom and ultimately conditional upon all parties' adherence to those particular laws. Hospitality within the theo-philosophical tradition, on the other hand, is noncontingent. Derrida opposes the law of "absolute hospitality" (singular, universal) to the laws of practiced hospitality (plural, particular), concluding that hospitality in general is best understood as a "legal antinomy."[26] Sonnets 35, 49, and 88 epitomize one side of this antinomy. In presenting justice as something that accrues from the fulfillment of a primary, unconditional commandment to accommodate the not-you, they manifest in uniquely poetic terms the theo-philosophical principle of absolute hospitality: "*The* Law, in its universal singularity."[27]

This commandment, this absolute and unassailable duty, is what Levinas termed "responsibility." In Levinas's thinking, responsibility for the other is the founding relationship; prior to contract, prior even to Being. It's pre-juridical and pre-ontological, the bedrock on which all other forms of obligation stand. Levinas's ethics of responsibility offer a particularly compelling vocabulary for addressing Shakespeare's hospitable justice and, in particular, for mapping out intersections between questions of law and questions of selfhood. In the broadest sense, Levinas's philosophy can be understood as an attempt to formulate a non-ontological account of

Being. That is to say, an account of Being which is open and social rather than bounded and inward-looking. His two most influential books, *Totality and Infinity* (1961) and *Otherwise Than Being* (1974), present a radical ethics of selfhood founded on the idea that subjectivity is relational, a property not of hermetic cognitive experience but of the self's encounter with, extension toward, and welcoming of an absolute other.[28] Selfhood, to put it another way, is not a form of enclosed dwelling or sealed-off at-homeness, as Heidegger envisioned it, but a state of homelessness, a form of hospitality so complete that it calls into question what, if anything, is properly mine.[29] Levinas makes this argument in opposition not only to Heidegger, but to Western philosophy from Plato to Kant, more generally. While the mainstream of metaphysics explores Being from the perspective of the singular, self-identical ego—"I think therefore I am"[30]—Levinas, by contrast, proposes a mode of inquiry which prioritizes hospitality and neighborliness. "Philosophy," he famously averred, "is an egology," and as such, he was convinced, a dangerous intellectual manifestation of precisely the sort of systematized egotism that led to the horrors of the Holocaust.[31] Levinas, by investing himself in exteriority rather than interiority and in ethics rather than ontology, expresses a radical hope that we might dislodge the deeply ingrained habit of thought that prioritizes the one over the many, the same over the different, the self over the other, and which ultimately leads to violence. The kernel of Levinas's ethics, his core challenge to "the egoist spontaneity of the same,"[32] is his assertion of an elemental responsibility we bear to the other, understood simultaneously in personal and nonpersonal terms as that which is different from and outside of ourselves. This, for Levinas, is the most basic and pure relationship, an original and nonnegotiable duty toward the not-you.[33] In the political realm, Levinas's ethics have proved problematic. As Simon Critchley points out, in Levinas's world, "the ethical subject is . . . a *split subject* divided between itself and a demand that it cannot entirely fulfill," and thus pragmatic political action is "always usurped by the heteronomous experience of the other's demand."[34] For legal philosophy, though, Levinas's vision of absolute and infinite obligation remains compelling.[35] It's the fulfillment of this primary responsibility that Levinas calls *justice*. The term, for him, describes a moral event rather than an institutionally enforced principle. If the latter kind of justice constitutes the *body* of law, then the former type of justice—Levinasian justice—might be thought of as the *soul* of law.[36]

There are two primary fronts on which Levinas's philosophy intersects with Shakespeare's sonnets. First, as I have just pointed out, Levinas conceived of hospitality as a form of justice. Derrida called Levinas's justice

"a sort of essential quasi-ahistorical law" and, similar to his own distinction between the Law and the laws, distinguished Levinasian justice from culturally and institutionally embedded forms of regulation.[37] Levinasian justice, therefore, shares with sonnets 35, 49, and 88 a reliance upon a sense of law which is universal rather than particular. Second, Levinas's ethics—unlike, say, Aristotle's or Kant's—is more about who you are than what you do or who you should be. Levinas saw the hospitality relationship as issuing a challenge to the ontological bias of metaphysics and, consequently, as offering an opportunity to reformulate selfhood as a state of openness rather than enclosure. The speaker of sonnets 35, 49, and 88, likewise, coheres as a literary subject, paradoxically, through an act of self-abandonment. Sean Hand's description of Levinasian subjectivity as "absolutely persecuted . . . a subjectivity that is hostage to the other" could as easily be applied to the speaking subject of Shakespeare's sonnets.[38] This is not to say that Shakespeare is a philosopher or even that he in any straightforward way predicts Levinasian ethics. Rather, it's to underscore how in these sonnets Shakespeare shares with philosophy an interest in law that is not in the first place institutional or procedural and how he shares with Levinas, in particular, an awareness that conceptualizing justice always brings with it a set of assumptions about what it means to be human.[39] Ultimately, Shakespeare and Levinas speak different languages: Levinas imagines an absolute duty to a generalized other while Shakespeare, working within the literary conventions of the love lyric, begins by imagining a particular duty to a particular other. But Levinas and Shakespeare have similar things to tell us, all the same. Both redefine justice in terms of hospitality and in doing so drag justice out of the realm of the juridical and into the realm of the existential. For Shakespeare as for Levinas, hospitable justice entails not only a reevaluation of law, but also a reevaluation of selfhood.

Let's take a closer look at how Shakespeare undertakes this reevaluation of selfhood. I should begin by acknowledging that sonnets 35, 49, and 88 are not about selfhood per se. They are about the distorted way in which power and accountability are distributed between two people. The scene these people inhabit, however—the scene of hospitable justice—is constitutive of selfhood since it creates an environment in which literary subjectivity must obtain in a specific way. The scene of hospitable justice is what Levinas would have called an "inter-subjective world," one in which "denucleated" selves exist relationally in something we might think of as an ecology of being.[40] From the self-identical "I am that I am" of sonnet 121, sonnets 35, 49, and 88 bring us into the relational world of I-am-that-I-am-not. In sonnet 35, the "I" manifests itself at the very

moment of self-abandonment: "All men make faults, and even I in this, / Authorizing thy trespass with compare" (5–6). The "authorizing" act is at once charitable and demeaning, an invitation to persecute which fashions the speaking "I" as both host and hostage. This subject, the only kind of subject that can inhabit the scene of hospitable justice, is foreign to itself and to its own interests. It's important, though, that we recognize it as a fully constituted subject, nonetheless. The substitution of roles whereby "thy adverse party" becomes "thy advocate" (10) is only "an erosion of subjectivity," as Heather Dubrow puts it, if subjectivity is conceived of in ontological terms as self-identical and integral.[41] This is not the case in sonnet 35. This poem imagines subjectivity as a hospitable encounter and thus as an inherently lopsided kind of relationality. Desmond Manderson describes the other in the hospitality relationship as "a neighbor who cannot properly be classed as friend or enemy."[42] The young man in sonnet 35 is precisely this friend-enemy, just as the speaker is the consummate host-hostage. Sonnet 35 is not a poem where subjectivity erodes, nor is it quite right to identify its language as "the rhetoric of self-hate."[43] Rather, it's a poem that produces a form of selfhood marked above all by the way it renders traditional distinctions between love and hate, host and hostage, friend and enemy meaningless.

In the domain of hospitable justice, then, selfhood is built from the outside in, not from the inside out. It's phenomenological rather than ontological. Hannah Arendt describes how the Romans used the terms for *being alive* and *being amongst men* interchangeably, recalling for us a way of thinking about sentience as collective experience.[44] Sonnets 35, 49, and 88 occupy similar conceptual territory and in this respect contribute to a more general current of thought on sociality and collectivity that runs throughout the sequence. One example is sonnet 138, which reimagines truth—typically conceived of as absolute, transcendent, and singular—as something *made* collaboratively in the world of action and decision. As long as there is agreement among the parties involved, truth can be assembled from anything—even lies. The opening lines declare,

> When my love swears that she is made of truth,
> I do believe her though I know she lies,
> That she might think me some untutored youth,
> Unlearnèd in the world's false subtleties. (1–4)

Truth (the woman is faithful, the man is young) is not keyed to what the individual knows, but instead to what the social unit actively chooses to believe. Collective participation is the substance of truth and its necessary

condition. Is there a cynical streak in Shakespeare's presentation of this idea? Perhaps. But there's also optimism, even delight, in the notion that truth can be a matter of social contract. Sonnet 138 invites us, briefly, into a scene where the content of each individual's claims—the question of whether they are correct or not—is less important than the conditions of mutual recognition under which those claims are made. Truth, the sonnet proposes, is not a thing in itself; it's an effect of shared discourse and common acknowledgment, a matter of form, not of substance.

Other thematizations of sociality can be found in sonnets 1–17, the "procreation group." This sequence advances multiple versions of the same basic argument: the young man is too beautiful not to have children; if he does not produce "another self" (10.13) to preserve his beauty, he is committing a crime against "the world" (1.13). The key to this argument is the belief that beauty belongs not to the individual fortunate enough to possess it, but rather to the larger public world that desires to experience it. Beauty is "the world's due" (1.14), a common resource loaned by nature to particular men and women who then bear the responsibility of distributing and maintaining it: "Nature's bequest gives nothing, but doth lend, / And being frank she lends to those are free" (4.3–4). The young man's failure to live up to his social responsibility is castigated in a variety of ways. He is presented as "glutton[ous]" (1.13), "unthrifty" (4.1), and "self-willed" (6.13). Even more sensationally, he is described as "possessed with murd'rous hate" (10.5). The speaker of sonnet 9 avers: "No love toward others in that bosom sits / That on himself such murd'rous shame commits" (13–14). Murder is the most profoundly antisocial behavior. The logic of its inclusion in these sonnets has to do with two assumptions the procreation group makes about selfhood: first, that a self is not reducible to a single person, but is constituted instead by an intergenerational network of family members who share the same core attributes. (We'll recognize this idea from Bullingbrook in the previous chapter who presents himself, York, and Gaunt as different modes of the same substance.) Second, and in a very similar spirit, that you do not belong to you. You belong to the commons, to society. So, when a beautiful person fails to have children, they not only fail to complete themselves, they also deprive society of what is rightfully theirs. It's a form of self-murder and an affront to the community. Sonnet 13 addresses these matters explicitly:

> O that you were yourself; but, love, you are
> No longer yours than you yourself here live.
> Against this coming end you should prepare,
> And your sweet semblance to some other give.

> So should that beauty which you hold in lease
> Find no determination; then you were
> Yourself again after your self's decease, (1–7)

The argument here is not simply: you will die someday, so have a child and triumph over death. The idea, more precisely, is that living in a singular sense—living exclusively as and for the self—is not really living at all. Life becomes meaningful, and ethical, when conceived of in terms of others. This can be "the world," whose demand for recognition is heard so often in the procreation group, or it can be the intergenerational community of parents and progeny. "You had a father," sonnet 13 concludes, "let your son say so" (14).

   The hospitality sonnets, therefore, are part of a larger imaginative commitment in the collection to sociality and to a way of thinking about things—justice, truth, beauty—that starts with the community rather than the individual and which makes the demand of the other more important than the will of the self. This, the sociality of being, has been overlooked by criticism devoted to sonnets 35, 49, and 88, the majority of which has focused on issues of interiority: the speaker's "self-division" and "heterogeneous internality,"[45] his "masochism" and "depersonalization,"[46] his "intestine . . . civil war,"[47] or the "sudden uncoiling of the self."[48] Hospitable justice, by contrast, asks that we privilege *exteriority* as the field of self-actualization. While self-denial is intrinsic to hospitality, it would be a mistake to think of it in psychological or psychoanalytic terms.[49] At no point in sonnets 35, 49, and 88 are we presented with something we would now call mental experience. When in sonnet 49, for example, the speaker vows to "uprear" "this my hand against myself" (11), we learn less about a state of mind than about a configuration of bodies in space. The upreared hand is at once a synecdoche for the ritual act of oath-taking in the courtroom and for the infliction of violence.[50] Both referents cast the promise as a physical reply to external acts: namely, the friend "frown[ing] on," "strangely pass[ing]," and "scarcely greet[ing]" the speaker. The basic unit of meaning in sonnet 49 is the social interaction, not the individual thought. The speaking subject is assembled through a process of address and response, and so the self is not so much divided as it is distributed. Selfhood has more to do with relationality—the space, physical and ethical, between persons—than it does with individuality. This is underscored in all three sonnets by the legal conceit. The "lawful reasons" (12) and "strength of laws" (13) which have the final say in shaping the relationship between the speaker and the friend are criteria whose very existence is intimately bound up with the conditions of collectivity.

And in sonnet 88, the speaker's offer to testify against himself on the young man's behalf, to "set down a story / Of faults concealed, wherein I am attainted" (6–7), is less a movement inward than a holding forth, a public act of divulging. Self-denial is front and center in these sonnets. It's urgent and powerful and demands a readerly response. As Helen Vendler observes of sonnet 35, "*myself corrupting salving thy amiss* is the line of the poem that reaches deepest, poetically as well as morally, and we must ask ourselves why."[51] But to describe the self-denial we find in these sonnets in psychological terms, to approach it from the perspective of interiority, runs counter to the poems' staunch refusal to invite us in, what I would characterize as their unswerving exteriority. These sonnets are not in the business of making windows into men's souls. Instead, our attention is everywhere directed outwards toward the scene of hospitable justice.

Sonnets 35, 49, and 88 rediscover the experience of loss as a central juridico-ethical principle. Justice, Shakespeare seems to tell us, is not about what you get, but what you give. It's not about what is rightfully yours, but about what is somebody else's, rightfully or not. Like Levinas's ethics and the story of Lot and his daughters, these sonnets are challenging because they place an enormous imaginative demand on the reader, asking them to reconceive basic notions in ways that seem irrational. Can we invest ourselves in a version of justice that is premised on sacrifice? Can we take seriously a vision of the self that is fundamentally self*less*? It's a hard sell, to be sure, but it's consistent with Shakespeare's broader interest in the sonnets in radical thought experiments: What if truth could be based on lies? What if *your* beauty belonged to *us*? The point of these thought experiments is not to offer usable blueprints for living, but rather to open up a space for what we would now call critical thinking by confronting the reader with scenes that are at once familiar and profoundly alien. In sonnets 35, 49, and 88, we recognize a law-bound world of litigation and judgment, but not the ethical assumptions of those who occupy it. If we want to engage meaningfully with the legal thought at work in these sonnets, we must also find a way to imagine, and even defend, a version of the good that runs counter to self-interest.

Cosmopolitan Hospitality

The question I'm going to pose next will feel jarring after a discussion in which the key terms were words like sacrifice, otherness, obligation, and loss, but considering it will help us transition into a reading of *The Merchant of Venice*. Shakespeare's sonnets, as we have seen, present an

anti-egocentric model of hospitality that runs counter to the liberal tradition of political philosophy. My question is: what would hospitality look like if it were placed firmly *within* that tradition?

The most famous and sustained answer to this question comes from Immanuel Kant in "Toward Perpetual Peace: A Philosophical Project" (1795). At the center of this essay is Kant's idea of "cosmopolitan hospitality," defined, as I mentioned above, as "the right of a foreigner not to be treated with hostility." Later in the essay, Kant refers to cosmopolitan hospitality as the "right to be a guest" and the "right to visit."[52] The juxtaposition of the word "right" with terms like "foreigner," "guest," and "visit" is significant: cosmopolitan hospitality enfranchises the individual at the same time as it marks that individual as alien. This is crucial for Kant's larger project of establishing a program for "perpetual peace" since, in his view, political stability in an era of global exchange requires both the accommodation of national and ethnic outsiders into the commercial realm and the preservation of *insider* and *outsider* as meaningful indicators of identity. This is a difficult balance to strike, but cosmopolitan hospitality provides a set of social scripts and legal protocols for achieving it.

In *The Merchant of Venice*, Shakespeare takes up some of the same questions about curating political space that interest Kant in his essay. In fact, ideas very similar to Kant's would have been available to Shakespeare in the printed descriptions of Venetian law, politics, and culture that helped establish the Italian city-state's mythical status in early modern England.[53] In this section and the next one, I show how *The Merchant of Venice* both advances and critiques a cosmopolitan, rights-based version of hospitality. I suggest, moreover, that the play can be thought of as staging an encounter between Kant and Levinas and the very different versions of hospitality they imagine. When we read from this perspective, the play starts to look less religiously "sectarian" than much of the criticism devoted to it would have us believe.[54] Law becomes associated with liberalism rather than Jewish legalism; sacrifice emerges as neither specifically Jewish nor specifically Christian, but instead as a broadly theological posture that troubles the purported rationalism of the modern state; and Shylock and Antonio, though certainly enemies, prove to be alike to the extent that they are both divided between the play's double configuration of hospitality.[55] A comparatively inclusive reading like this one does not downplay the moral urgency of Shylock's experience as a Jew. On the contrary, I would suggest that by placing that experience in the more universal contexts of legal responsibility and ethical encounter, it takes on even more urgency precisely because it becomes emblematic of something larger: the violence and coercion that subtends civil society. As

Kenneth Gross observes, Shylock is a character with an "atomic quality," by which he means an ability to be both historically "compact" and philosophically "explosive."[56] In the remainder of this chapter, we'll pursue this cluster of ideas through the play's varied scenes of hospitality: social hospitality (table fellowship), commercial hospitality (financial dealings), and absolute hospitality (personal hazard and self-sacrifice). Along the way, we'll see Shakespeare confronting the complexities of a political and legal world marked at once by rationality and risk.

The Merchant of Venice is Shakespeare's most determinedly cosmopolitan play, presenting an array of border crossings and visitations among a religiously, nationally, and ethnically diverse community of friends and enemies. In such an environment, hospitality is omnipresent, orchestrating socially, materially, and affectively the encounters between insiders and outsiders that give the play its dramatic energy. In act 1.2, Portia's residence at Belmont functions as an open house for foreign visitors, all pursuing her hand in marriage. Recent passers-through include a Neapolitan prince, the county Palatine, a French prince, a baron of England, a Scottish Lord, and the Duke of Saxony's nephew. Before the scene ends, the Prince of Morocco arrives, too. Cultural, religious, and ethnic spaces are frequently materialized as houses in the play, making cosmopolitan interaction more readily understandable in terms of hosts and guests. Portia's residence in 1.2, 2.1, and 2.7 is one example of this, but we also see both Shylock and his daughter, Jessica, link Jewishness to domestic space. Jessica's rejection of her father's "manners" and her decision to "become a Christian" through marriage to Lorenzo amounts to a wholesale disavowal of both cultural and doctrinal Jewishness, which she locates in her father's "house" and describes as "hell" (2.3.2). Her arrival in the world of Christianity, her awakening into a new religion and a new culture, is signaled by her arrival at a new house (Portia's) and the hospitality extended to her there: "Nerissa, Cheer yond stranger, bid her welcome" (3.2.237), Graziano instructs Portia's lady in waiting. Shylock also associates religious identity with the home, compensating for breaking a custom and agreeing to dine with the Christians by having Jessica secure his house: "Jessica, my girl, / Look to my house. I am right loath to go" (2.5.15–16); "shut doors after you; / Fast bind, fast find" (2.5.53–54). Later in the play when Shylock instructs Tubal to meet him at their synagogue, the strange repetition of "Tubal" and "synagogue"—"Go, Tubal, and meet me at our synagogue; go, good Tubal, at our synagogue, Tubal" (3.1.129–30)—insistently casts religious identity as a relationship between, or even conflation of, person and place. In this case the place is not specifically domestic, but it nevertheless requires us to think of identity in terms of habitation, and

therefore as something capable of being shaped, managed, or threatened through the operations of hospitality.

It's also important to note, however, that Portia's accommodation of foreign visitors is different from Lot's welcoming of the angels in Genesis 19 and from the old man hosting the Levite in Judges 19. As we have seen, the biblical parables instance absolute hospitality, unlegislated acts of self-exposure and self-sacrifice; risk without reward. The hospitality extended by Portia is legally regulated, conditional upon all parties' adherence to the contractual stipulations of her father's will: Portia "may neither choose who [she] would, nor refuse who [she] dislike" (1.2.23–24), but instead must submit herself to the terms of the three-casket challenge, accepting as husband whoever succeeds. Likewise, Portia's hopeful guests must swear "If [they] choose wrong / Never to speak to lady afterward / In way of marriage" (2.1.40–42). This is risk, to be sure, but unlike the risk of absolute hospitality, it's risk with the clear potential of reward—and it's the reward (the possibility of an attractive spouse and the wealth attached to her) that motivates both parties. Here, then, is a form of hospitality which is underwritten by law and which offsets the possibility of loss with the possibility of profit. It's similar to the kind of hospitality the Venetian republic extends to Shylock and other Jews: religious and cultural outsiders are granted through law a limited form of membership in the civic community, one which is carefully calibrated to reward both guest (the Jew) and host (Venice) economically.[57]

Legally anchored and commercially driven, Kant would have viewed such hospitality as the bedrock of Venetian peace and stability. In "Perpetual Peace," his program for ending political hostility in Europe involves the practice of a secularized and pragmatic form of hospitality that facilitates productive interaction among people and nations without compromising territorial sovereignty or national identity. Kant's cosmopolitan hospitality is structured around a mutual acknowledgment of each individual's right not to be aggressed and, moreover, of the personal gain that can accrue from each party's entering into these legally regulated conditions of neighborliness. He explains as follows:

> *Hospitality* means the right of a foreigner not to be treated with hostility because he has arrived on the land of another . . . What he can claim is . . . the *right to visit*; this right, to present oneself for society belongs to all human beings by virtue of the right of possession in common of the earth's surface on which, as a sphere, they cannot disperse infinitely but must finally put up with being near one another.[58]

The "earth's surface" belongs to all of humankind and thus each human has a right to move across it, even if that means crossing political and cultural thresholds. Kant adds an important caveat, though: "This right of hospitality—that is, the authorization of a foreign newcomer—does not extend beyond the conditions which make it possible to *seek* commerce with old inhabitants."[59] Commerce, actual financial or commodity-based exchange, is both the aim and the limiting condition of cosmopolitan hospitality since, for Kant, commerce is the ultimate good and the ultimate guarantor of peace. "Since the power of money," he explains,

> may well be the most reliable of all the powers . . . subordinate to that of a state, states find themselves compelled (admittedly not through incentives of morality) to promote honorable peace and, whenever war threatens to break out anywhere in the world, to prevent it by mediation, just as if they were in a permanent league for this purpose . . . In this way nature guarantees perpetual peace through the mechanism of human inclination itself.[60]

In other words, since states and individuals are alike motivated first and foremost by what Kant calls "the *spirit of commerce*," and since commerce "cannot coexist with war,"[61] our natural inclination toward self-advancement and personal incentive will, when realized through a thriving, cosmopolitan commercial life, prevent military confrontation and neutralize hostility. Hospitality is crucial to this dynamic since it regulates the transactions, both personal and national, on which commerce depends. What this means from a legal perspective is that hospitality becomes a function of law, a form of relationality made possible by a particular set of rules and rights established contractually before the hospitable encounter takes place. Rational and impersonal, the host-guest relation in Kant's "*state of nations*" is an expression of the "public coercive laws"[62] that he thinks crucial for transforming human collectives from a state of savagery to a state of morality.[63]

In Kant's version of the hospitality relation, then, each party—nation or individual—arrives on the scene with a fully formed legal status in place. This link between hospitality and legal status derives ultimately from the Roman legal tradition, in which the meaning of *hostis* (stranger or guest) came to denote the *legal representation* of that stranger or guest in a juridical setting.[64] The Roman version of *hostis*, in other words, signified a subject of rights and conveyed a sense of carefully legislated equality. It ran counter to the term's broader cultural and theological associations with exposure, sacrifice, and risk. Accordingly, Kantian

hospitality configures the relationship between law and selfhood in a way fundamentally different from theological, or absolute, hospitality. Within the latter tradition, hospitality is itself *the* Law; for Kant, on the other hand, hospitality is a function of laws. For Levinas, hospitality is premised upon an open, non-ontological form of selfhood; for Kant, hospitality is a relationship between two closed, sovereign subjects. For Levinas, as for Lot, hospitality is about obligation, selflessness, even self-persecution; for Kant, it's about rights (in his own words, "it is not a question of philanthropy but of *right*").[65] Within the theological tradition, hospitality inevitably involves loss; within the Kantian framework, it necessarily involves profit and self-advancement. Levinasian hospitality is immanent; Kantian hospitality is legislated.

Kant's critique of the intellectual genealogy of which he is nevertheless a part is effected by eliminating one half of the meaning of *hostis*. Whereas someone like Derrida is at pains to emphasize the term's dual signification as both guest and enemy, Kant refuses to let the stranger register threat, just as he refuses to allow the stranger to be threatened. Tracy McNulty observes that much of Kant's restructuring of biblical hospitality comes from an intense dissatisfaction with the fact that "hostility is . . . contained within the notion of the guest as an implicit possibility . . . the tendency of one meaning to bleed into the other is precisely what Kant identifies as a problem: hosts are hostile to their guests, or guests abuse their status to exploit their hosts."[66] This state of affairs, as far as Kant is concerned, has no place in a practical philosophy. It certainly cannot provide the grounds for a pragmatically conceived project for perpetual peace. Kant's solution is to replace ethics with ontology, relation with identity, and the Law with laws to arrive at a rights-based hospitality that both expresses and reinforces the liberal subject and the sovereign state.

The Venetian setting of *The Merchant of Venice* adds a historical dimension to the play's proto-Kantian sensibility. Venice was known in Shakespeare's time for its rigid, rights-based legal system and for a highly developed culture of trade and global finance, both of which were viewed as key contributing factors to the republic's stability and prosperity.[67] George Buchanan, sixteenth-century Britain's leading proponent of republicanism, vigorously praised the constitution of Venice as a guarantor of equality and as a safeguard against corruption since it made everyone, including the doge, subject to a regulatory system of laws and elections.[68] Historian Brian Pullan describes Venice as a city-state that liked to think of itself as "devoted to the pursuit of wealth through commerce rather than of prestige through military prowess."[69] Venice's political and economic success, in other words, was viewed as

resulting from a liberal constitution aimed at the protection of the individual, the maintenance of liberty, and the sustenance of a variety of mutually beneficial associations—what Dennis Romano calls a "network of networks"[70]—among the religiously, ethnically, and racially diverse commercial communities that made Venice their permanent or temporary home. In these respects, Venice displays precisely the sort of legally anchored and commercially oriented hospitality that Kant would place at the center of his project for perpetual peace two centuries later.

Of course, the reality of sixteenth-century Venice was rather different from the myth. A tiered system of citizenship reserved influential political offices and voting rights for an elite class of nobles only. Jews and foreigners were granted legal status, but if this status conferred upon them certain commercial privileges it also restricted them in a number of ways from full participation in civic and political life.[71] But it was the myth, not the reality, that shaped perceptions of Venice in early modern England. We can trace this back to the publication of William Thomas's *Historie of Italie* in 1549. The book praises Venice's geographical location, economic structure, procedures for assigning political offices, legal system, and something Thomas calls the "libertee of straungers."[72] "All men, especially strangers," Thomas observes,

> have so much liberty . . . he that dwelleth in Venice, maie recken him selfe exempt from subjection. For no man there marreth an others dooyngs, or that mans living. If thou be a papist, there shalt thou want no kinde of supersticion to feed upon. If thou be a gospeller, no man shall aske why thou comest not to churche. If thou be a Jewe, a Turke, or beleevest in the divell (so thou spreade not thyne opinions abroad) thou art free from all controllement . . . And generally of all other thinges, so thou offendest no man privately, no man shall offende thee, which undoubtedly is one principall cause that draweth so many straungers thither.[73]

We could easily imagine Kant admiring the version of Venice described by Thomas: rational, cosmopolitan, pragmatically tolerant. The "libertee of straungers" is commendable for Thomas, as it would be for Kant, because it's emblematic of a legal system that prizes individual autonomy above all else and which maintains a clear distinction between public and private conduct.

Tribute of this sort gets amplified in Lewis Lewkenor's *Commonwealth and Government of Venice* (1599), an English translation of Gaspar Contarini's detailed description of the Venetian constitution, *De Magibus et*

Republica Venetorum (1543).[74] The Contarini-Lewkenor account of Venice, which was published one year after Shakespeare's play was entered in the Stationer's Register and one year before it first appeared in quarto, had a noticeable impact on English literary culture of the late 1590s and early 1600s: Edmund Spenser, for example, wrote one of the dedicatory sonnets in Lewkenor's translation and, as Andrew Hadfield notes, "it was also used as a guide by both Shakespeare and Ben Jonson when they wrote their Venetian plays."[75] In his prefatory epistle to the reader, Lewkenor writes that even travelers who

> had been in the farthest parts of Asia and Affrica, comming once
> to speake of the cittie of Venice, they would inforce their speech to
> the highest of all admiration, as being a thing of the greatest wor-
> thinesse, and most infinitely remarkable, that they had seen in the
> whole course of their travels.[76]

Focusing, like Thomas, on the freedom people in Venice seem to enjoy, Lewkenor describes the city as "a Democracy or popular estate" operating on principles of "justice [that are] pure and uncorrupted."[77] The first chapter of the *Commonwealth* then opens with a description of the "wonderful concourse of strange and foreign people, yea of the farthest and remotest nations, as though the City of Venice onely were a common and general market to the whole world."[78] The attributes claimed for Venice, then, are as follows: a thoroughly republican constitution that distributes power among the inhabitants; a legal system that enables individual autonomy but prevents the abuse thereof; and a commercially attuned policy of hospitality to outsiders. Kant, as we know, would make a direct link between these attributes and the kind of prosperity and stability that endures over time. The same link is made by Lewkenor, who observes after a preliminary description of the inhabitants of Venice that "from the first building . . . even until this time . . . [Venice] hath preserved it self free and untouched from the violence of any enemie, though being most opulent and furnished, as well of gold and silver, as of all other things."[79]

   It's clear enough that the phenomenon that Kant calls cosmopolitan hospitality was already being described, albeit less programmatically, in the printed texts that helped propagate the myth of Venice in early modern England. *The Merchant of Venice* participates in this discourse even as it questions its laudatory assumptions about cosmopolitanism by exploring the differences and tensions between economic, religious, legal, and affective forms of belonging. With this in mind, I would like to return now to the play and, in particular, to a passage in which we can see the

dynamics of cosmopolitan hospitality at work: act 1.3, in which Bassanio negotiates his loan with Shylock:

> SHY. . . . I think I may take his bond.
> BASS. Be assur'd you may.
> SHY. I will be assur'd I may; and that I may be assur'd, I will
>   bethink me. May I speak with Antonio?
> BASS. If it please you to dine with us.
> SHY. Yes, to smell pork, to eat of the habitation which your
>   prophet the Nazarite conjur'd the devil into. I will buy with
>   you, sell with you, talk with you, walk with you, and so fol-
>   lowing; but I will not eat with you, drink with you, nor pray
>   with you. (1.3.26–38)

Shylock is the guest, hosted by Venice and given limited but still mean-ingful agency within that civic space. But Bassanio, too, seeks a form of accommodation when he asks that his request be *entertained* ("May you stead me? Will you pleasure me?" [1.3.7]). Neither character expects selfless benefice from the other, and neither seems prepared to give it. Instead, their interactions, here and throughout act 1.3, are carefully scripted according to the rules of the marketplace. The keyword in the conversation between Bassanio and Shylock is "assur'd." Whether we choose to understand this word in the simple sense of being "reassured" or in the more pointedly financial sense of "surety," the basic thrust of the exchange is largely the same: both parties seek some sort of financial gain and that, importantly, at minimal risk. (We cannot say the same for Antonio, of course, who thrives on high-risk ventures.) Hospitality, in other words, is built on the grounds of commerce, and when Bas-sanio attempts to pull the exchange into the world of table fellowship, a more theologically charged version of hospitality, Shylock quickly pulls it back: "I will buy with you, sell with you, talk with you, walk with you . . . but I will not eat with you, drink with you, nor pray with you." This, as Julia Reinhard Lupton points out, is just one of several instances of failed table fellowship in *The Merchant of Venice*.[80] Shylock occupies a world of commerce-as-hospitality and he adheres rigorously to its dictates. He will welcome and be welcomed by the other for the purpose of commerce ("buy with you, sell with you"), in the language appropriate to that kind of relationship ("talk with you"), and in the civic spaces provided for such exchanges ("walk with you"). He resists sharing the kinds of private, or semiprivate, rituals (eating and pray-ing) that fall outside of legislated procedures and scripted behaviors,

rituals that require risking the self and compromising social and spiritual identity.

It's in this context that we might most productively understand Shylock's frequent appeals to law. Shylock clings to law because law manages risk—especially risk of the self—within Venice's larger scenes of sociality in which he plays both guest and host. When Antonio defaults on his loan, we discover through Salerio that Shylock "plies the Duke at morning and at night, / And doth impeach the freedom of the state, / If they deny him justice" (3.2.277–77). Shylock's insistence on the duty of the Venetian authorities to protect commercial liberty is legally and economically justified. As Antonio himself points out,

> . . . the commodity that strangers have
> With us in Venice, if it be denied,
> Will much impeach the justice of the state,
> Since that the trade and profit of the city
> Consisteth of all nations. (3.3.26–31)

Venice's peace and prosperity is founded on a commercial vitality due in no small part to the presence of foreign merchants and moneylenders. The law protects these "strangers" just as it protects Venetians so healthy commerce can be maintained. At the same time, Shylock's appeal to law is also an appeal to a certain version of selfhood. Venetian law endows Shylock with a limited form of agency and personal sovereignty actualized through the issuing and enforcing of legally binding financial contracts. When Shylock insists that he "would have [his] bond" (4.1.87), his fear is not simply the loss of capital, but also, and much more urgently, the loss of the very field from which his political subjectivity arises—that of codified law. Within Venetian law, Shylock is a guest who is also an individual of rights, an agentive self in a scene of cosmopolitan hospitality. Within Venetian law he can be both insider and outsider. As Portia (disguised as Balthazar) observes of his plea, "Of a strange nature is the suit you follow, / Yet in such rule that the Venetian law / Cannot impugn you as you do proceed" (4.1.177–78). The suit, like Shylock himself, is both "strange" and legally sanctioned, foreign and familiar. If Shylock in demanding a contractually stipulated pound of flesh becomes the archetypally monstrous other, he is also the archetypally doctrinaire Venetian. Cosmopolitan hospitality and the legal foundation on which it stands embraces, even requires, this paradox. Without Venetian law, and without the status of cosmopolitan selfhood, Shylock must choose: insider or outsider, Christian or Jew. And at the end of the trial scene, this is

exactly what happens. Shylock's relationship to Venetian law shifts when Portia catches him in the snares of his own positivism, pointing out that in exacting the pound of flesh he must take no more and no less than a "just pound" (4.1.327), in accordance with the terms of the bond, and further that he must take only flesh, for "this bond doth give thee here no jot of blood" (4.1.306). At this moment, Shylock moves from plaintiff to defendant, from guest to hostage. The legal threats and conditions meted out to Shylock from this point onward identify him as "alien" as opposed to "citizen" (4.1.349–51) and punish him, at Antonio's directive, by channeling his personal capital away from the cosmopolitan commercial networks within which he had thrived and into the gift economy of Christian marriage by transferring all his assets to Jessica, his prodigal daughter, and Lorenzo, the Christian Venetian she has run off with. This turn of events in the trial scene fundamentally changes the cosmopolitan structure of commerce and the hospitable function of law, something underlined most sensationally by Shylock's defeated acquiescence to Christian conversion just moments before he walks out of the courtroom and out of the world of the play for good.

Cosmopolitanism and Sacrifice

The Merchant of Venice opens up onto a world of cosmopolitan hospitality, but that cosmopolitanism does not survive the play's trial scene. This is not the only problem a fully Kantian reading of the play would have to grapple with. Such a reading would also depend upon a great deal of obviation of a competing form of hospitality: the absolute hospitality that I have linked to Levinas, Derrida, and the Bible. Kant's problem with the theo-philosophical tradition of absolute hospitality is also hospitality's defining feature: the tendency for one meaning of *hostis* (enemy) to bleed into the other (guest). The part of hospitality that Kant's retheorization suppresses—the unlegislated, the absolute, the risky, and the absurdly selfless—*The Merchant of Venice* retains. We see this in scenes of absolute hospitality which coexist in Shakespeare's Venice with the cosmopolitan hospitality I have just described. The key character here is Antonio, a figure who, by his own confession, has "much ado to know [him]self" (1.1.7). Henry Turner describes Antonio as "a partial citizen," alienated from himself and "social (hemophilic) life" whenever Bassanio, the identity-affirming friend, is absent.[81] Antonio can also be viewed as a subject-as-host in the theological sense who, Lot-like, devotes himself throughout the play to acts of reckless accommodation and self-abandon.

To Bassanio, Antonio offers "my purse, my person, my extremest means" (1.1.138) and when he defaults on the loan he secured for him and faces the removal of a pound of his own flesh, he adamantly refuses to shift responsibility over to Bassanio:

> Slubber not business for my sake, Bassanio,
> But stay the very riping of the time;
> And for the Jew's bond which he hath of me,
> Let it not enter in your mind of love: (2.8.39–42)

Antonio's gift to Bassanio is absolute, without condition. "All debts are clear'd between you and I" (3.2.318–19), he writes from the prison cell where he's incarcerated. Unlike the carefully legislated hospitality relation of Kant's cosmopolitan marketplace, the hospitality relation between Antonio and Bassanio is not structured by debt and obligation. Antonio is, to borrow Sean Hand's phrase again, "absolutely persecuted," a Levinasian rather than a Kantian subject. For him, being a host looks rather like being a hostage; and quite literally so when he ends up imprisoned and on trial for accommodating Bassanio.

The coexistence of commercial cosmopolitanism and personal sacrifice in *The Merchant of Venice* makes the play a particularly rich, if also particularly unwieldy, artifact within the intellectual history of hospitality. This complexity emerges not only from the juxtaposition of different scenes, but also from single scenes and even single characters which bifurcate between the two different models of hospitality. Antonio, for example, may be a persecuted theological host in his relationship with Bassanio, but his interactions with Shylock conform to the scripts of cosmopolitan hospitality. Act 1.3 is again instructive. Antonio's first words to Shylock invoke the two modes of association:

> Shylock, albeit I neither lend nor borrow
> By taking nor by giving of excess,
> Yet to supply the ripe wants of my friend,
> I'll break a custom. (1.3.61–64)

Antonio's smug disapproval notwithstanding, he and Shylock enter into a financial relationship, one based explicitly on difference, even unsociality, but also on mutual financial need. However, the real catalyst for this relationship is the merchant's very different kind of bond with Bassanio. Under the auspices of *this* relationship, Antonio is obliged to break customs and cast aside personal convictions, all for the greater good of

supplying the "wants" (not needs) of an other. This is a patently lopsided and irrational form of sociality, but it nevertheless forms the scaffolding for the regulated interactions that comprise commercial exchange.

Like Antonio himself, the pound of flesh he offers as collateral for the loan seems to be situated at the cusp of two different kinds of hospitality relations. "If you repay me not," Shylock stipulates,

> on such a day,
> In such a place, such sum or sums as are
> Express'd in the condition, let the forfeit
> Be nominated for an equal pound
> Of your fair flesh, to be cut off and taken
> In what part of your body pleaseth me. (1.3.146–51)

What kind of work does the flesh, or the idea of the flesh, perform in this passage? To whom is it being given and in what capacity? I think there are two answers to these questions. One is that the flesh is being given (conditionally, of course) to Shylock and it functions as collateral for a loan. Another is that the flesh is being given to, or at least for, Bassanio, which is in keeping with Antonio's pledge in the very first scene of the play to place at Bassanio's disposal not only his "purse" and his "extremest means," but also his "person." In this case, the flesh functions as gift, and, importantly, as a gift that is freely given—noncontractual, without condition. As a mediator between Antonio and Shylock, the flesh is reified as an item of commercial exchange. It presupposes two self-identical individuals of rights, each motivated by reward and advancement. As a mediator between Antonio and Bassanio, the flesh is a symbol of sacrifice, of disproportionate and unrecompensed giving. It presupposes a skewed relationship in which loss rather than gain is an ultimate good and in which Antonio, far from being self-identical, is quite literally a distributed entity. The flesh materializes law, but it also fulfills the Law. It is both legal artifact and primal donative.

Shylock, too, exists at the intersection of two different systems of hospitality. In act 1.3, we observe an outsider whose ability to exert influence and establish conditions of exchange with Venetian citizens are made possible by the affordances of cosmopolitan hospitality. Yet folded into these carefully managed exchanges are regular evocations of Shylock's alienness and the hostility it provokes. "You call me misbeliever, cut-throat dog" (1.3.111), he objects, and complains of being kicked "as you spurn a stranger cur / Over your threshold" (1.3.118–19). Shylock's otherness exceeds the merely different. Religiously, he is

seen to display active spiritual bankruptcy ("misbeliever"); ontologi-
cally, he falls short of the fully human ("cut-throat dog"; "stranger cur").
While certainly the Roman-Kantian *hostis*, Shylock is also very much the
theological-Derridean guest, the guest who is always at least part enemy.
The mingling of these two registers of hospitality is underlined slightly
later in the scene when Antonio asks Shylock to "lend [the money] not /
As to thy friends," but rather "to thine enemy" (1.3.132–33, 135). This
odd conceptualization of financial exchange has the enmity implicit in
all hospitality relations exploding through the surface of a commercial
script which, Kant would argue, works to neutralize such animosity. A
similar bifurcation of hospitality is at work in the first half of the trial
scene where Shylock is doubly defined. He is an individual of rights and
flaunts his freedoms ("I am not bound to please thee"; "I stand here for
law" [4.1.64, 141]); but Shylock-as-*hostis* is also an object of revilement
("This is no answer, thou unfeeling man"; "be thou damn'd, inexecrable
dog"; "thy desires / Are wolvish, bloody, starv'd, and ravenous" [4.1.63,
128, 137–38]). The former status does not preempt the latter. While
Shakespeare does fashion Shylock's civic life in terms of a version of soci-
ality that Kant would later call cosmopolitan hospitality, unlike Kant, he
does not do away with the underside of guest status—the guest as enemy,
the guest as intruder—as a result. Hospitality in Shakespeare's republic is
more complicated, more pluralistic than either the Kantian or the abso-
lute model on their own will allow.

So, what kind of republic is this? Two versions of hospitality means
two different ways of configuring the relationship between law and
selfhood. The personal liberty and individualism celebrated by William
Thomas and Lewis Lewkenor in the sixteenth century and theorized by
Kant in the eighteenth century is a powerful force in Shakespeare's play,
guaranteeing Shylock's commercial autonomy and bolstering the border-
crossing strategies of self-betterment displayed variously by Bassanio,
Antonio, Jessica, and Lancelot Gobbo. But this is not the whole story. In
Shakespeare's republic, the autonomous self of republican thought and
liberal political philosophy is always in negotiation with the persecuted,
sacrificial self of theology and absolute hospitality. Venice is inhabited by
both individuals and "dividuals," and neither individuality nor dividual-
ity are fixed, final states.[82] Rather, they represent different points along
a sliding scale of selfhood which shifts and evolves as it moves through
the various spaces of social, commercial, and political congregation. The
selves of Shakespeare's republic are both autonomous and bound, her-
metic and vulnerable, shaped at once by laws that ensure their personal
liberty and a Law that requires self abandon; one is founded on equality,

the other on disparity. Sociality in Shakespeare's republic is rooted, on one hand, in the purportedly neutral interface between business partners, and on the other in the turbulent and disorientingly nebulous exchanges between friends and enemies. *The Merchant of Venice* presents cosmopolitan political life in a way that is as imaginatively rich as it is theoretically untidy. The play creates an institutionally and linguistically recognizable republic, but one which is nevertheless embryonic, malformed, and contradictory in the way it presents ideas about both law and selfhood.

This doesn't mean that we should come away from the play with the sense that Shakespeare's Venice is dysfunctional or that it somehow fails as a republic. *The Merchant of Venice*, it seems to me, makes the much more nuanced and difficult proposition that this is what republics (and democracies) actually look like; that the liberal model of social, political, and economic life always contains precisely the things it purports to excise and overcome: irrationality, persecution, sacrifice. As Bonnie Honig has shown, even law itself, the foundation of the modern liberal state, subverts liberal theory's emphasis on autonomy and self-actualization: "the law by which we were founded," she explains, "is always lingeringly alien to us since we did not (indeed, we could not) will it." She continues:

> There is no way to avoid this sense of the law's alienness . . . Its character as a problem is severely aggravated when we are dealing with *democratic* law (which is supposed to be coming from the people, after all), and when democracy is conceived of in Rousseauvian republican terms as a politics of radical self-authorship and self-identity.[83]

Hospitality represents a similar kind of aporia within the liberal political community, at once bearing out what that community claims for itself (individuality, rationality) and marking out the limits of those claims. Shakespeare's Venice is legislated from above according to the principles of autonomy and entitlement, but in the city streets and the private homes, on the Rialto and in the courtroom, life is frequently animated by the irrational interplay of sacrifice and persecution, munificence and hostility. Venice, in other words, comprises a modern, liberal society which nevertheless—or perhaps by definition—operates according to a complex and contradictory set of norms and practices. If this makes *The Merchant of Venice* a particularly sophisticated play, it also makes it a particularly unsettling one, for it denies us the reassurance of writing off Shylock's troubling fate—his conversion and subsequent erasure from the world of the play—as the result of a political or legal malfunction. Instead, we

must acknowledge the trial scene's assault on difference as the outcome of a species of hypocrisy that is, in fact, native to modern liberal society in its most conventional form. That is to say, we must acknowledge Shylock's world as our own.

What the sonnets and *The Merchant of Venice* have in common, then, is not just the theme of hospitality, but more specifically a way of using hospitality to think beyond the horizons of the individual. The sonnets do this from the radical perspective of absolute hospitality while *The Merchant of Venice* enters absolute and cosmopolitan forms of hospitality into conversation to show how liberal subjectivity is always a provisional state. In both cases, though, hospitality provides resources for managing the interface between self and other, a set of rules and expectations that translate moral and legal obligation into social practice. In both cases, too, selfhood becomes an inherently relational concept: it's the demand of the visitor, the claim of the foreigner, and the desire of the friend that forms the ground of self-actualization. As we'll see in the next chapter, Shakespeare continues to think about relationality in *Macbeth*. This time, however, the point of entry is not the dynamics of self and other, but an uncanny encounter between a person and a thing.

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Criminality: The Phenomenology of Treason in *Macbeth*

If, as I suggested at the end of the previous chapter, relationality is a key concept in Shakespeare's treatment of law and selfhood, then *Macbeth* stands as a particularly important case study. The famous dagger scene in act 2.1 is unique within the canon. In no other play by Shakespeare does the idea of an encounter between a person and a thing carry such high political, moral, and legal stakes, and nowhere else does it come wrapped in such basic philosophical questions about the relationship between certainty and perception as well as intention and action.

Macbeth's dagger experience, its legal-historical sources and philosophical effects within the theater, is the focus of this chapter. I want to open, though, by considering a rather different scene, one from Steven Spielberg's 2002 science fiction film, *Minority Report*, loosely based on a short story by Philip K. Dick.[1] The film takes place in the future and centers on the Washington, D.C., Police Department's "Pre-Crime Unit." True to its name, Pre-Crime is responsible for stopping misdeeds, murders in particular, before they happen. The unit is dependent on a complex computer system linked to three adult psychics, called "precogs," who can predict intentional killings shortly before they take place. The task of Pre-Crime agents is then to rush to the scene of the crime and arrest the murderer (or pre-murderer?) in that critical temporal space between intent and act.

The opening sequence shows agent John Anderton (played by Tom Cruise) deciphering the precogs' vision of a husband unwittingly walking in on his wife and her lover and then stabbing his wife to death in a fit of jealous rage. In the next shot, Pre-Crime helicopters descend onto the couple's quiet Georgetown street and agents rush into the house just as the husband discovers the infidelity. They promptly fit him with a "halo," a device that will place him in a state of suspended animation until the

term of his sentence expires. In the brief span of time between the arrest and the haloing, wife and husband burst into panicked tears, both insisting that he would never kill her. It's a disturbing scene made all the more troubling by the revelation later in the film of the existence of a "minority report," a secret document detailing rare instances in which the precogs were wrong.

Minority Report has many flaws, but it nevertheless manages to raise a series of compelling legal and philosophical questions. Does a crime begin at the moment of conception or the moment of performance? At what point in the progress from thought to act do we become legally culpable? To what degree do intentions determine actions? And if we decide that intent should affect an individual's degree of liability for an act, or more radically, that the conception of a wrong is equivalent to its performance, how reliable are our methods for determining the nature of thoughts and intentions? *Minority Report* takes a conservative and skeptical line on these questions. We leave the theater unsettled by the film's dystopian vision of government thought-police intruding on the last sanctuary of private property, the inner world of contemplation. On the other hand, most of us agree that there is a meaningful distinction between killing with intent (murder) and killing without (manslaughter), and we trust the courts to be able to differentiate between the two in the majority of cases. The issue also seems to haunt the ever-growing number of mass shootings in the United States at schools, universities, movie theaters, and religious institutions. In the aftermath of such events, outrage at the lack of progress on gun control is often coupled with a desire to see more communication between the mental health sector and law enforcement. When we discover that a shooter was in thrall to antisocial fantasies, or suffered from crippling PTSD, or harbored violently misogynistic views, we quite naturally wish that these mental attributes could somehow be policed. On both sides of the issue, there are fundamental ethical and epistemological questions to grapple with: What can we know? How reliably can we know it? And what responsibilities do we have, both to the suspect and the public, once that knowledge is in hand?

Like all effective science fiction, *Minority Report* is troubling because the issues it points to do not belong solely to a remote world of the future. These are abiding legal issues and universal philosophical problems. We recognize them in our own world and Shakespeare would have recognized them in his, too. In sixteenth- and seventeenth-century England, there was more than one way to understand the phenomenological geography of crime. William Holdsworth, Cynthia B. Herrup, and Richard Firth Green, for example, have identified a general shift toward the mental in early

modern criminal law, with the category of *mens rea* (guilty mind) becoming crucial for judges and juries attempting to assess degrees of liability.[2] In standard practice, though, this shift toward the mental remains securely anchored to the physical. *Mens rea*, that is, is meaningful only in reference to *actus reus*, a "guilty act." This is neatly illustrated by the landmark suicide case of *Hales v. Petit* (1571). As Edmund Plowden writes in his report, "imagination of the mind to do wrong, without an act done, is not punishable in our law, neither is the resolution to do wrong, which he does not, punishable, but the doing of the act is the only point which the law regards."[3] One is reminded here of Angelo in *Measure for Measure* who instructs, "'Tis one thing to be tempted, Escalus, / Another thing to fall. . . . What's open made to justice, / That justice seizes" (2.1.17–18, 21–22).[4]

The crime that Macbeth commits when he walks offstage at the end of act 2.1 is treason, which has its own uniquely vexed legislative and intellectual history. From the beginning, treason was defined as a thought-crime. According to the Edwardian statute of 1352, treason occurs "when a man doth compasse or imagine the death of our lord the king."[5] Subsequently, over the course of the sixteenth and early seventeenth centuries, the crime was subject to a series of statutory reimaginings, each of which attempted to link treason more precisely to a certain kind of act, utterance, or thought. The result, as I will explain in more detail below, was a category of criminality that became remarkably pluralistic and malleable, on the one hand a problem of the mind and heart with close affinities to religious notions of sin, and on the other a singularly consequential form of material intervention in the realm of human affairs. On the early modern stage, the act of treason served as both plot device and occasion for stage spectacle, but the crime's definitional openness also made it available to playwrights as an object of theoretical inquiry. Nowhere is this more apparent than in the dagger scene in *Macbeth* in which Shakespeare makes the striking decision to give sustained attention to the moments just before the criminal act when, through the vision of the dagger, Macbeth gradually finds himself able to *think* the crime he is about to *do*. What we witness in this scene is a theatricalization of the process of criminal intent, but also, and more to the point, of criminal intent *as* process. Compassing treason, in other words, is not reducible to static, contained thought in the dagger scene. In fact, Macbeth's crime takes shape in pointedly sensual terms. He is concerned with whether or not he truly *sees* the dagger which has materialized in front of him ("Is this a dagger which I see before me" [2.1.33]); he wants to touch it ("come, let me clutch thee" [2.1.34]); and when these things prove problematic

he replaces the visionary dagger with a real one, with "this which now I draw" (2.1.41). Regardless of the ontological status of the dagger that triggers Macbeth's speech, by the end of it, treason emerges as something that must be experienced physically in order to be real.

If this phenomenological way of thinking about treason is a creative response to early modern legal culture, it also constitutes a broader reflection on the relational structure of selfhood. Treason for Macbeth is something Maurice Merleau-Ponty would have called "a unit of experience," a multimodal event involving both ideas and things in a way that forces us to abandon the mutually exclusive categories of subject and object.[6] Accordingly, like Richard's divestment of property and like Antonio's reckless acceptance of Shylock's contract, Macbeth's encounter with the dagger comprises a legal ecology: a jurisprudential scene in which selfhood obtains as and through a dynamic process involving other persons or things. I will show how this works in more detail below, but first we need to return to the legal and cultural history of treason. Doing so, we'll find that some of the conceptual genome of the dagger scene was already contained within key acts, statutes, and trials of the sixteenth and seventeenth century.

Locating Treason in Early Modern England

Let's begin by taking another look at the Edwardian statute of 1352. As I mentioned, this statute, which eventually found its way into Edward Coke's *Institutes* (1644), defined treason as "when a man doth compasse or imagine the death of our lord the king." The key terms are "compasse" and "imagine." They enter the English statue as literal translations of the original Law French—*compasser* and *imaginer*—and occur in no other legal statute. Their effect within the statute of treason is to cast realized action as a consequence of a crime that has already taken place in the mind. That is, as an *effect*, which may or may not actually be produced. Monarchs and judges quickly learned how the category of "imagined treason" might be stretched and extended to embrace a wide variety of offenses, often having to do with written or spoken words of a purportedly malicious, or otherwise antimonarchical, nature. Indeed, with the exception of charges arising from levying war against the king (something not uncommon during the political upheavals ushered in by Richard II), "imagined" treachery—treachery planned, spoken of, or alluded to—was the dominant source of indictment between the years 1352 and 1485.[7] It's only with the Tudor period, and in particular the reign of Henry VIII, that

we find a concerted effort to define exactly what imagined treason might entail. Whereas between 1352 and 1485 ten new treason statutes were enacted, the period 1485 to 1602 saw a staggering sixty-eight treason statutes enacted.[8] This succession of legislative interventions—what amounts to a sustained dialogue with the original Edwardian statute—focused on particularizing that vague notion of the "treasonous imagination," testing its conceptual boundaries and phenomenological structure, and doing so in a way that permitted it to be more efficiently mobilized as a category of criminality.

That Henry VIII's reign is the most significant passage in the history of treason in early modern England is in some ways hardly surprising. Given Henry's complete overhaul of the established structure of obedience and obligation, it's only logical that treason, a type of offense whose official existence was largely aimed at safeguarding that structure, would receive a similar overhaul. Between the years 1530 and 1542, a series of acts intended in the first place to defend Henry's religious policies and matrimonial arrangements resulted in a newly detailed model of the scope of treason. The first Succession Act (25 Hen. VIII c.22),[9] for instance, attempted preemptively to safeguard Henry's marriage to Anne Boleyn by making explicitly treasonous not only deeds which imperiled the king, but also written or printed words that slandered him or his marriage.[10] This met with swift retaliation from Henry's legal advisors who urged, at the very least, the demotion of spoken words to the lesser crime of "misprision of treason." They were unsuccessful. The 1521 trial of the Duke of Buckingham set precedent against them. At Buckingham's trial, Chief Justice Fineux distinguished between felony and treason thus: whereas the former always required some kind of act to be committed, the latter required nothing more than *intention* to kill the king and this, Fineux maintained, could be sufficiently proven by words alone.[11] The 1534 Treason Act (26 Hen. VIII v.13) drove this point home by making "treason by words" its focal point. Moreover, now not only were written and printed words deemed treasonous, but *spoken* words, too—pronouncing the king a heretic, a schismatic, a tyrant, an infidel, an adulterer—were taken as definitive marks of a traitor, and this was reiterated in the second Succession Act (28 Hen. VIII c.7). However, the most sensational piece of Henrician treason legislation was the act passed in 1541/42 (33 Hen. VIII c.23) dealing with women the king intended to marry. This act stated that if the monarch pursued marriage with a woman under the assumption that she was chaste and she later proved to be otherwise, she would be found guilty of treason. The act is explicitly concerned with monitoring the body, but it's also concerned with monitoring the mind. A woman indicted under this act is not

just guilty of a sexual infraction; she is also guilty of withholding information, of having knowledge of a certain state of affairs and not providing the authorities with access to that knowledge. Consistent with this logic, under this act, any other subject who happened to know of the woman's sexual status and failed to report it would also be guilty of treason. This is a bizarre and despotic piece of legislation, to be sure, at once a testament to Henry's own manic single-mindedness and a significant landmark in the cultural history of sexual surveillance. However, the 1541/42 act also tells us something important about changes in the metaphysics of crime in early modern England. A crime becomes in this act something that can take place prior to, or irrespective of, instantiated words or actions. It constitutes, therefore, an important extension of the territory of treason beyond the materialized world into the realm of thoughts themselves.

Henry VIII is a monarch whose solutions to immediate political problems tended to have rather long-term effects, and his treason acts are no exception. Edward, Mary, and Elizabeth each oversaw new treason statutes, and each wave of legislation had its own characteristics. But all three reigns are characterized by a more general pattern of optimistically rolling back Henry's punitive legislation shortly after ascension only to reinstate it when the task of governing started to get thorny.[12] As a result, Henrican definitions of treason—pinpointing, in turn, written words, spoken words, and, finally, silent knowledge as policeable phenomena—came to have a formative influence on sixteenth-century notions of treason more broadly. The nonphysical forms of the crime signaled implicitly in the 1352 statute were made explicit in the Henrican acts, transforming the crime from an enacted affront to something that might more accurately be thought of as a psychological terrain—a cognitive space, from which words and actions merely have the *potential* to issue.

By the sixteenth century, the mental component of crime had become important beyond the pale of treason, too. The distinction between murder and manslaughter, which I referred to above, emerges for the first time in the sixteenth century, and then as now it turned on whether or not the accused intended to kill their victim.[13] Later, in the seventeenth century, Edward Coke and Matthew Hale used the concepts of "malice prepensed" and "*malitia praecogitata*," respectively, to differentiate among a wide range of felonies, including not only various forms of homicide, but also burglary, arson, and assault.[14] At the root of these concepts is the jurisprudence of Henry de Bracton, the thirteenth-century English judge and clergyman whose seminal work, *De Legibus et Consuetudinibus Angliae* (c. 1235) was first printed in 1569. Bracton developed the idea of *mens rea*, arguing that

> we must consider with what mind [*animo*] or with what intent [*vol-untate*] a thing is done, in fact or in judgment, in order that it may be determined accordingly what action should follow and what punishment. For to take away the will makes every act indifferent, because your state of mind gives meaning to your act, and a crime is not committed unless the intent to injure [*nocendi voluntas*] inter-vene, nor is a theft committed without the intent to steal.[15]

Bracton's emphasis on the mental component of crime is the result of two key influences. One is Roman law, which had been undergoing a massive resurgence in Europe since the beginning of the twelfth century. *Mens rea* owes at least a partial debt to the Roman legal concept of *dolo malo* (evil intention), dealt with extensively by Cicero, for example, in *Pro Tullio*.[16] The other, much stronger, influence on Bracton was canon law, a system of ecclesiastically based rules in which the lack of distinction between crime and sin endowed all forms of infraction with a deeply spiritual, and therefore interiorized, quality. Eugene Chesney has observed that Bracton's work "was replete with ideas borrowed from canon law" and Frederic Pollock and Frederick William Maitland point out that Bracton's ideas on homicide, in particular, were extracted from a treatise by the twelfth-century canonist and bishop Bernard of Pavia.[17]

Henry's treason legislation shares with the concepts of *mens rea*, "mal-ice prepensed," and "*malitia praecogitata*" a theoretical concern with the origin of crime as well as its effects. This is very different from, say, the absolute liability of early medieval criminal law which based sentences almost exclusively on what Oliver Wendell Holmes called "externals."[18] An arrow shot over a barn for fun was an act of homicide if it happened to kill somebody taking a stroll on the other side. All that mattered was the outcome. Yet it remains the case that treasons which produced outwardly manifested evidence were much easier to prove. The successful prosecution of imagined treason frequently involved creating such evidence. Written or spoken words, witness testimony, even the suspect's body could be taken as indicators of a fully formed mental plot to harm or betray the monarch. A major piece of evidence used against Katherine Howard in 1542, for example, was a mark on her body. The trial of Mary, Queen of Scots in 1586, on the other hand, turned on the authenticity of an encrypted group of letters. And at Sir Walter Raleigh's 1603 treason trial, a great deal of importance was placed on things he was purported to have said.[19]

Sometimes, though, it was the absence of language or action that ended up being the most damning piece of evidence since silence and withdrawal could so easily be connected to secrecy, scheming, and malevolence in the

period. This was certainly the case at the trial of Henry Cuffe in 1601, as it was at the much more famous trial of Thomas More in 1535. At More's trial, the king's attorney general, Christopher Hales, asserted in no uncertain terms, "Even though we should have no word or deed to charge upon you, yet we have your silence, and that is sign of your evil intention and sure proof of your malice."[20] The link between silence and disobedience in the early modern period emerges in large part out of anxiety about religious dissimulation, an issue that was intensified by the terms of the Elizabethan religious settlement. In stark contrast to the inquisitional policies of Catholic Spain, the 1559 Act of Uniformity required only *outward* conformity to Protestantism. This prioritization of phenomena over essence, actions over belief, simplified the matter of religious regulation significantly, but it also created a distinct epistemological problem: how can one know what others truly believed if outsides, acts, are all that is policed?[21] Silence—the absence of externally manifested evidence—becomes particularly vexing in this context. George Wither exploits this anxiety in his emblem, "In Silentio et Spe." The image depicts a friar holding a closed book in one hand and an anchor in the other. The lines below the image read:

> The clasped-Booke, doth warne thee, to retaine
> Thy thoughts within the compasse of thy breast;
> And, in a quiet silence to remaine,
> Untill, thy minde may safely be exprest.
> That Anchor, doth informe thee, that thou must
> Walke on in Hope; and, in thy Pilgrimage,
> Beare up (without despairing or distrust)
> Those wrongs, and sufferings, which attend thine Age.
> . . .
> Hee, that then keeps his Tongue, may keepe his Life,
> Till Times will better favour Innocence.
> Truth spoken where untruth is more approved,
> Will but enrage the malice of thy foes.[22]

In Wither's poem, ideas, thoughts, and beliefs constitute a form of criminality in and of themselves, and the figure of the friar casts this criminality as specifically Catholic. While silence and stasis are associated with patience, strength, and hope—a form of well-advised withdrawal from a dangerous (Protestant) world—it also offers a way of arming oneself for confrontation with that world. It represents the surest means of survival in a time when "untruth is more approved" than truth.

More complex forms of deception allowed Catholics to remain silent on the question of their faith even while appearing to address it. The doctrine of equivocation, for example, urged Catholics under the threat of recusancy laws to profess adherence to Protestantism in language which, while not constituting an outright lie, was vague enough to accommodate the sentiment opposite to that ostensibly being expressed. The opposite sentiment ("I am a devout Catholic") would be the one held inwardly and the one known to God.[23] Equivocation was an especially challenging form of subterfuge because it was, paradoxically, a speaking secret. It achieved the effects of silence through the mechanics of language and, in this way, preserved the mind as a haven for subversive ideas.

At the turn of the seventeenth century, equivocation was increasingly being correlated to the crime of treason. Christopher Bagshaw and William Watson, both of whom were themselves Catholics, joined a chorus of like-minded criticism when they condemned equivocation as "secret concealed treason."[24] Such appraisals were validated by the series of events that followed the unsuccessful Gunpowder Plot, a conspiracy aimed at killing King James, his family, and a large number of Protestant aristocrats by blowing up the Houses of Parliament while in session. A search of the chambers of one of the chief conspirators, Francis Tresham, turned up a copy of *A Treatise of Equivocation* (1598) by the Jesuit Henry Garnet in which he upheld the legitimacy and utility of the practice.[25] This, predictably, led to equivocation's immediate disrepute and its entrenched association with the treasonous imagination. During the conspirators' trials, Coke, then the attorney general, condemned "perjurious Equivocating" and Garnet's treatise in particular as "a very labyrinth to lead men into error and falsehood" by persuading them not only "to conceale or denie an open trueth, but Religiously to averre, to protest upon salvation, to sweare that which themselves know to be most false, and all this by reserving a secret and private sense inwardly to themselves."[26] The mandatory oaths of allegiance that King James instated in 1606 and 1610, largely as a response to the Gunpowder Plot, were designed to lay bare the workings of subjects' minds by forcing them not only to swear loyalty to the king, but also to swear that they were doing so unequivocally.[27] Measures like these were only partially successful. There were always new ways to dissimulate. And there was also the advice proffered in Wither's emblem: silence. Many simply refused to take the oaths.[28]

On one hand, a combination of legislative intervention and political anxiety made the inner world of thoughts a very real location for treason. On the other, the indisputable knowledge that thoughts are only intelligible by way of a material trace made the interiorized account of treason

theoretically and procedurally thorny. During Nicholas Throckmorton's 1554 treason trial for allegedly "compassing" to deprive the queen of her crown, the accused lashed out, "Where doth appear the open deed of any compassing or imagining the Queen's death?"[29] The trial of Henry Cuffe features similar wrangling over the definition of treason. Henry Cuffe was secretary to Robert Devereux, second Earl of Essex, and was executed along with him after a failed insurrection against the queen in 1601. Cuffe played no active role in the rebellion. The secretary was in his study reading when Essex and his followers marched on London. But in the aftermath of the botched insurrection, Cuffe was accused of failing to prevent a conspiracy he had full knowledge of.[30] As this suggests, the conviction of Henry Cuffe depended on the prosecutors' ability to deploy successfully a version of treason that was neither linguistically nor physically inscribed. Cuffe's defense, however, was firmly rooted in an alternative notion of treason as *action*. As far as he was concerned, since he was not present at the attempted insurrection, he was not culpable. The mind, for Cuffe, was policeable only by God, not the sovereign and not the sovereign's judges. The thoughts that were running through Cuffe's head on the day of the insurrection as he was sitting quietly in Essex House reading were, in his own words, "no more treason than the child in a mother's belly is a child."[31] Solicitor General Thomas Fleming saw things differently. Even if Cuffe had not accompanied Essex on the day of the rebellion, he appeared to have been intellectually complicit with the republican political ideas that bolstered Essex's ill-fated plan. The fact that he remained silent and inactive at Essex House while all of this was going on was taken as proof of this complicity. Accordingly, Fleming argued, Cuffe was guilty not for acting out against the queen, but for "compassing the queen's Destruction." This, he maintained, was "Treason in the very thought and cogitation."[32] Cuffe maintained his innocence until the very end. In a scaffold speech that came to be widely disseminated in print and manuscript, he declared defiantly, "I do here call God, his angels, and my own conscience to witness, that I was not the least concerned therein, but was shut up that whole day within the house, where I spent the time in very melancholy reflections"; "I am here adjudged to die for plotting a plott never acted [and] for acting an act never plotted."[33]

Over the course of the sixteenth and early seventeenth centuries, treason in theory moved deeper into the unseen world of thought and knowledge. In practice, however, physical acts and material things proved very difficult to excise from the crime's overall conceptual structure. Conviction frequently required concrete evidence, some trace of subversion's

appearance in the world, and even when this evidence was not required, when silence and withdrawal seemed to be grounds enough for conviction, records show that the accused still demanded it. By the time Shakespeare wrote *Macbeth* in 1606, treason had a peculiar mixture of associations. On one hand, it called to mind sensational forms of action: Essex and his men marching on London in 1601; Catholic conspirators almost blowing up the House of Lords in 1605. On the other hand, treason was firmly linked to the imagination, to *ideas* that were fundamentally incompatible with social and political order. As such, early modern treason raises in historically specific terms theoretical questions about criminality more generally. When does a crime begin? At what point are we culpable? What counts as evidence? When we start posing questions like these, we're not just talking about law anymore. Also at issue is the nature of the relationship between thinking and doing. Answering the questions involves assumptions about how the body and mind interact, the difference between an idea and an intention, and the degree to which thoughts both shape and get shaped by the material world. The dagger scene in *Macbeth* takes up this cluster of questions and in doing so it functions as both an imaginative response to the legal culture of treason and a theatrical experiment in translating the performance of political disobedience into the performance of selfhood.

The Phenomenology of Treason

Macbeth teaches us not only that power corrupts, but also that *knowledge* corrupts: bad thoughts lead to bad deeds. The murder of Duncan finds its source in Macbeth's acquisition of untimely knowledge from the witches: "All hail, Macbeth, that shalt be King hereafter" (1.3.50). And when he hisses despairingly to Lady Macbeth, "O, full of scorpions is my mind, dear wife!" (3.2.36), he is referring not only to the guilt and paranoia that have seized hold of him since the murder, but also to those corrupting seeds of knowledge from which his malice (first toward Duncan and now toward Banquo and Fleance) originally sprung. In these examples, there is a certain sequential distance between knowledge or thought and the act they lead to. In other places, thinking and doing are more proximate and lack a clearly causal relationship. Early on in the play, for example, Macbeth speaks of his "thought, whose murther yet is but fantastical" (1.3.139). The reference is not to the murder of a thought, but instead to a thought that will itself do the murdering. It's a strange turn of phrase which extends the murderous thought beyond the

technical parameters of *mens rea*. Instead, "thought" marks the collapse of *mens rea* and *actus reus* into one another, something we see again later in the play when Macbeth describes his machinations as "young in deed" (3.4.143). Macbeth means that plans are being thought up but have yet to be executed. But to describe thoughts as "young in deed" puts particular emphasis on the way thinking can be viewed as part of the larger life cycle of doing, rather than as something substantially or ontologically distinct. To broach the idea from the other direction, deeds according to the logic of this phrase are things that have thoughts folded into them as a constituent substance. These distinctions may be subtle, but in a play as grimly fascinated as *Macbeth* is with both the sources and consequences of thought, they become touchstones of a larger thematic concern, one that is attended to with particular rigor in the dagger scene.

Towards the end of act 2.1, we find Macbeth alone on stage. His servant has gone to bed; so has Banquo. Left by himself to ponder for a moment the crime he is about to commit, Macbeth stares intently into empty space and says the following:

> Is this a dagger which I see before me,
> The handle toward my hand? Come, let me clutch thee:
> I have thee not, and yet I see thee still.
> Art thou not, fatal vision, sensible
> To feeling as to sight? or art thou but
> A dagger of the mind, a false creation,
> Proceeding from the heat-oppressed brain?
> I see thee yet, in form as palpable
> As this which now I draw. (2.1.33–41)

There has been a tendency in criticism devoted to *Macbeth* to view this speech as a moment during which some form of interiority is disclosed: "the growth of evil in the mind,"[34] "the divided soul,"[35] or "the functioning of conscience,"[36] to give a few examples. Were we to put this in legal terms, we might call it a performance of *mens rea* or what the Edwardian statute calls "compass[ing]" treason. But this is only part of the picture. If we focus too narrowly on the idea of interiority we risk obviating what, in my view, makes the speech unique and intellectually potent: its complex marshaling of mind and matter. Rather than simply staging interiority, the dagger scene treats the process of becoming criminal in a way that makes physical sensation integral to mental conception.[37] The initial question that Macbeth poses—"Is this a dagger which I see before me, / The handle toward my hand?"—has to do not only with *what* at that moment

Macbeth knows, but also, as we quickly discover, with *how* he knows it: through vision ("see") and through touch ("Come, let me clutch thee").[38] These lines describe knowledge and thought as part of a larger sensual experience that extends beyond the mental or spiritual into a real, material world of things and actions. This is not to say that Macbeth does not *think* himself into the criminal event, but rather that the thinking he does he does at least in part with his body. Knowledge—the treasonous imagination, in this case—requires a physical extension outward, which means the kernel of thought is not mental activity per se but the objects and environments that generate that mental activity when perceived by the senses. Thinking exceeds the boundaries of the purely physical or purely mental since it entails an act of quasi-physical mental acquisition, one which in this soliloquy is literalized when Macbeth reaches out for the mental dagger, eventually replacing it with his own real dagger.

What we see in the dagger scene, then, is not so much criminal *intent* as it is something we might call criminal *intentionality*. Criminal intent—the premeditation of a murder, for example—refers to something mental. And though it also presupposes a will toward an action in the objective world outside, it still designates the mental inception of that act as chronologically prior to its materialized performance and, to that extent, as separate from it. As Jonathan Gil Harris reminds us, chronological thinking is "a practice [that] works to separate time into a linear series of units . . . each of which is partitioned from what precedes and follows it."[39] Intentionality, on the other hand, is a phenomenological concept that models mind-body relations in a rather different way.[40] In Edmund Husserl's formulation, the doctrine of intentionality states that every act of consciousness, every thought, is directed toward an object of some sort. That is to say, consciousness is always consciousness *of* something: the thought and the thing are never readily separable.[41] Indeed, the *thing*—what Husserl would call an "intentional object," or *noema*[42]—creates the thought, creates the very conditions of sentience; not the other way around. In Macbeth's soliloquy, the dagger takes on the role of the intentional object. It catalyzes Macbeth's consciousness of his own criminality and at the same time teeters playfully on the frontier between idea and object.[43] Treason is not anchored to a founding moment of cogito in this scene. Instead, it should be viewed as evolving out of something Tim Bayne calls "agentive experience," a distributed and dynamic process involving both thinking and feeling, imagination and action.[44]

In Heidegger's version of phenomenology, this intentional approach to thought meant that all being, all consciousness, must be understood as being-in-the-world (*In-der-Welt-sein*), in a world "out there" rather

than "in here."[45] Similarly, Hannah Arendt, in her phenomenologically influenced study *The Life of the Mind*, sought to affirm the active, physiological qualities of thought by insisting that the mind is always "the mind of the maker of use-objects," "a toolmaker's mind," "the mind of a body endowed with hands."[46] Merleau-Ponty took the notion of *In-der-Welt-sein* one step further, declaring that "there is no inner man, man is in the world, and only in the world does he know himself."[47] Merleau-Ponty's focus, especially in *The Phenomenology of Perception*, is on the way our senses gather information from a reality that is "always 'already there' before reflection begins."[48] This, according to Merleau-Ponty, makes perception the intentional act par excellence. Rather than seeing the world and our actions in it as the products of ideas innate within the mind, Merleau-Ponty argued that we can only *conceive* what we first *perceive*, that thought is largely the product of embodied experience of the world.[49] "All knowledge," he insists, "takes place within the horizons opened up by perception."[50]

Merleau-Ponty's arguments are seminal within the history of twentieth-century phenomenology and its critique of transcendental philosophy, but they also gesture back to similarly sense-oriented theories of human cognition within the Aristotelian tradition of philosophy, including Scholasticism and neo-Scholasticism. Aristotle understood the soul, or the mind, to be the domain not only of intellectual powers, but also of vegetative and sensitive powers, including all forms of internal and external sensation, appetite, and motion.[51] Thomas Aquinas, following his lead, argued that all knowledge and thought start with the reception in the external sense organs of what he terms "sensible species" transmitted from the sensible qualities in external objects.[52] This Thomastic model of cognition—precisely the model that Descartes's dualistic philosophy sought to do away with—was maintained by later Scholastics in the early modern period, especially in Spain and Italy.[53] Indeed, there is something curiously premodern about Merleau-Ponty's sensual account of thought and about the conceptual machinery of phenomenology, more generally. Merleau-Ponty suggests as much when he describes the goal of phenomenology as "re-achieving a direct and *primitive* contact with the world."[54] Robert Sokolowski has traced some of this relationship in detail, noting for example the "continuity between Thomistic thought and the early stages of phenomenology," the chief instance of this being the formidable influence of Franz Bretano's neo-Scholastic philosophy on Edmund Husserl. "Phenomenology," according to Sokolowski, "breaks out of modernity and permits a restoration of the convictions that animated ancient and medieval philosophy."[55]

This link between the modern and the premodern reminds us that it's only in a very narrow sense that phenomenology can be considered a single school of thought. Although it did take the form of an actual philosophical movement in the twentieth century—associated most notably with Husserl, Heidegger, and Merleau-Ponty—phenomenology is not in the first place a historically fixed set of doctrines. More accurately, it's a practice or a method, a way of describing knowledge as embedded experience. Because this practice or method occurs in a variety of contexts, and because it can be used to pursue different kinds of philosophical and creative projects, phenomenology is most usefully thought of as an "intellectual diaspora," a network of discrete theories and practices that share basic assumptions about the embodied and object-oriented nature of experience. Theater is very much part of this intellectual diaspora.[56] As I have argued elsewhere with James Kearney, "phenomenology . . . has an affinity with theater's attempt to stage for its audience minds and bodies and artifacts in dynamic relation." Whether the goal is philosophical inquiry or entertainment,

> phenomenological description and theatrical dramatization . . . depend on a suspension or bracketing of the world of experience, a framing of the object at hand, to see some aspect of that experiential world in some sort of exaggerated or reduced or clarified form.[57]

This is the sense in which the performance of treason in *Macbeth* is phenomenological. The dagger scene represents an attempt to *suspend* and *frame* the dynamic relationship between minds, bodies, and artifacts. It tries to think slow something that typically gets glossed over or ignored: the way thoughts emerge interactively from a larger sensory environment and the way imagination functions as part of a material ecology that includes but also exceeds the individual body.

With this in mind, consider the moment in the soliloquy when Macbeth experiences his most intense doubt about the existence of the dagger. The passage sets up a particularly close set of correspondences between feeling, thinking, and doing:

> Mine eyes are made the fools o' th' other senses,
> Or else worth all the rest. I see thee still;
> And on thy blade and dudgeon gouts of blood,
> Which was not so before. There's no such thing:
> It is the bloody business which informs
> Thus to mine eyes. (2.1.44–49)

Macbeth is intent on finding a position of lucidity, but it soon becomes apparent that while he can deny the objective existence of the dagger, he cannot deny his sensory experience of it: "I see thee still," he confesses. Macbeth *feels* criminal, and this *perception* of treason is not readily separable from his *conception* of the same. What's more, this economy of feeling and perceiving also sets the parameters for action in Macbeth's world. There is something temporally peculiar about the way the dagger is seen as deriving from the "bloody business." Wouldn't it be the other way around? Isn't the "bloody business," the *actus reus* of the future, a final destination, the outcome of Macbeth's reflection on the dagger? Macbeth doesn't see it this way, and for a simple reason. The dagger *already* has "gouts of blood" on the "blade and dudgeon" (2.1.46). From his perspective, the dagger seems to be compelling him to do something that's already been done. This temporal convolution produces a strange combination of effects: on the one hand, an uncanny sense of urgency, and on the other, an overwhelming sense of inevitability. Macbeth struggles to keep pace with his own actions. The material instantiation of murder, metonymized in the dagger, is always one step ahead of his thoughts of the same: "Thou marshal'st me the way that I was going, / And such an instrument I was to use" (2.1.42–43). Yet the temporally eccentric way in which Shakespeare structures mind-body relations in this scene would look familiar to phenomenologists. As Husserl, Alfred Schutz, and others have posited, all acts must be thought of as already completed in order for them to be begun, with the result that ostensibly *prospective* action is always, on some level, experienced as *retrospective*.[58] This model of temporal experience, what Husserl calls "internal time-consciousness," is a salient feature of the murder of Duncan and it's also part of the larger thematic fabric of the play. The idea is signaled early on in Lady Macbeth's apt phrase, "The future in the instant" (1.5.58).[59] The world of *Macbeth* is one in which the force of what-is-to-come overwhelms what-is-at-hand, establishing its moral and political horizons and placing sharp strictures on what is possible in the realm of human action. It's a world in which the present is haunted by the future, not the past. The "gouts of blood" on the dagger serve this larger theme of untimeliness and model an intentional form of consciousness where one thinks with things and makes plans for the past.

   Shakespeare's phenomenology of treason concedes that the crime involves knowledge, but it insists that knowledge is always *situated* in a lived environment. It concedes that the crime involves thinking, but it insists that one thinks with the body. This model of criminality occurs

elsewhere in the play, too, as when Macbeth decides to ambush Macduff's castle and murder his wife and children. He resolves that,

> From this moment
> The very firstlings of my heart shall be
> The firstlings of my hand. And even now,
> To crown thoughts with acts, be it thought and done: (4.1.146–49)

What is arresting about this passage is the self-consciousness with which Macbeth adopts a phenomenological disposition and the pointedness with which his resolution denies thought-act chronology. This, Macbeth's third murderous undertaking (after Duncan and Banquo), is not thought *then* done; it's "thought *and* done." Thinking and doing are both, simultaneously, "firstlings"; one is of the heart, one is of the hand, but both are folded together into a single criminal event.

For Lady Macbeth, too, heart and hand, mind and body, converge to form the phenomenological cusp along which criminality structures itself. For her, the treasonous imagination, or "mortal thoughts" (1.5.41), can only be conceived of in embodied terms:

> Come, you spirits
> That tend on mortal thoughts, unsex me here,
> And fill me from the crown to the toe topful
> Of direst cruelty! Make thick my blood,
> Stop up th' access and passage to remorse,
> That no compunctious visitings of nature
> Shake my fell purpose, nor keep peace between
> Th' effect and it! (1.5.40–47)

As Lady Macbeth directs herself with increasing determination toward the murder of Duncan, we do not witness criminal intent evolving in any conventional sense from her mind. Lady Macbeth's "mortal thoughts" are thoughts indeed, but far from being incorporeal abstractions, they are presented as concrete things that "fill" the body, "from the crown to the toe topful." Moreover, the movement from "mortal thoughts" to mortal act is not expressed in dualistic or even sequential terms, with ideas passing across a threshold into the territory of bodily action. Instead, this movement between "fell purpose" and "Th' effect" is described as an integrated physiological episode involving the thickening of the blood and the closure of various bodily valves and passageways.[60] Thinking

remains an essential component of criminality in this passage, but it's imagined specifically as something that takes place in and through the body. In this respect, Lady Macbeth's dark ruminations lay the conceptual groundwork for the legal phenomenology that receives its fullest, and most sensational, treatment in the soliloquy of act 2.1.

Theater, Theory, and the Legal Imagination

We have seen that Shakespeare responds to questions about treason made available to him through the legal culture of his time, including key trials and legislation as well as major criminal events like the Essex rebellion and the Gunpowder Plot. We have also seen that Shakespeare approaches these questions from what would now be described as a phenomenological perspective, especially in the dagger scene. The sequential process of thinking and doing, of *mens rea* and *actus reus*, is performed during this episode as a scene of seeing and feeling, one which, accordingly, advances an embedded model of selfhood at the same time as it speculates about the nature of the treasonous imagination. Keeping these observations in view, what I propose in this section is that the dagger soliloquy should be thought of as both an act of theater and an act of theory. Attending to the way these two practices overlap can deepen our understanding of how Shakespeare uses the formal and material resources of performance to move from matters of law to matters of selfhood.

Let me return one more time to that foundational question: "Is this a dagger which I see before me?" On one hand, this is a quintessentially theatrical question. At once an object and a vector, the dagger describes the possibility of knowledge ("Is this a dagger") in specifically visual and spatial terms ("which I see before me"). At the same time, Macbeth is posing a quintessentially theoretical question, one that assumes knowledge to be both conditional and experiential, and which, as I noted at the beginning of the chapter, probes the relationship between certainty and perception as well as intention and action. It's the act of seeing, signaled by the word "see" in the opening line, that binds theater and theory together conceptually. The link is preserved etymologically in the two words' common source, the Greek verb *theaomai* (to look).[61] The Greek word for theater, *theatron*, means literally, a place for viewing, and the first occurrence of the word "theatre" in English, in a Wycliffite Bible manuscript of 1382, carries the gloss, a "commune biholdying place."[62] Similarly, theory, from the Greek word *theorein* (a looking at, viewing, contemplation) originally meant "a sight," or "a spectacle."[63] To theorize was to observe intensely

the outward appearance of something. In the dagger soliloquy, Shake-speare opens this space of overlap between theater and theory, where knowledge is assumed to be a product of seeing and where understanding accrues from sensual, visual contact with the outward world of appearances, not from some ideal realm of forms beyond it. The moment of collective seeing—Macbeth's and the audience's—invoked when Macbeth asks, "Is this a dagger which I see before me," is also the point at which the play thinks most rigorously about the nature of criminality. Theater and theory, spectacle and speculation, vision and knowledge, for a moment become a single entity.

The idea of an equivalence between theater and theory—even the idea that serious thinking could take collective and spectacular forms—will sound oxymoronic to some. It is, after all, antithetical to some of the most deeply entrenched assumptions of Western philosophy: that we should be suspicious of appearances, seek true knowledge behind the deceptive veneer of surfaces, and cultivate wisdom and new ideas in isolation and through introspection. When the philosopher of science Michel Serres writes, "in an *oral culture*, drama is the vehicular form of knowledge," the implication is that this knowledge, theatrical knowledge, is somehow rudimentary, unevolved, or pre-philosophical.[64] William West explains that "the culture in which knowledge and spectacle are equal is always represented as one that is alien to the definer: oral instead of literate, 'primitive' or decadent rather than modern."[65] The divorce between theater and theory has been traced back to Plato by Jacques Taminiaux and Paul Kottman.[66] Taminiaux describes the shift in terms of the displacement of *phronesis*, a practical form of wisdom that assumes action to play an essential role in the acquisition of knowledge, by *sophia*, an abstracted and ideal form of wisdom set in opposition to *praxis* and the operations of the body.[67] While *phronesis* is easily accommodated by the practice and experience of theater, *sophia* obviously is not. Taminiaux sees the replacement of *phronesis* by *sophia* as a defining characteristic of Plato's writings, arguing that "it is against the former theater—the theater of Aeschylus and Sophocles in which the average person was judge—that Plato . . . [expels] the uncertain light and ambiguity of theatrical plots in order to gain access to another stage, no longer *praxis* but instead the onto-theological order of Ideas."[68] After Plato, "theory" begins to signify a new kind of seeing, one that takes place through the eyes of the soul rather than the eyes of the body and which, therefore, carried a sense which would eventually be entrusted to Latin terms like *contemplatio*.[69] Accordingly, *Macbeth* may be understood as being theoretical in a specifically pre-Platonic sense, or in the manner invoked by Alain Badiou when

he argues that "theater thinks."[70] *Macbeth* is a play that engages in the work of knowledge, the labor of thinking, as theatrical *phronesis* rather than as *sophia*.

Plato is not the only one to blame for the conceptual rupture between theater and theory. Plotinus, for instance, viewed all forms of activity, theater included, as merely debased forms of contemplation.[71] Aristotle, too, in both the *Nicomachean Ethics* and the *Politics*, differentiates between the contemplative *bios theoretikos* and the active, practical *bios politikos* in such a way so as to make them wholly distinct forms of life.[72] Cicero and Seneca would reinforce this distinction later in their own writings.[73] As we move out of Greek philosophy into Roman thought and beyond, the physical seeing and material spectacle of theater drifts ever farther from the increasingly abstracted, privileged, and specialized seeing of theory. The story of this divergence reaches its apex with Descartes. His famous commentary on gazing down from a window onto a busy street in *Meditations on First Philosophy* carefully undermines the idea of physical seeing as a form of knowing and rejects by implication the theater as a site of knowledge-making. Descartes explains, "when looking from a window and saying I see men who pass on the street, I really do not see them, but infer that what I see is men." "What," he asks, "do I see from the window but hats and coats which may cover automatic machines?"[74] This kind of skepticism would propel Europe into the age of modern science, where the gaze of Man is always insufficient and physical seeing never provides a reliable path to knowledge.[75] Truth unfolds instead through a new kind of vision, once the onto-theological vision of philosophy, now the theoretical-instrumental gaze of modern science. Both leave sensual vision, spectacle, and above all, therefore, theater on the far side of a wide rift that separates it from the sophianic knowing of theory.

Shakespeare belongs to a different intellectual genealogy. The process of criminal becoming performed in act 2.1 advances an interactive and nonhierarchical model of mind-body relations. The scene makes the space of action and collective seeing coextensive with the kind of probative thinking and conjecture that we now call theory. The paradox of the convention of soliloquy, a paradox that Shakespeare embraces in act 2.1, is that while it allows the audience to indulge in a fantasy of unmediated access to the workings of the mind, it is in the end always precisely the opposite: language, gesture, exteriority.[76] In the theater, thought is a material artifact and to "compass and imagine the death of . . . the king" on stage is to activate a collective sensory event, one organized around the transactional rhythms of appearance and recognition. Such transactions are among the theater's most basic mechanisms for meaning-making:

plays place *things* in the audience's field of vision and meaning is generated through their ability to identify and contextualize them. Andrew James Hartley describes this dynamic as "a continuum of recognition . . . crucially grounded in physical presence."[77] In its commitment to exteriority, Shakespeare's theatrical practice in act 2.1 anticipates philosophers like Husserl, Heidegger, Merleau-Ponty, and Arendt, each of whom in their own way seeks to bring action, vision, sensation, and collective physical experience back into the domain of the intellectual. Shakespeare also looks *back* to Pythagoras who offers something of an originary scene of theater-as-theory when he compares the life of a philosopher to someone who goes to festivals not to compete for prizes or to sell wares, but simply to watch.[78]

Pythagoras's philosopher, as Arendt notes, is part of a collective of spectatorship and is "therefore quite unlike the philosopher who begins his *bios theoretikos* by leaving the company of his fellow men."[79] The Pythagorean parable makes looking essential to thinking, binding together the theoretical life and the theatrical life into a single activity. This conceptual proximity, preserved in ancient Greek words like *theatron* and *theorein*, persists in Renaissance humanist conceptions of knowledge-making and knowledge-management. In the sixteenth century, the Latin word *theatrum* could refer either to a place for viewing spectacles or to a wide-ranging, encyclopedic book, so that by the time the Theatre was built in London in 1576, its name evoked works of scholarship like Pierre Boaistuau's *Theatrum mundi* (1561), Theodor Zwinger's *Theatrum vitae humanae* (1566), and Abraham Ortelius's *Theatrum orbis terrarum* (1570).[80] The Theater, like other London playhouses established after it, was not only a place of entertainment, it was also a learning environment where one could watch ideas and see thinking in action. Thomas Elyot draws on this conception of theater when in *The Image of Governance* (1541) he has his ideal educational facilities include not only a library shaped like a theater, but also an actual theater where people could "dispute openly . . . some matter of philosophy."[81] West explains, "For Elyot, the areas of the theater and the library are contiguous and complimentary. . . . In fact, the circularity of the library and the vivid statues and images with which it is decorated mark it as a kind of asymptomatic ideal for the theater as a perfectly legible *spectacle of knowledge*."[82]

This is the tradition in which Shakespeare works—that of spectacular knowledge, or theoretical theater—when in *Macbeth* he uses the stage to articulate a phenomenology of treason. To recognize this is not to turn Shakespeare into a theorist or a philosopher per se. It's to see him for what he was, a man of the theater, but to gain a heightened sense of

what that means by insisting that theater itself, and perhaps especially Shakespeare's theater, is and always has been theoretical. Accordingly, the dagger scene in *Macbeth* is best understood as the product of a carefully managed encounter between a culturally specific set of questions about a particular kind of crime and the uniquely collective and embodied form of thought that theater makes possible. The effect in the world of the play is a kind of conceptual dilation whereby treason comes to encompass a much broader set of ideas about the relationship between thinking and doing and the shared, material grounds of knowledge and action. We'll continue to think about these ideas—embodiment, collectivity, theater—in the next chapter as we move from one side of the legal equation to the other—from criminality to judgment. In this new context, we'll discover that thinking in and through the outer world of people and things has implications beyond the realm of phenomenal experience; it also constitutes a distinct ethical orientation, one that locates the good in the social and psychic commons of collaborative discernment.

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Judgment: The Sociality of Law in *Hamlet* and *The Winter's Tale*

In *The Arte of Logicke*, an English rhetorical manual from 1599, Thomas Blundeville makes a distinction between "invention" and "judgment." While "invention finds matter," Blundeville explains, judgment "frameth, disposeth, and reduceth the same into due forme of argument."[1] This formulation derives from Roman rhetorical theory, which has deeper roots in Aristotle. Texts like Cicero's *De inventione*, the anonymous *Rhetorica ad Herennium*, and Quintilian's *Institutio oratoria* describe invention (*inventio*) as the skill of deciding which line of reasoning is most likely to strike a particular audience as especially compelling. Judgment's role is to break that line of reasoning down into component parts and then arrange them in a sequence calculated to achieve maximum persuasiveness.[2] Judgment, in other words, turns ideas into arguments by lending them organizational form. Along with invention, it was an essential component of what Aristotle termed the *genus iudiciale*, the kind of speech typically found in the law courts.[3] In Shakespeare's time, anyone with a grammar school education was likely to have encountered rhetorical handbooks like *De inventione*, *Rhetorica ad Herennium*, and *Institutio oratoria*, or vernacular manuals like Thomas Wilson's *Art of Rhetorique* (1553), which drew on the Roman handbooks.[4] Accordingly, Blundeville's simple description of judgment would have sounded familiar to many early moderns. This includes Shakespeare, who would have been exposed to rhetorical texts as a student at the King's New School at Stratford-upon-Avon.[5] As Kathy Eden, Henry Turner, Lorna Hutson, Joel Altman, Quentin Skinner, and others have shown, playwrights regularly made use of their training in rhetoric and dialectic when crafting speeches and plots having to do with evidence, proof, or doubt.[6]

Shakespeare's understanding of judgment may also have been shaped in a more general way by changes in the culture and practice of law during

the sixteenth century. This period saw a gradual shift in emphasis from legal doctrine to judge-made law, or *jurisprudence*, which meant that the role of judgment—of judicial decision-making—in creating the law expanded significantly.[7] Whereas in the fifteenth century, Thomas Little-ton's landmark *Tenures* (1481) relied almost exclusively on doctrine, or common learning, Sir William Staunford, holding the same judicial office as Littleton less than a century later, wrote, in J. H. Baker's words, "books so crammed with references and quotation that he seemed incapable of venturing an opinion unless it could be derived from someone else."[8] Staunford, in other words, in books like *Les plees del coron* (1557) and *An Exposicion of the Kinges Prerogative* (1561), drew heavily on past judicial decisions to lend his own claims authority. Edmund Plowden's later sixteenth-century law reports exhibit the same tendency, but with more methodological rigor and decisiveness. Plowden was very selective when it came to choosing which cases to report. Unlike more typical year-books of the period, he would leave out any courtroom debate that was inconclusive, publishing only those cases in which a specific point of law had been settled by a final judgment of record.[9] These shifts are indica-tive of a mounting desire among legal professionals and their clientele for law to rest upon clearly recorded facts. It resulted, gradually, in a more authoritative judiciary, and judgment came to loom larger in the concep-tual landscape of English common law.[10]

   In the discussions that follow, I will return at a number of points to these rhetorical and legal-historical contexts. My ultimate aim, though, will not be to determine where Shakespeare's ideas about judgment came from, but rather to understand how those ideas were put to use in the plays' broader explorations of human association and interdependence. Focusing on *Hamlet* and *The Winter's Tale*, I will show that Shakespeare's scenes of judgment are always grounded in a basic interest in the rela-tionship between the individual and the collective and always attuned to the moral stakes of that relationship. These scenes are informed by particular aspects of early modern legal culture and ideas about discern-ment and decorum developed in rhetorical and literary critical texts of the period. In using these particular cultural referents to pose larger questions about selfhood and ethics, Shakespeare undertakes a project similar to that pursued by Immanuel Kant in the eighteenth century and Hannah Arendt in the twentieth, both of whom sought to understand judgment in terms of sociality.[11] Kant argued, famously, that judging requires an "enlarged mentality," a form of decision-making that is based on a com-bination of one's own intuitions and the range of other possible intuitions held by those with whom you share a particular space or community. He

describes it as "a power to judge that . . . takes account (a priori), in our thought, of everyone else's way of presenting [something], in order as it were to compare our own judgment with human reason in general."[12] Arendt, Kant's most astute modern interpreter, makes a similar argument: "As logic, to be sound, depends on the presence of the self, so judgment, to be valid, depends on the presence of others"; "Judging," she continues, "is one, if not the most, important activity in which this sharing-the-world-with-others comes to pass."[13]

The important thing to remember about judgment, then, is that it always constitutes a form of participation in the world of people and things, a way of using and orienting the mind within some sort of inter-active environment. This, I will show, is one of the principal ideas that Shakespeare explores in *Hamlet* and *The Winter's Tale*, and it results in a distinctly social and intersubjective vision of moral agency.

Hamlet and the Scene of Judgment

Hamlet is a play of judgments. Its action is littered with scenes of judicial observation, careful discernment, and methodical decision-making. When these events occur they are almost always collaborative in form, taking place in social and theatrical spaces and developing out of conversation, contest, and transactional thinking. As this suggests, Shakespeare is not simply interested in judgment in *Hamlet*, but more precisely in something we might call the "scene of judgment"—the interactive environment in which adjudication takes place and the role that performance, interpre-tive spectatorship, and aesthetic perspicacity play therein.

When we read *Hamlet* from this perspective, it becomes difficult to recognize the post-Romantic account of the play as a study in interiority, individuality, and bounded subjectivity, a reading most readily associated with Hegel and A. C. Bradley, but which persists in various forms in more recent criticism, too.[14] John Lee, for instance, contends that Hamlet pos-sesses a "self-constituting sense of self, and this sense of self is central to his tragedy."[15] Peter Holbrook, similarly, develops an interpretation of *Hamlet* that builds on the work of Kierkegaard and Heidegger, both of whom viewed Hamlet as a figure of alienation and radical autonomy.[16] Accordingly, he argues that Hamlet "holds himself back from the world," and further, that the character's appeal lies precisely in this "aggressive singularity." Hamlet, Holbrook continues, "insists on his difference from 'the others.' His conduct is eccentric and anti-social but also deeply attrac-tive because human and free."[17] Judgment, however, requires engagement

with the world; holding back is not an option. To judge is to participate, which means finding a middle ground between autonomy and dependency, speaking and listening. By staging scenes of judgment in *Hamlet*, Shakespeare offers a series of case studies in the sociality of thinking and the intersubjective grounds of moral agency.

To begin, let me focus on a short passage of the play that I think offers a particularly useful model of how Shakespeare puts judgment to work in *Hamlet*. The scene is act 2.2, the moment when Polonius comes to Claudius and Gertrude with a letter Ophelia received from Hamlet:

> POL. . . . I have a daughter—have while she is mine—
> Who in her duty and obedience, mark,
> Hath given me this. Now gather, and surmise.
>   [*Reads the salutation of the letter*.]
> "To the celestial and my soul's idol, the most beautified Ophelia"—
> That's an ill phrase, a vile phrase, "beautified" is a vile phrase. But
>   you shall hear. Thus:
> "In her excellent white bosom, these, etc."
> QUEEN. Came this from Hamlet to her?
> POL. Good madam, stay awhile. I will be faithful.
>   [*Reads the*] *letter*.

"Doubt thou the stars are fire,
Doubt that the sun doth move,
Doubt truth to be a liar,
But never doubt I love.

> O dear Ophelia, I am ill at these numbers. I have not art to reckon
>   my groans, but that I love thee best, O most best, believe
>   it. Adieu.

Thine evermore, most dear lady,
whilst this machine is to him, Hamlet."

> This in obedience hath my daughter shown me,
> And more above, hath his solicitings,
> As they fell out by time, by means, and place,
> All given to mine ear. (2.2.106–28)[18]

We are not in a courtroom here, nor is the topic of conversation a crime in a conventional legal sense. But this is a scene of judgment, nonetheless.

The "case" under consideration—though it's not referred to directly in these particular lines—is the source of Hamlet's apparent madness. The decision that is gradually being reached, based on the evidence of the letter, is that it's his infatuation with Ophelia—though Claudius also says he wants to "try it further" (2.2.159), which is to say extend the process of adjudication to consider more evidence. This is a *scene* of judgment because the considered opinions that are handed down are not delivered under conditions of solitary reflection; conclusions are arrived at collectively. Polonius plays, in turn, both lawyer and judge, and Claudius and Gertrude seem to occupy positions somewhere between judge and jury. In any case, judging is a group activity. Also noteworthy about this scene is the fact that Shakespeare makes legal and literary forms of judgment part of the same conversation, a conjunction typical of the Aristotelian rhetorical tradition, especially in the English Renaissance.[19] The letter not only functions as forensic evidence, it also bears a poem which is assessed in terms of decorum and style: "That's an ill phrase, a vile phrase, 'beautified' is a vile phrase," Polonius says derisively.

I will return to the literary critical context of this scene in a moment, but first I want to consider in more detail the idea and practice of collaborative judgment in a legal context. Shakespeare's England would have offered models of such collaboration. In sixteenth- and seventeenth-century courtrooms, judgment was, with few exceptions, a *process* involving multiple parties. We get a sense of how this worked in the manuals produced for justices of the peace in the period. Essentially printed how-to guides, these manuals were aimed at the gentlemen charged with presiding over the Quarter Sessions—county courts that met four times per year (Epiphany, Easter, Trinity, and Michaelmas)—though they were no doubt consulted by other legal amateurs, too. Justices of the peace were appointed annually and the primary qualification for the job was local standing, not legal expertise. They would hear cases having to do with comparatively minor offenses, such as trespass, assault, licenses for alehouses, and theft.[20] Cases involving the most dangerous felonies, such as murder, were typically heard at the Assizes, which met twice per year and were presided over by professional barristers from the central courts. Responding to a clear need among England's many legal amateurs for procedural guidance, justice of the peace manuals began being printed in the late sixteenth century and increased steadily in popularity over the course of the seventeenth century. Almost all justice of the peace manuals went through multiple print runs and successive editions, so we can assume that they were in demand. Small books ranging in size from sixteenmo to octavo, they were meant to be carried around and referred to

while on the job or shortly beforehand. Accordingly, the tone and style of the justice of the peace manuals tend to be practical and concise. From the mid-seventeenth century onward, in particular, a premium seems to have been placed on usability. The anonymously authored *The Complete Justice* (1637), for example, simply lists alphabetically a series of key technical terms and procedures followed by brief descriptions. This is a manual designed for quick and easy reference. The same format is adopted in *The Justice of Peace, His Clarks Cabinet* (1654), written by the prolific William Shepherd, who also produced law lexicons and manuals for parsons, constables, and other minor legal professionals.

All of these texts show legal judgment to be a process involving various individuals working in close partnership. Take William Lombarde's *Eirenarcha: or The Office of the Justices of the Peace* (1581). As an early example of the genre, *Eirenarcha* is more discursive and descriptive than its later-seventeenth-century counterparts. Lombard overviews the duties of justices to their community, the central courts, the king, and God, and tries to differentiate between those situations in which strict conformity to certain recorded statutes is appropriate and when more discretionary judgment is called for.[21] Significantly, during the lengthy discussion of the protocols of trial and sentencing, Lombarde describes this "Session of the Peace" as "an assemblie," and he stresses the fact that not one, but "two (or moe) Justices" must be present "to heare and determine" a case.[22] This plurality of adjudicators is essential, and "if any of them be absent," Lombarde explains, "their fellow justices cannot amerce them . . . for . . . the auctoritie of all the Justices of the Peace at the Sessions is equall."[23] Lombarde goes on to describe in some detail each of the other figures who must be present for a trial to go forward and judgment to be passed: the "Shirife," the "Baylifes," and the "Juries," which "ought to containe 12. in number at the leaste."[24] *Eirenarcha* presents judgment as a participatory "assemblie," one in which complex bureaucratic procedures knit together a diverse network of both amateur and professional legal agents. Michael Dalton, a member of Lincoln's Inn, stresses this point, too, opening his manual, *The Countrey Justice* (1618), with a narrative sketch of where the justice of the peace stands within the larger legal hierarchy and what that position affords in terms of specific duties, obligations, and dependencies.[25]

At the heart of these justice of the peace manuals is a fascination with breaking the legal process, especially adjudication, down into its most essential components. This concern with itemization and procedural detail can be found in other kinds of writing, too. Richard Bernard's stunningly dense allegory, *The Isle of Man, or, The Legall Proceedings in*

Man-shire against Sinne (1627) is a good example. In this narrative, self-examination, self-management, and self-regulation are figured through the collaborative procedures of common law. Conscience is represented by the judge, but this judge operates within a diverse cluster of justices and other officials:

> The Justices of Peace in the Countrie are there, and doe sit with the Judge and are in Commission with him. Of these some are of the Quorum, and of the better ranke, some are meaner Justices and take their place lower.
>
> The Justices of Peace in the Soule of better ranke are Science, Prudence, Providence, Sapience: the inferiors are Weake Wit, common Aprehension, and some such like.
>
> These Justices have their Clerkes, there ready with their examinations and recognizances. Justice Science, his Clerke is Discourse: Justice Prudence, his Clerke is Circumspection, Justice Providence, his Clerke is Diligence; Justice Sapience, his Clerke is Experience: Justice Weake-wit, his Clerke is Conceit: and Justice Common-Apprehension, his Clerke is onely Sense.[26]

Bernard turns common law into a precise language of cognitive process and spiritual struggle, signaling what Lorna Hutson describes as "a new moral confidence . . . in the procedural detail of the Common Law."[27] The allegory demonstrates the power of common law adjudication as an emblem of collaborative decision-making and as a figure for the concatenation of forces involved in moral choice.

This material helps us frame in historical terms the transactional nature of the deliberations about Hamlet's letter. But there is also the more particular matter of Polonius's condemnation of Hamlet's poem: "That's an ill phrase, a vile phrase, 'beautified' is a vile phrase." Polonius's censure is first and foremost an act of literary criticism, yet for Shakespeare and his audience it would not have been out of place in a scene concerned with adjudication more broadly. In the sixteenth and seventeenth centuries, a period which saw the rise of vernacular literary criticism in England, programmatic descriptions of good writing and right reading are almost always concerned with judgment, both as the faculty responsible for proper discernment and the human capacity that stands to benefit from superior writing and oratory. Judgment lies at the conceptual core of criticism, something captured etymologically in the Greek root of "critic," *kritikos*, which means "the man who is capable of judgment." For this reason, authors of literary critical works—including

Philip Sidney, George Puttenham, Samuel Daniel, and Henry Peacham—participate in the early modern culture of judgment no less than William Lombarde, Michael Dalton, and Richard Bernard.

Central to literary critical judgment was the notion of *decorum*. With its roots in Aristotelian rhetorical and literary theory, *decorum* involved following carefully proscribed rules about how, for example, certain types of characters require the use of certain kinds of language, or how certain styles of argument require particular metaphors, or how a given genre necessitates a specific type of plot.[28] These precepts reached early modern readers through either direct or mediated exposure to the ideas in Aristotle's *Rhetoric* and Horace's *Ars Poetica*, as well as through grammatical and rhetorical commentaries attached to the comedies of Plautus and Terence, which were among the mainstays of elementary and intermediate education in Latin.[29] For early modern critics and theorists writing in this vein, the aesthetic quality and even the moral viability of imaginative writing depended on how well the rules of *decorum* were followed. Thomas Wilson in his pioneering manual, *The Arte of Rhetorique* (1553), uses the word "aptness" for *decorum* and stresses that writers must choose "words most apt for their purpose. In weighty causes grave words are thought most needful, that the greatness of the matter may the rather appear in the vehemency of their talk."[30] Robert Ascham, in *The Schoolmaster* (1570), prefers the word "propriety," and tells his readers that it applies at all levels of a composition, "in choice of words, in framing sentences, in handling of argument, and use of right form, figure and number."[31] George Puttenham goes on to lay out these precepts in impressive detail in *The Art of English Poesy* (1589). Consequently, for many readers in the sixteenth and seventeenth centuries, the process of appraising the aesthetic worth and moral purchase of imaginative writing was guided by simple questions that linked reading to judging: Were laws broken or adhered to? What are the implications? Within this general interpretive framework, someone like Sir John Harrington can defend Ariosto against charges of obscenity by pointing out that "there is so meet a decorum in the persons that speak lasciviously, as any of judgment must needs allow."[32]

Philip Sidney's *The Defense of Poesy* (c. 1580; printed 1595) is the first attempt at sustained literary criticism in English. In it, Sidney expands on the idea that judgment forms the basis of sound reading to argue, in addition, that our ability to judge well can be sharpened by good poetry. All the wisdom that philosophy has to offer, Sidney says, "lie[s] dark before the imaginative and judging power if they be not illuminated or figured forth by the speaking picture of poesy."[33] Sidney goes on to describe how

religious scripture "inhabit[s] . . . the judgment" precisely because it func-
tions like poetry, which is neither wholly conceptual (as philosophy is)
nor wholly particular (as history is), but something in between, which
illustrates universal precepts with specific instances and images:

> Even our Saviour Christ could as well have given the moral com-
> monplaces of uncharitableness and humbleness as the divine
> narration of Dives and Lazarus, or of disobedience and mercy as
> that heavenly discourse of the lost child and the gracious father,
> but that his through-searching wisdom knew the estate of Dives
> burning in hell and of Lazarus in Abraham's bosom *would more
> constantly, as it were, inhabit both the memory and judgment* (truly,
> for myself, me seems I se before my eyes the lost child's disdainful
> prodigality turned to envy a swine's dinner), which by the learned
> divines are thought not historical acts but instructing parables.[34]

The charge of English poetry, then, is to help build a community of ratio-
nal, moral, right-thinking people. Samuel Daniel, for instance, tasks poetry
with "setting up the music of our times to a higher note of judgment and
discretion" in *A Defense of Rhyme* (1603).[35] It is also true, though, that
bad poetry can weaken judgment. The Scottish poet, courtier, and states-
man William Alexander has a method for avoiding such problems:

> When I censure any poet, I first dissolve the general contexture of
> his work in several pieces, to what sinews it hath, and to mark what
> will remain behind when that external gorgeousness, consisting in
> the choice or placing of words, as if it would bribe the ear to cor-
> rupt the judgment, is at first removed, or at least marshaled in its
> own degree.[36]

Good poetry builds and fortifies judgment; bad poetry erodes it. And
since, as Wilson, Ascham, and Puttenham show us, judgment is the cor-
nerstone of responsible reading—of being able to discern what is good
and what is bad—the whole process is circular. The more good poetry
people read, the better equipped they will be to identify other examples
of good poetry, and the better disposed they will be to produce good
(moral, decorous) poetry themselves. This last point is important. For it
is sound judgment, Henry Peacham tells us in *The Garden of Eloquence*
(1577), that transforms wisdom, through the application of rules of deco-
rum, into the kinds of eloquent and persuasive verbal packages that affect
people:

> Many, not perceiving the nigh and necessary conjunction of these
> two precious jewels [wisdom and eloquence], do either affect fine-
> ness of speech and neglect the knowledge of things, or, contrariwise,
> covet understanding and contemn the art of eloquence. And there-
> fore it cometh to pass that such take great pains and reap small
> profits; they ever seek and never find the thing they would fain-
> est have—the one sort of these speak much to small purpose, and
> the other (though they be wise) are not able aptly to express their
> meaning. From which calamity they are free, that do use a right
> judgment in applying their studies so that their knowledge may be
> joined with apt utterance: that is to say, that their eloquence may be
> wise, and their wisdom eloquent.[37]

Each of the writers mentioned above has a slightly different way of invoking judgment, a slightly different way of positioning it in relation to the ethical affordances of English poetry and rhetoric. What is clear, though, is that judgment is a practice suspended within a larger web of ideas about literary evaluation and invention: it's part of the reading process since all art is, or should be, rule-bound; it's a faculty that stands to be strengthened or weakened depending on what one chooses to read; and it's a mediating force between pure ideas and the embodiment of those ideas in a structured expressive form. What is also clear, given the core assumptions of early modern literary criticism, is that when Polonius censures Hamlet for his poor grasp of matters of decorum, this is meant to reflect a corresponding sense that Hamlet suffers from poor judgment more generally, that he is of questionable moral fiber, and that the lack of wisdom and right-thinking indicated by his subpar poetry, in Polonius's view, places him well outside the pale of normative behavior. By the same token, in demonstrating to Claudius and Gertrude his ability to evaluate poetry, Polonius asserts a broader moral and intellectual claim to judge in general.

Yet Hamlet *is* a skilled aesthetic judge. Kathy Eden has even described him as "a literary theorist of some sophistication."[38] Hamlet begins to demonstrate these attributes shortly after the conversation between Claudius, Gertrude, and Polonius concludes. When told by Rosencrantz that "the tragedians of the city" (2.2.328) are on their way to Elsinore, Hamlet immediately launches into a discussion of the quality of the company and the relative esteem in which their plays are held,[39] and when the troupe finally arrives, Hamlet strikes up a conversation with the First Player in which he weighs in on matters of taste and craft:

I heard thee speak me a speech once, but it was never acted, or if it was, not above once; for the play, I remember, pleas'd not the million, 'twas caviary to the general, but it was—as I receiv'd it, and others, whose judgments in such matters cried in the top of mine—an excellent play, well digested in the scenes, set down with as much modesty as cunning. (2.2.434–40)

At the end of this passage, Hamlet establishes a link between "cunning" and "modesty," or what we might call *skill* and *restraint*. The link allows Hamlet to package together a moral judgment (modesty/restraint) and an aesthetic judgment (cunning/skill) in a way that will be familiar from the literary criticism discussed above. These two related lines of inquiry— what is beautiful and what is ugly? What is right and what is wrong?—get even more tangled in act 3 when Hamlet confronts his mother about marrying his uncle in the wake of his father's death. The primary point of reference is two pictures, one of his father and one of Claudius, which Hamlet holds before his mother as he castigates her:

Look here upon this picture, and on this,
The counterfeit presentment of two brothers.
See what a grace was seated on this brow:
Hyperion's curls, the front of Jove himself,
An eye like Mars, to threaten and command,
A station like the herald Mercury
New lighted on a heaven-kissing hill,
A combination and a form indeed,
Where every god did seem to set his seal
To give the world assurance of a man.
This was your husband. Look you now on what follows:
Here is your husband, like a mildewed ear,
Blasting his wholesome brother. Have you eyes?
Could you on this fair mountain leave to feed,
And batten on this moor? ha, have you eyes?
You cannot call it love, for at your age
The heyday in the blood is tame, it's humble,
And waits upon the judgment, and what judgment
Would step from this to this? Sense sure you have,
Else could you not have motion, but sure that sense
Is apoplex'd, for madness would not err,
Nor sense to ecstasy was ne'er so thrall'd

But it reserv'd some quantity of choice
To serve in such a difference. What devil was't
That thus hath cozen'd you at hoodman-blind?
Eyes without feeling, feeling without sight,
Ears without hands or eyes, smelling sans all,
Or but a sickly part of one true sense
Could not so mope. O shame, where is thy blush?
Rebellious hell,
If thou canst mutine in a matron's bones,
To flaming youth let virtue be as wax
And melt in her own fire. Proclaim no shame
When the compulsive ardure gives the charge,
Since frost itself as actively doth burn,
And reason panders will. (3.4.53–88)

In performance, Hamlet frequently presents Gertrude with portrait min-
iatures of the two kings, stage business which Arthur Colby Sprague and
J. C. Trewin describe as customary at least since the eighteenth century,
and perhaps stretching back even further.[40] But whether it's portrait
miniatures being used or paintings hanging on the wall, the grounding
of Hamlet's chastisement of Gertrude in art objects anchors the larger
question of right and wrong that the queen is made to confront to a
more local question of taste. Hamlet, that is, interrogates Gertrudes's
moral judgment through her aesthetic judgment. The very first words of
Hamlet's withering rebuke is a command to "Look on this picture," and
the question, "Have you eyes?," posed twice in three lines, probes not
only the Queen's ability to recognize beauty, but also her ability to dis-
cern between good and bad, innocence and guilt. Hamlet's act of moral
interrogation is also an act of criticism that hinges on the collaborative
close-reading of a visual text.

    Both Polonius's presentation of the letter in act 2.2 and Hamlet's
censure of Gertrude in act 3.4 involve an interplay between legal and aes-
thetic versions of judgment. In addition, each of these passages represents
judgment as a socially situated process based on dialogue and exchange.
These two features of judgment—a fundamental sociality and a conflation
of legal and aesthetic methods—are particularly pronounced during those
episodes in the play when judgment operates as, and through, theater.
These include the engineering and observation of the encounter between
Hamlet and Ophelia by Polonius and Claudius and Hamlet's presentation
of "The Mouse-trap" (3.2.237) at court. At such moments, the theatrical
event is not simply an object of judgment (like the poem in the letter or

the portrait miniatures in Hamlet's hand), but rather the conditions under which judgment occurs.

Let's return for a moment to the discussion of Hamlet's letter in act 2.2 and see how it develops into a scene of judicial observation. We recall that there is a provisional judgment passed on Hamlet: he is mad because he loves Ophelia and she has rejected him. As Polonius puts it,

> . . . he repell'd, a short tale to make,
> Fell into a sadness, then into a fast,
> Thence to a watch, thence into a weakness,
> Thence to a lightness, and by this declension,
> Into the madness wherein now he raves,
> And all we mourn for. (2.2.146–51)

Claudius and Gertrude agree that this verdict is "very like," (i.e., very *likely*; 2.2.152), but Claudius wants to adjudicate, or "try" the theory, further. What Polonius proposes is a second round of arbitration. The plan is to stage a scene. "I'll loose my daughter to him," Polonius explains,

> Be you and I behind an arras then,
> Mark the encounter: if he love her not,
> And be not from his reason fall'n thereon,
> Let me be no assistant for a state,
> But keep a farm and carters. (2.2.163–67)

Positioned thus, as concealed spectators, Polonius and Claudius create a theater of judgment. The scene of observation takes place in act 3.1, with Polonius, like a true director, handing out props and blocking out the action beforehand ("Ophelia, walk you here . . . / Read on this book" [3.1.42–43]). He contrives a similar adjudicatory ploy later in the play when he hides behind an arras in order to "hear the process" (3.3.29) between Hamlet and Gertrude in Gertrude's bedchamber. The word "process" carries both a temporal sense of events unfolding in time as well as a more narrowly juridical sense of proceedings in a legal action.[41] Polonius's bedchamber gambit is disastrous: he is heard by Hamlet and killed. The scheme with Ophelia, however, runs smoothly. The scene set, Claudius and Polonius withdraw, occupying roles somewhere between theatrical spectators and courtroom judges; "lawful espials" is the term Claudius uses in the First Folio text (3.1.33).[42] "Seeing unseen," he explains to Gertrude, "we may of their encounter frankly judge" (3.1.32–33). It's theater—Polonius's scenography, Ophelia's performance, Claudius and

Polonius's spectatorship—that provides the collaborative framework within which this judging may be done. And indeed, what the King and his counselor witness leads Claudius to "quick determination" (3.1.168) about Hamlet's suspect behavior: not love, not madness, but "something in his soul / O'er which his melancholy sits on brood" (3.1.164–65).

Polonius is a theatrically minded adjudicator, well attuned to the way artifice and scene management can help shape behavior and streamline information to make judgment easier and more accurate. But Hamlet is the performer and the one who understands actual theater, so it's not surprising that he is the one who arranges the most complex theater of judgment in the play. The project begins with Hamlet asking the visiting acting troupe to perform the play *The Murder of Gonzago* at court for guests which will include Claudius and Gertrude. The First Player agrees to let Hamlet interpolate a scene, "some dozen or sixteen lines" (2.2.541–42), which presents a murder almost identical to the one the ghost accused Claudius of. Hamlet dubs this revised version of the play, "The Mouse-trap" (3.2.237).[43] Hamlet's idea is to turn theater into a legal instrument, a machine of judgment. He recalls,

> I have heard
> That guilty creatures sitting at a play
> Have by the very cunning of the scene
> Been struck so to the soul, that presently
> They have proclaim'd their malefactions: (2.2.588–92)

Shakespeare's inspiration for these lines could have been drawn from any number of stories about criminals confessing their crimes upon seeing similar misdeeds represented on stage. In *A Warning for Fair Women* (c. 1590), for example, a play which had been performed by the Lord Chamberlain's Men, we hear of a woman at a play compelled by "a good tragedian" and "the passion written by a feeling pen" to proclaim her guilt in the murder of her husband:

> A woman that had made away her husband,
> And sitting to behold a tragedy
> At Lynne, a town in Norfolk,
> Acted by players travelling that way,
> Wherein, a woman that had murdered hers,
> Was ever haunted with her husband's ghost;
> The passion written by a feeling pen,
> And acted by a good tragedian,

> She was so moved with the sight thereof,
> As she cried out the play was made by her,
> And openly confessed her husband's murder (2038–48)[44]

This anecdote resurfaces in Thomas Dekker's *An Apology for Actors* (1612) as part of a moral defense of the theater.[45] Considered from the perspective of judgment, what is most striking about these lines is the way legal adjudication gets lost in the layers of aesthetic experience. The way, that is, good poetry and good acting presuppose the need for evidence and testimony by almost mystically drawing out individuals' guilt or innocence. With "The Mouse-trap," *Hamlet* invests himself in the idea of a theater of judgment but trades the quasi-divine notion of art leading to truth for a more pragmatic, mechanistic understanding of theatrical experience as a legal apparatus. Hamlet explains a series of concrete steps—playing a certain scene on stage, observing Claudius's looks, probing and analyzing his reactions—and the juridical outcome toward which these steps are oriented:

> I'll have these players
> Play something like the murther of my father
> Before mine uncle. I'll observe his looks,
> I'll tent him to the quick. If 'a do blench,
> I know my course. The spirit that I have seen
> May be the dev'l, and the dev'l hath power
> T' assume a pleasing shape, yea, and perhaps
> Out of my weakness and my melancholy,
> As he is very potent with such spirits,
> Abuses me to damn me. I'll have grounds
> More relative than this—the play's the thing
> Wherein I'll catch the conscience of the King. (2.2.594–605)

Hamlet's project is motivated by a desire for "grounds / More relative than" the word of the ghost of his father. Whereas the judgment heard that night on the ramparts—"Murther most foul" (1.5.27)—is of uncertain origin, Hamlet sees in the relationships that constitute theater grounds for an objective and rational procedure for determining guilt: "the play's the thing / Wherein I'll catch the conscience of the King."

   One way to view Hamlet's "Mouse-trap" plan is as a reimagining of the broadly adjudicatory conditions under which professional drama always existed in Shakespeare's time. Plays were bound up with the larger culture of literary judgment that I discussed earlier, something referred

to frequently, either with deference or disdain, in both performance and printed playbooks. At the end of *A Midsummer Night's Dream*, for instance, Puck, in a move characteristic of theatrical epilogues, acknowledges the adjudicatory role of playgoers by asking for their "pardon" "if we shadows have offended" (5.1.430, 423).[46] Ben Jonson, on the other hand, famously scorned being held in thrall to the judgment of theater audiences and readers alike, the majority of whom he assumed to have unsophisticated tastes. In his epistle "To the Reader" in the 1612 quarto of *The Alchemist*, he opines,

> How out of purpose, and place, doe I name Art? When the Professors are growne so obstinate contemners of it, and presume on their owne Naturalls, as they are deriders of all diligence that way, and, by simple mocking at the termes, when they understand not the things, thinke to get of wittily with their Ignorance. Nay, they are esteem'd the more learned, and sufficient for this, by the Multitude, through their excellent vice of judgment. For they commend Writers, as they doe Fencers, or Wrastlers; who if they come in robustly, and put for it with a great deale of violence, are receiv'd for the braver fellowes.[47]

What we see in "The Mouse-trap" is Shakespeare taking the basic adjudicatory relationships of theater and artfully redistributing them, so that in addition to the play becoming an object of aesthetic judgment for members of the audience, it also serves as a catalyst for quasi-legal judgment *among* members of the audience. Hamlet prepares Horatio for the latter shortly before "The Mouse-trap" begins: "Observe my uncle," he says urgently, "And after we will both our judgments join / To censure of his seeming" (3.2.80, 86–87). Theater and judgment share the same raw materials in the "Mouse-trap" episode—the same physical setting, the same occasion, the same ensemble of people. They also share an essential sociality, a baseline requirement that people work, talk, and think together, in the same space and toward the same end. Hamlet reaches his final verdict through the collaboration of the players and in consultation with Horatio:

> HAM. O good Horatio, I'll take the ghost's word
> for a thousand pound. Didst perceive?
> HOR. Very well, my lord.
> HAM. Upon the talk of the pois'ning?
> HOR. I did very well note him. (3.2.286–90)

Hearing individually ("the ghost's word," spoken to Hamlet alone) requires the corroboration of seeing collectively ("Observe my uncle"; "Didst perceive?"; "I did very well note him"). In the previous chapter, I discussed how perception, especially collective seeing, is central to theatrical experience. The Greek *theatron*, we'll recall, was literally a "place of seeing" and theater was first defined in English as a "commune biholdying place."[48] In the "Mouse-trap" episode, collective seeing is also the source of legal knowledge and the basis for judgment.

Hannah Arendt, perhaps more than any other modern thinker, understood this link between judgment and collective perception. It was something that, in her view, made the faculty of judgment essential to social and political life. "That capacity to judge," Arendt explains in "The Crisis in Culture,"

> is a specifically political ability in exactly the sense denoted by Kant, namely, the ability to see things not only from one's own point of view but in the perspective of all those who happen to be present; even that judgment may be one of the fundamental abilities of man as a political being insofar as it enables him to orient himself in that public realm, in the common world.[49]

Drawing this assertion out further, Arendt maintains that aesthetic judgment, or "taste," should be understood in the same terms:

> insofar as it, like any other judgment, appeals to common sense, is the very opposite of private feelings. In aesthetic no less than political judgments, a decision is made, and although this decision is always determined by a certain subjectivity, by the simple fact that each person occupies a place of his own from which he looks upon and judges the world, it also derives from the fact that the world itself is an objective datum, something common to all its inhabitants.

"For judgments of taste," Arendt concludes, "the world is the primary thing, not man, neither man's life nor his self."[50]

Arendt didn't look to Shakespeare to develop these arguments, but she could have. The central idea she advances—that judgment, broadly conceived, is interactive and participatory—is articulated in *Hamlet*. The play's title character can't escape judgment, not only because he is the object of it, but also, more importantly, because he feels compelled to pass it himself, to find a way, in spite of the ghost's injunctions, to assess both

his uncle and his mother and to call them to task on those terms. Revenge is a solitary act, a species of individual decision, and Hamlet famously struggles with it. While for some, like Laertes, revenge connects the individual to a larger moral order, for Hamlet, it's profoundly alienating. The simple but absolute calculus of revenge seems antithetical to thinking and questioning, the knowledge-making practices to which he is most drawn, and which, like theater (to which he is also drawn) are fundamentally collaborative and social. The alienated Hamlet of revenge has received plenty of comment, from Kierkegaard to Hegel and from Bradley to Holbrook. The social Hamlet of judgment has not. By attending to it, as I have done in this section, we discover a few important things. First, we are reminded that *Hamlet* draws much of its speculative and dramatic energy from scenes of communication, contest, and encounter, rather than from scenes of isolation and introspection. Second, we begin to see how the play makes a sustained project of mapping out through judgment conceptual intersections between law and aesthetics. And finally, there is the sense we are left with at the end of the play that in the world Shakespeare has created for Hamlet, moral agency—typically understood as the capacity of an *individual* to make judgments about right and wrong— can never, in fact, be achieved in individual terms. Instead, and precisely because it's dependent on judgment, moral agency requires some form of mutual presencing or collaboration.

One question Shakespeare leaves open, then, is ethical: can individual judgment lead to the good? Put another way: what are the social and moral risks of judging alone rather than in and through what Arendt calls "the common world"? These are questions that Shakespeare would take up ten years later in *The Winter's Tale*, and it's to that play that we turn now.

The Winter's Tale and the Ethics of Judgment

The Winter's Tale is best known for the scene of cataclysmic jealousy that sets the play in motion. Observing his wife, Hermione, successfully persuade his childhood friend, Polixenes, to extend his visit in Sicilia, Leontes rapidly assembles a narrative of adulterous lust which spurs him to actions that, by the end of the second act, have resulted in the apparent death of Hermione, the death of his son, Mamillius, and the loss of his daughter, Perdita. My interest in *The Winter's Tale* concerns the two adjudicatory events that frame the action subsequent to Leontes's initial descent into paranoid jealousy: the judgment passed on Hermione

by Leontes in the trial scene of act 2 and the judgment passed on Leon-
tes by the court community, including Hermione, at the end of the play
in accordance with the oracle of Apollo. The first of these two events
is juridical: Hermione is placed on trial for adultery. The second event
is, in the first place, aesthetic since it's built around collective admira-
tion for what appears to be a statue of Hermione. However, the statue
scene is also a moral and legal event since it occasions a final assess-
ment of Leontes's crimes and the possibility of legal satisfaction. These
two case studies in judgment shape and are shaped by the play's larger
tragicomic form: in act 2, we witness judgment as tragedy; in act 5, we
witness judgment as redemption and reconciliation. In addition to their
formal affordances, these two models of judgment collectively introduce
a distinct ethical vision into *The Winter's Tale*, one that has as much to
do with selfhood as it does with law. The key difference between the
tragic judgment of act 2 and the restorative judgment of act 5 is that the
former is entirely, and pathologically, individual. Leontes ignores other
voices and forsakes the legal scene of which he is, or should be, a part. He
even disregards the divine voice of the oracle of Apollo. Leontes's judg-
ment is egocentric, and this egocentrism leads to pain, death, and despair.
The healing and reconciliation achieved through the judgment of act 5,
by contrast, derives from the fact that adjudication has become a shared
practice rooted in collaboration and exchange. In what follows, I will
show how *The Winter's Tale* explores through judgment the hazards of
extreme individualism and the restorative powers of legal communalism.

The onset of Leontes's jealousy occurs in act 1.2: "Too hot; too hot!
/ To mingle friendship far is mingling bloods" (1.2.108–9). From that
moment on, it begins to transform into a dangerous and delusional form
of egocentrism, what Julia Reinhard Lupton has characterized as a "fore-
closure of all attachments." Lupton shows how Leontes, who "disavows
his dependencies on his wife, friend, son, and unborn child," exemplifies
the psychotic foreclosure studied by Freud and Lacan in the case of Judge
Schreber.[51] The King's behavior, she explains, drags "the coordinates of
his world into the annihilating vortex of divestment":[52] Hermione is a
"hobby-horse" (1.2.276), Polixenes is an "enemy" (1.2.317), his children
bastards, and his counselors traitors. Lenotes never doubts these convic-
tions for a moment:

> How blest am I
> In my just censure! in my true opinion!
> Alack, for lesser knowledge! How accurs'd
> In being so blest! (2.1.36–39)

Rhetorically, Leontes expresses dismay at being so knowledgeable—if only I knew less! But even more important than the notion of *burdensome* knowledge is the notion of *exclusive* knowledge: Leontes is in singular possession of the truth, an appraisal of reality keyed precisely to his anti-sociality and actualized in his repeated and unwavering repudiation of competing truth claims:

> CAM. Good my lord, be cur'd
> Of this diseas'd opinion, and betimes,
> For 'tis most dangerous.
> LEON. Say it be, 'tis true.
> CAM. No, no my lord.
> LEON. It is: you lie, you lie! (1.2.296–99)

There is a similar exchange between Leontes and Antigonus in act 2.3 when the King accuses the old counselor of conspiring with his wife, Paulina, to aid Hermione:

> LEON. Thou, traitor, hast set on thy wife to this.
> . . . .
> ANT. I did not, sir.
> These lords, my noble fellows, if they please,
> Can clear me in't.
> LORDS. We can. My royal liege,
> He is not guilty of her coming hither.
> LEON. You're liars all. (2.3.131, 142–46)

In this exchange between Leontes, Antigonus, and the Lords, the King's paranoid foreclosure functions as a rejection of the sort of legal scene explored by Shakespeare in *Hamlet*. Whereas for Hamlet, Claudius, and Polonius, judgment is participatory and social, for Leontes it's about alienation and individual will. "Not guilty" is the lords' position; "You're liars all!" is Leontes's response. In *Hamlet*, Shakespeare imagines judgment as something one necessarily does with others. In the first three acts of *The Winter's Tale*, by contrast, it's the force that keeps self and other, the one and the many, utterly apart. Observe, for example, Leontes's first specifically juridical action against Hermione: "Away with her, to prison! / He who shall speak for her is afar off guilty / But that he speaks!" (2.1.103–5). This act of judgment is tyrannical, of course, but it's also, and more specifically, profoundly antisocial. It's a legal expression of individualism in its most reckless and irresponsible form.

Both in his ruthlessness and his apparent lack of discernment, Leontes embodies some of early modern England's primary anxieties about legal judgment. Lorna Hutson has shown that in the fifteenth century, writing associated with the Church frequently presented secular judgment as severe and dangerously fallible in comparison with the equitable and restorative principles of Christianity.[53] One such text is *Jacob's Well* (c. 1450), a sequence of penitential sermons composed for oral delivery between Ash Wednesday and the Vigil of Pentecost, now widely recognized as an early source for the morality play *Mankind* (c. 1465).[54] Each sermon fits into a larger allegorical scheme in which the soul struggles out of a pit of corrupt waters into the pure well of Jacob, assisted by various tools that represent contrition, confession, and satisfaction. The aim of these sermons is to urge parishioners to make confession and embrace the Church's penitential system for managing and purging sin. The diabolical alternative is the secular common law courts in which "thou schuldst be convict in thi cause, for thou art gylty in wrong . . . and the sentens of dampnacyoun shulde be gouyn agens the." Better to go "to the juge of god, that is, to the preest."[55] Whereas God's justice offers a shot at redemption, the inflexible justice of the common law courts leads directly to death and damnation. Hutson explains that in *Jacob's Well*, "jury trial emerges as no kind of trial at all, and salvation is imagined as a repeated escape from the rigors of Common Law Hell, first by the priestly judge's absolution, and then by Purgatorial pains, figured as our escape, by pleading clergy, to the canonical purgation of the spiritual courts."[56]

The attitude toward secular judgment in *Jacob's Well* is indicative of a deeply entrenched habit of thought, a core distrust of secular law that persisted even despite the momentous shift in jurisdictional authority from spiritual to temporal institutions over the course of the sixteenth century. As late as 1578, Thomas Garter's dramatic interlude, *The Commody of the Most Virtuous and Godlye Susanna*, portrays a miscarriage of justice in a secular court set right at the last moment by divine intervention. Here, the concern is less with the diabolically stringent, either/or conditions of common law courts than it is with the basic competence of human judges, fallen and imperfect as they are, to identify truth and arbitrate accordingly. The Judge in Garter's interlude, persuaded by the false testimony of the elders, sentences Susanna to death. However, as "*she is led to execution . . . God rayseth the spiritte of Danyell,*" who insists that "*they return all backe to judgment.*"[57] In due course, Susanna is proclaimed innocent and the other participants in the trial roundly condemned. Garter's interlude is comforting to the extent that it portrays a caring God who intercedes on behalf of the downtrodden, but it

certainly would not have left readers with much confidence in temporal judgment.[58] Daniel refers to the members of the legal community in the interlude as "foolish folke . . . that know not ill from good"[59]—hardly an endorsement of the efficacies of English common law.

Anxieties about the role of judges and the effects of their decisions can be found issuing from *within* the legal community, too. Edward Coke, for example, though confident enough that a judge would not completely misinterpret evidence and testimony, nevertheless urged those charged with the task of adjudication not to overstep their bounds. The role of the judge, Coke insisted, is to declare law, not to make it, "for that which hath been refined and perfected by the wisest men in former succession of ages, and proved and approved by continual experience to be good and profitable for the commonwealth, cannot without great hazard or danger be altered or changed."[60] He returned to the issue in his *First Institutes*, noting that "commonly a new invention doth offend against many rules and reasons of the common law, and the ancient judges and sages of the law have ever . . . suppressed innovation and novelties in the beginning."[61] Coke was not the only one to weigh in on the "hazard" of judicial innovation. John Davies makes a similar point in the preface to *Le Primer Report des Cases en Ireland* (1615) and Francis Bacon opens his essay "Of Judicature" with an extended statement on the matter:

> Judges ought to remember that their office is *jus dicere*, and not *jus dare*; to interpret law, and not to make law, or give law. Else it will be like the authority claimed by the church of Rome, which under pretext of exposition of Scripture doth not stick to add and alter; and to pronounce that which they do not find; and by show of antiquity to introduce novelty. Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue.[62]

Judgment, Bacon asserts, is a strain of applied scholarship, not a maverick performance. He urges a kind of learned modesty and deference to legal doctrine. As long as the laws themselves speak through the judge, rather than vice versa, there is minimal risk of corruption and error. In this context, Leontes starts to look like a poster child for everything that Coke, Davies, and Bacon warn against.

Paulina, on the other hand, represents a more reassuring model of judgment. She persistently and forcefully takes Hermione's side and tries to steer Leontes off the dangerous course on which he is set. In the

prison where Hermione is held, she declares herself the Queen's "advo-cate" (2.2.37), the first of a number of juridical gestures on Paulina's part. Then, in act 2.3, forcing her way into Leontes's presence with the infant Perdita, she argues for the child's legitimacy:

> Behold, my lords,
> Although the print be little, the whole matter
> And copy of the father—eye, nose, lip,
> The trick of 's frown, his forehead, nay, the valley,
> The pretty dimples of his chin and cheek, his smiles,
> The very mould and frame of hand, nail, finger. (2.3.98–103)

Paulina seeks a counter-ruling by appealing to *communal* judgment: "Behold, my lords," she begins, beseeching all present to participate in interpreting the evidence at hand. The drive in Paulina's lines is toward collectivity and the restoration of a *scene* of adjudication. Unlike Leontes's enraged decisionism, a worst-case scenario of judge-made law, Paulina's conduct is closer in spirit to the way legal judgment was actually supposed to work in early modern England. The growing power of the judiciary notwithstanding, common law trials were designed to be participatory in Shakespeare's time. Queen Elizabeth tried to reinforce this principle by setting up a special office for collecting defaults by jurors.[63] King James subsequently issued a "Proclamation for Jurors" which insisted that "all persons which have Free-hold, according to the Law, shall be returned to serve upon Juries, as occasion shall require."[64] If these measures indicate a certain level of reluctance or apathy among would-be jurors, they also remind us that the system was at least premised on collaboration and pro-ductive agonism. Historians such as Thomas Andrew Green and Cynthia Herrup have confirmed this.[65] Documents related to the courts of early modern Sussex, for example, reveal constant, uneven negotiation among judges, justices, and juries. Herrup writes,

> Judges, magistrates, and petty jurors had generally complimentary, but not identical, ideas about justice. Judges, justices, and juries seem to have agreed as to the proper sentence in the vast major-ity of cases convicted in the Assizes or the Quarter Sessions. Each group was willing to intervene when necessary and the Bench, not the jurors, seems to have had the greatest reservoir of patience.[66]

The work of judgment may have been contentious, but it was always fun-damentally collaborative. It involved collective thinking and participatory

action. These are the attributes that give Paulina's arbitrational practice a kind of procedural and moral authority absent from Leontes's blinkered allegations.

Hannah Arendt insisted that "judgment must liberate itself from the subjective private conditions," that it is in fact a basic element of social existence, something that necessarily ties the individual to a larger community of values, thought, and action.[67] Paulina knows this very well, but Leontes learns it too late. In act 3.2 Hermione is brought in for a formal trial, the strict collaborative procedures of which should mitigate Leontes's unwaveringly subjective censure. Leontes says as much himself at the opening of the "sessions" (3.2.1):

> Let us be clear'd
> Of being tyrannous, since we so openly
> Proceed in justice, which shall have due course,
> Even to the guilt or purgation. (3.2.4–7)

A formal indictment is then read by an Officer and Hermione is given the opportunity to mount a defense. In another gesture of commitment to what Leontes insists is "a just and open trial" (2.3.205), the King submits the case of Hermione to divine judgment. Two Sicilian lords, Cleomenes and Dion, are sent to Delphos where they will receive the oracle of Apollo.[68] Ostensibly, then, at the opening of act 3.2, we have a *scene* of judgment in both the Shakespearean sense familiar from *Hamlet* and in the broader historical sense of early modern courtroom practice. There are officers and lords contributing to the adjudicatory process. There is also a larger religious framework, something frequently invoked in justice of the peace manuals as part of their emphasis on distributed authority. William Lombarde, for instance, asserts that "such as occupy Judicial places ought to take heed what they doe, knowing (as Jehosaphat saide) that they exercise not the judgements of Men onelie, but of God himself, whose power, as they doe participate: So he also is present of the Bench with them."[69] Even so, Leontes's egocentric judgment slices through the collaborative conditions he has established. Ignoring testimony and evidence, Leontes condemns Hermione to "no less than death" (3.2.91) in a proceeding that the Queen aptly calls "rigor and not law" (3.2.114).

By far, though, Leontes's most sensational act of adjudicatory egocentrism is his refutation of divine judgment. When Hermione submits herself to Apollo—"refer me to the oracle: / Apollo be my judge!" (3.2.115–16)—she is promptly proclaimed innocent. Leontes reacts by declaring, "There is no truth at all i' th' oracle. / The sessions shall proceed; this is mere falsehood"

(3.2.140–41). In chapter 2, I discussed the way Emmanuel Levinas saw
the dominant model of selfhood—subjective, introspective, individual—as
licensing a sort of practiced egocentrism which led inevitably to suffering.
Leontes crosses a threshold when he defies the oracle beyond which his
own egocentric judgment plays out in precisely the way Levinas would
have predicted.[70] For the moment he declares the oracle "falsehood"
(3.2.141) a servant enters to report that Mamillius has died out of conster-
nation over his mother's fortune, news which, in turn, causes Hermione
to collapse. We soon learn from Paulina that she, too, has perished: "the
Queen, the Queen, / The sweet'st, dear'st creature's dead" (3.2.200–201).
Leontes's egocentrism has exceeded the bounds of shared discourse and
shared belief; Hermione and Mamillius are the casualties of this explosive
rupture in the fabric of the spiritual and legal commons.

This rupture also marks a point of transition, one distinct from, yet
coterminous with, that between tragedy and comedy, culture and nature,
and "things dying" and "things new-born" (3.3.113, 114), all of which
have offered critics useful ways of thinking about the movement from the
punitively delusional world of Leontes's court to the festive, fertile world
of Bohemia, where Perdita is left by Antigonus in act 3.3.[71] The shift I have
in mind involves the legal topography of the play. We witness one adju-
dicatory event draw to a close and a second appear on the horizon. The
first adjudicatory event has Leontes in the role of judge, and judgment in
his hands is experienced as social tragedy. The second adjudicatory event
seems, at first glance, to distinguish itself from the previous one by turn-
ing the judge into the judged. Indeed, Leontes recognizes the role reversal
the moment news of Mamillius's death is delivered: "Apollo's angry, and
the heavens themselves / Do strike at my injustice" (3.2.146–47). But this
is not itself the adjudicatory event. The oracle of Apollo reads as follows:

> Hermione is chaste, Polixenes blameless, Camillo a true subject,
> Leontes a jealous tyrant, his innocent babe truly begotten, and the
> King shall live without an heir, if that which is lost be not found.
> (3.2.132–36)

The sentence—"the King shall live without an heir"—is almost passed,
but the "if" makes it conditional. The possibility of finding "that which
is lost" presents an opportunity for at least partial satisfaction for Leon-
tes's transgression. It also defers the actual adjudicatory event to the final
scene of the play.

Those familiar with *The Winter's Tale* know that that which is lost
is found. Having survived abandonment as an infant on the shores of

Bohemia, Perdita returns to Sicilia with Florizell, the son of Polixenes and her husband-to-be, in act 5. The two young lovers have eloped and are pursued by a number of others, including Polixenes himself (who disapproves of the marriage), Camillo, an Old Shepherd, a Clown, and the trickster Autolycus. Everyone eventually arrives at the Sicilian court in the company of Leontes and Paulina, and through a series of remarkable revelations it's discovered that Perdita is Leontes's lost daughter and the oracle has been fulfilled. This along with Hermione's apparent revivification in the last scene of the play constitutes the final adjudicatory event of *The Winter's Tale*, bringing to completion the suspended, conditional judgment issued by the oracle in act 3.2. Importantly, these concluding events also reimagine judgment, transforming it from something that proceeds according to the principles of retribution into a process that includes forgiveness.[72] Desmond Tutu, writing in the context of the establishment of the Truth and Reconciliation Commission in South Africa, calls this "restorative justice," and describes it as a system of arbitration that focuses on building and repairing relationships among perpetrators, victims, and society.[73] This has special significance for the play's final vision of selfhood, too, since forgiving is a communal activity that presupposes an unbounded, socially situated mode of being. To put it another way, the practice of forgiving tells us something vital about what it means to be a person. It reminds us, to quote Desmond Tutu again, that "a person is a person through other persons."[74] This is the great lesson Leontes learns by the end of the play. As Sarah Beckwith explains it, Leontes comes to understand "enough about the grammar of forgiveness to know that he cannot forgive himself, that the grammar of forgiving yourself is, in fact, nonsensical." "Forgiveness," Beckwith continues, "requires the presence of others; and in the acknowledgment of that mutuality lies the truth that others have reality in a past that is no one's individual possession."[75]

Judgment that embraces forgiveness, then, is necessarily premised on an outward-looking model of selfhood, and in practice that version of judgment actualizes an ethics of otherness that is antithetical to Leontes's retributive egocentrism. We can see how this ethics works in the final scene of *The Winter's Tale*. Like the "Mouse-trap" episode in *Hamlet*, there is both aesthetic discernment and quasi-legal arbitration taking place in this scene. When Paulina "*draws a curtain, and reveals Hermione standing like a statue*," she bids all present to judge on aesthetic grounds: "Behold, and say 'tis well . . . but yet speak. First, you, my liege; / Comes it not something near?" (5.3.20, 22–23). Leontes's extended response marks the moment as both elegiac and sublime, a scene charged with both

guilt and wonder. He is in awe at the figure's "natural posture" (5.3.23) and pronounces it a "royal piece" (5.3.38). Likewise, Polixenes exclaims, "Masterly done!" (5.3.65). But Leontes also describes the presence of the statue as "piercing to my soul," and aesthetic approval soon gives way to self-condemnation: "I am asham'd" (5.3.37), he says, and continues:

> There's magic in thy majesty, which has
> My evils conjur'd to remembrance, and
> From thy admiring daughter took the spirits,
> Standing like stone with thee. (5.3.39–42)

Aesthetic and moral judgment are carefully wound together in the statue scene. It's through the contemplation and evaluation of beauty that Leontes again confronts his crimes on the psychological terrain of shame and memory. But guilt and remorse do not remain matters of inner turmoil long. Camillo and Polixenes set into motion a process whereby Leontes's self-censure is ushered into the participatory and recuperative ambit of forgiveness:

> CAM. My lord, your sorrow was too sore laid on,
> Which sixteen winters cannot blow away,
> So many summers dry. Scarce any joy
> Did ever so long live; no sorrow
> But kill'd itself much sooner.
> POL. Dear my brother,
> Let him that was the cause of this have pow'r
> To take off so much grief from you as he
> Will piece up in himself. (5.3.49–56)

Camillo and Polixenes offer Leontes the opportunity to experience the culmination of Apollo's oracular judgment as something curative rather than punitive, and Leontes's acceptance of this is signaled, finally and sensationally, by Hermione's reanimation and embrace. It's true that, as Stanley Cavell has noted, all is not restored in these romantic reversals of fortune. Some losses are permanent. Mamillius and Antigonus are dead and their absence casts a long shadow over the otherwise optimistic conclusion of the play.[76] Nevertheless, there is a profound contrast between the way judgment is imagined in the first half of the play and the way it's imagined at the end. In comparison with the first adjudicatory event in *The Winter's Tale*, in which reckless egocentrism leads to death and the breakdown of both family and service bonds, the second, extended

adjudicatory event leads finally to the emergence of a participatory community, and with it a new kind of intersubjective selfhood.

This new community—what we might call a community of judgment—unfolds along four axes. It's apparent, first, in the collective agencies essential for forgiveness. We see this in the verbal and physical acts of Camillo, Polixenes, and Hermione in response to Leontes's disclosures of guilt and shame. It's apparent, as well, in the kind of mutual presencing that takes place through acts of recognition and acknowledgment: Leontes's and Hermione's recognition of Perdita; Leontes's recognition of Hermione; Hermione's recognition of Leontes. It's apparent in the sociality of aesthetic experience, in which Paulina's invitation to judge is met by an interplay of responses from Leontes, Polixenes, and Perdita. And when Hermione breaks into motion and steps forward to embrace Leontes, it's apparent even in physical action, which becomes in this scene a communal substance, the animated source of an enveloping awe and wonder, rather than an individual force or energy. Hannah Arendt could have been speaking directly to this climactic moment of *The Winter's Tale* when in *The Human Condition* she asserts that "action, the only activity that goes on directly between men without the intermediary of things or matter, corresponds to the human condition of plurality."[77] Accordingly, the final adjudicatory event of *The Winter's Tale* imagines judgment not in the narrow institutional terms of judicial decision-making, but in the broader terms of Kant's "enlarged mentality," the notion that led Arendt to observe that judgment, when exercised properly, was "one, if not the most, important activity in which . . . sharing-the-world-with-others comes to pass." To judge—morally or aesthetically, oneself or another—is, as Arendt puts it, to "remain in this world of universal interdependence."[78] In *The Winter's Tale*, the conditional judgment passed on Leontes by the oracle of Apollo provides a pathway back to "interdependence" and back to a kind of open, collaborative selfhood that takes the form of "sharing-the-world-with-others."

Whereas *Hamlet* explores what judgment *is*, *The Winter's Tale* explores what judgment *ought to be*. The cooperative dynamics that Shakespeare examines in the earlier play become in the later play something that is worked toward and finally achieved through suffering, forgiveness, and, of course, Paulina's careful planning. This collaborative, anti-egocentric form of judgment becomes the means through which political community is reconstructed and the bonds of family and service (at least partially) restored. Consequently, judgment in *The Winter's Tale* carries a kind of ethical freight that is not present in *Hamlet*, or any other play by Shakespeare for that matter. It works to align communalism and otherness

with the good and egocentrism with a form of violence that tears at the foundation of that good. The treatment of judgment in *The Winter's Tale* is informed by early modern ideas about law—that adjudication is, or should be, a participatory affair; that bringing personal innovation or extreme emotion into the process of arbitration is a form of abuse. But as we have seen throughout this book, Shakespeare frequently uses the imaginative raw materials from one part of his culture to address an idea that we would normally think of as belonging to another. *The Winter's Tale* may speak from within the conceptual realm of early modern legal culture, but judgment in the play ultimately has less to tell us about law per se than it does about what I referred to earlier as the hazards of extreme individualism. Judgment, that is, provides a framework for showcasing the social and moral risks we take when we cease to think in, and through, the presence of others. And by the end of the play it provides an equally compelling framework for thinking about how we might manage those risks.

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Shakespeare's Ethics of Exteriority

The laws of property, the laws of hospitality, the act of treason, the act of judgment: what do we see when we stand back and consider as a whole Shakespeare's responses to these topics?

One thing we see is Shakespeare's interest in law as a field of relationality. In the plays and poems considered in this book, law forms spaces of encounter and knits discrete persons into the social and material fabric of the world. In *Richard II*, for example, land law provides a vocabulary, both linguistic and conceptual, for expressing various forms of intersubjectivity and codependence. In the sonnets and *The Merchant of Venice*, we see how hospitality curates complex relationships between self and other. In *Macbeth*, treason finds its source in embodied experience and a form of agency that is rooted in the sensory environment. And in *Hamlet* and *The Winter's Tale*, judgment involves orienting oneself, morally and materially, in a larger social scene. What this book has shown, in other words, is that Shakespeare not only had a sustained interest in the aggregative underpinnings of law, but also that this aspect of law provided an imaginative framework for exploring distributed forms of selfhood.

There's something else, too, that emerges from the plays and sonnets considered in these pages. It's a topic much larger than the one I have addressed here, but it nevertheless haunts many of the preceding discussions, perhaps especially those concerning the sonnets, *The Merchant of Venice*, and *The Winter's Tale*. I call it the ethics of exteriority.

Shakespeare's ethics of exteriority accrue from legally framed scenes of collective thought, interpersonal experience, and material embeddedness and come most fully into view when we start posing fundamental questions about distributed selfhood: what does it mean to imagine alternatives to interiority? What are the implications of looking outward instead of inward? Modern philosophers have offered their own answers to these questions. We have seen, for example, that for Emmanuel Levinas, exteriority is a force that pushes back against humanity's deeply

entrenched egotism. Disasters like the Holocaust, he argued, were always, at their root, the result of a simple yet catastrophic failure to recognize the other. Exteriority becomes a crucial concept for him precisely because it describes a way of living that is keyed to the ethical demand of the not-you.[1] Charles Taylor makes a similar point when he asserts that "a self only exists in . . . 'webs of interlocution.'"[2] He writes,

> I define who I am by defining where I speak from, in the family tree, in social space, in the geography of social statuses and functions, in my intimate relations to the ones I love, and also crucially in the space of moral and spiritual orientation within which my most important defining relations are lived out.[3]

Building on Charles Taylor's arguments, Paul Ricoeur points out that a disregard for these "webs of interlocution" has led to the deeply entrenched, liberal legal fiction of a "subject of law, constituted prior to any societal bond." To recognize the role of otherness in the formation of selfhood, he explains, is to strike at the root of this fiction and to create the conditions whereby individuals "participate in the burdens related to perfecting the social bond."[4] Hannah Arendt addressed the idea of exteriority, too, though she used a different term: "conditional existence." In *The Human Condition*, she writes,

> Whatever touches or enters into a sustained relationship with human life immediately assumes the character of a condition of human existence. This is why men, no matter what they do, are always conditioned beings. Whatever enters the human world of its own accord or is drawn into it by human effort becomes part of the human condition. The impact of the world's reality upon human existence is felt and received as a conditioning force. The objectivity of the world—its object- or thing-character—and the human condition supplement each other; because human existence is conditional existence, it would be impossible without things, and things would be a heap of unrelated articles, a non-world, if they were not the conditioners of human existence.[5]

Arendt's notion of conditionality comes close to the idea of exteriority. Both terms denote a way of understanding human existence as a product of the social and material *world out there*, in all of its plurality. In Arendt's view, this insight has important implications for how we understand politics. In order for political action to be human, which is to say

humane, it must first be conceived as something contingent upon the needs of other stakeholders. Like Levinas, Arendt felt that the alternative, an egotistical view of politics centered on individual *making*, led eventually to totalitarian disasters like Stalinism and Nazism. In *The Human Condition*, therefore, Arendt lays the philosophical groundwork for a political practice based on collaboration, acknowledgment, and responsibility. Shakespeare's ethics of exteriority lack, as they should, the programmatic specificity of philosophical argument, but the plays and sonnets I've explored in this book nevertheless diagram a situated and relational form of being that Levinas, Taylor, Ricoeur, and Arendt all take as prerequisite to responsible living.

At a number of points during my work on this project, I found myself wishing there was a place in the canon where Shakespeare pushed harder on these ethical insights, a text in which they were explored in a more concentrated and sustained manner. Shakespeare never did write a treatise on the ethics of exteriority, but if he had, I think it might sound something like this:

> Hath not a Jew eyes? Hath not a Jew hands, organs, dimensions, senses, affections, passions; fed with the same food, hurt with the same weapons, subject to the same diseases, heal'd by the same means, warm'd and cool'd by the same winter and summer, as a Christian is? If you prick us, do we not bleed? If you tickle us, do we not laugh? If you poison us, do we not die? And if you wrong us, shall we not revenge? (3.1.59–67)[6]

What makes Shylock's speech so arresting is the way it achieves depth through surface. On one hand, the speech is an affirmation of legal personhood issued through an appeal to basic equality and reciprocal rights. On the other, it's an act of moral agency that manifests Shylock as a self worthy of empathy. Importantly, though, Shylock's selfhood is rooted exclusively in outer life: hands, senses, food, germs, temperature, tickling, violence, social practices. It's not something unique about Shylock's mental or spiritual core that endows him with the complexity and emotional range prerequisite to selfhood. Rather, it's his invocation of a common stratum of creaturely life in which he partakes: his physical and formal presence, his vegetative need for sustenance, his sensory responses to outer stimuli. Shylock creates for playgoers a theater of recognition grounded in the physical: acknowledge my eyes, my hands, my form, all the manifestations of my creatureliness. It's a singular moment of appearing and we know, unmistakably, that we're supposed to *care*.

Why? Why do we feel that a recognition of Shylock on the terms he's established matter? The reason, I think, is quite simple and it forms the core of Shakespeare's ethics of exteriority: because acts of collective recognition are socially affirming; they ground us in an environment of shared experience and common imagination and establish, therefore, the only possible conditions for responsible world-making.

There is another book to be written on Shakespeare's ethics of exteriority. This one, situated firmly at the intersection of law and selfhood, can only gesture toward it.

It's a gesture, though, that points to the farthest-reaching implications of a project like this one: the idea that rethinking Shakespeare's imaginative relationship to law might lead us, finally, to a renewed sense of why his work remains important.

NOTES

Introduction

1. References to Shakespeare's works are from William Shakespeare, *The Riverside Shakespeare*, 2nd ed., gen. ed. G. Blakemore Evans (Boston: Houghton Mifflin, 1997).

2. See Denis Kezar, *Solon and Thespis: Law and Theater in the English Renaissance* (Notre Dame, Ind.: University of Notre Dame Press, 2007).

3. Thomas L. Berger, William C. Bradford, and Sidney L. Sondergard, eds., *An Index of Characters in Early Modern English Drama* (Cambridge: Cambridge University Press, 2006).

4. Bradin Cormack, Martha C. Nussbaum, and Richard Strier, eds., *Shakespeare and the Law: A Conversation among Disciplines and Professions* (Chicago: University of Chicago Press, 2013), 3.

5. For a historically and theoretically sophisticated discussion of legal jurisdictions in early modern England, see Bradin Cormack, *"A Power to Do Justice": Jurisdiction, English Literature, and the Rise of Common Law* (Chicago: University of Chicago Press, 2008).

6. C. W. Brooks, *Pettyfoggers and Vipers of the Commonwealth: The "Lower Branch" of the Legal Profession in Early Modern England* (Cambridge: Cambridge University Press, 1986), 48.

7. Tim Stretton, "Women, Property, and Law," in *A Companion to Early Modern Women's Writing*, ed. Anita Pacheco (Malden, Mass.: Blackwell, 2002), 40–57 (53).

8. William Prest, *The Inns of Court in Elizabethan England* (London: Longman, 1972), 21–22.

9. L. W. Abbot, *Law Reporting in England, 1485–1585* (London: Athlone, 1973), 7.

10. A second collection of Plowden's reports appeared in two parts in 1578 and 1579 and subsequent editions, as well as more user-friendly abridgments, were printed throughout the 1580s, 1590s, and early 1600s. Karen Cunningham notes that Plowden's commentaries are "unusual among contemporary legal works for being the only set of reports prepared for publication by an author in his own lifetime, and Plowden's own cases were being cited within a year of their being printed. Most unusual in the context of legal publishing, the first volume came out within a few months of the adjudication of the last case" (Cunningham, *Imaginary Betrayals: Subjectivity and the Discourse of Treason in Early Modern England* [Philadelphia: University of Pennsylvania Press, 2002], 152 n.66).

11. Both quotations appear on the title page.

12. The quotation is from Edward Coke, *The Third Part of the Institutes of the Laws of England* (London, 1644), sig. B3v, but the source of this definition of treason is an Edwardian statute of 1352. On the medieval context of treason, see John G. Bellamy, *The Law of Treason in England in the Later Middle Ages*

(Cambridge: Cambridge University Press, 1970); and Richard Firth Green, *A Crisis of Truth: Literature and Law in Ricardian England* (Philadelphia: University of Pennsylvania Press, 1999), 206–47.

13. Frances E. Dolan, *Dangerous Familiars: Representations of Domestic Crime in England, 1550–1700* (Ithaca, N.Y.: Cornell University Press, 1994); Frances E. Dolan, *Whores of Babylon: Catholicism, Gender, and Seventeenth-Century Print Culture* (Ithaca, N.Y.: Cornell University Press, 1999); Frances E. Dolan, *True Relations: Reading, Literature, and Evidence in Seventeenth-Century England* (Philadelphia: University of Pennsylvania Press, 2013); Rebecca Lemon, *Treason by Words: Literature, Law, and Rebellion in Shakespeare's England* (Ithaca, N.Y.: Cornell University Press, 2006); Subha Mukherji, *Law and Representation in Early Modern Drama* (Cambridge: Cambridge University Press, 2006).

14. See Julie Stone Peters, "Law, Literature, and the Vanishing Real: The Future of an Interdisciplinary Illusion," *PMLA* 120 (2005): 442–53 (444). It's possible to trace the origins of the field back significantly further than the 1970s, to Benjamin Cardozo's 1925 essay "Law and Literature." See Benjamin N. Cardozo, *Law and Literature and Other Essays and Addresses* (New York: Harcourt, Brace, 1931), 3–40.

15. See Richard Weisberg, *Poethics, and Other Strategies of Law and Literature* (New York: Columbia University Press, 1992); as well as Daniel J. Kornstein, *Kill All Lawyers?: Shakespeare's Legal Appeal* (Lincoln: University of Nebraska Press, 1994); Martha Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (Boston: Beacon, 1995); Wai Chee Dimock, *Residues of Justice: Literature, Law, Philosophy* (Berkeley: University of California Press, 1996), especially chap. 6; and Elliott Visconsi, *Lines of Equity: Literature and the Origins of Law in Later Stuart England* (Ithaca, N.Y.: Cornell University Press, 2008). For arguments against literature's applicability to law, see most famously Richard A. Posner, *Law and Literature* (Cambridge, Mass.: Harvard University Press, 1988); as well as Alan M. Dershowitz, "Life Is Not a Dramatic Narrative," in *Law's Stories: Narrative and Rhetoric in the Law*, ed. Peter Brooks and Paul Gewirtz (New Haven, Conn.: Yale University Press, 1996), 99–105.

16. Examples include Barbara Kreps, "When All Is True: Law, History, and Problems of Knowledge in *Henry VIII*," *Shakespeare Survey* 52 (1999): 166–82; Karen Cunningham, *Imaginary Betrayals*; Edward Gieskes, *Representing the Professions: Administration, Law, and Theater in Early Modern England* (Newark: University of Delaware Press, 2006); Constance Jordan and Karen Cunningham, eds., *The Law in Shakespeare* (Basingstoke, Eng.: Palgrave Macmillan, 2007); and Paul Raffield, *Shakespeare's Imaginary Constitutions: Late-Elizabethan Politics and the Theatre of Law* (Oxford: Hart Publishing, 2010). See, as well, the body of work dealing specifically with women and law. For example, Amy Louise Erickson, *Women and Property in Early Modern England* (London: Routledge, 1993); Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford: Oxford University Press, 1996); Tim Stretton, *Women Waging Law in Elizabethan England* (Cambridge: Cambridge University Press, 1998); Carolyn Sale, "Representing Lavinia: The (In)significance of Women's Consent in Legal Discourses of Rape and Ravishment in Shakespeare's *Titus Andronicus*," in *Women, Violence, and English Renaissance Literature: Essays Honoring Paul Jorgensen*, ed. Linda Woodbridge and Sharon Beehler (Tempe,

Ariz.: Arizona Center for Medieval and Renaissance Studies, 2003), 1–27; and Carolyn Sale, "Slanderous Aesthetics and the Woman Writer: The Case of *Hole v. White*," in *From Script to Stage in Early Modern England*, ed. Peter Holland and Stephen Orgel (Basingstoke, Eng.: Palgrave Macmillan, 2004), 181–94; Garthine Walker, *Crime, Gender, and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003); Nancy E. Wright, Margaret W. Ferguson, and A. R. Buck, eds., *Women, Property, and the Letter of the Law in Early Modern England* (Toronto: University of Toronto Press, 2004); and Andrew Majeske and Detmer Goebel, eds., *Justice, Women, and Power in English Renaissance Drama* (Madison, N.J.: Fairleigh Dickinson University Press, 2009). Older, foundational studies include Sir Dunbar Plunket Barton, *Links between Shakespeare and the Law* (London: Faber and Gwyer, 1929); George W. Keeton, *Shakespeare's Legal and Political Background* (New York: Barnes and Noble, 1967); and O. Hood Phillips, *Shakespeare and the Lawyers* (London: Methuen, 1972).

17. Lorna Hutson, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford: Oxford University Press, 2007). See also Hutson's *Circumstantial Shakespeare* (Oxford: Oxford University Press, 2015), which came out as this book was going into production.

18. Luke Wilson, *Theaters of Intention: Drama and the Law in Early Modern England* (Stanford, Calif.: Stanford University Press, 2000).

19. Katharine Eisaman Maus, *Inwardness and Theater in the English Renaissance* (Chicago: University of Chicago Press, 1995); Katharine Eisaman Maus, *Being and Having in Shakespeare* (Oxford: Oxford University Press, 2013).

20. Peter Holbrook, *Shakespeare's Individualism* (Cambridge: Cambridge University Press, 2010), 1, 12–13.

21. See further, Michael Witmore, *Shakespearean Metaphysics* (London: Bloomsbury, 2008). Witmore asserts that "finding our way to a truly Shakespearean metaphysics . . . should not be an exercise in transcendence, but an attempt to unearth a new and different kind of materialism, one that is grounded in bodies but emphatic in asserting the reality of their dynamic interrelations" (3).

22. A. N. Whitehead, *Process and Reality* (corrected edition), ed. David Ray Griffin and Donald W. Sherburne (New York: Free, 1978), 41.

23. Patricia Fumerton, *Cultural Aesthetics: Renaissance Literature and the Practice of Social Ornament* (Chicago: University of Chicago Press, 1991), 1. See also Margreta De Grazia, Maureen Quilligan, and Peter Stallybrass, eds., *Subject and Object in Renaissance Culture* (Cambridge: Cambridge University Press, 1996), 3; Ann Rosalind Jones and Peter Stallybrass, *Renaissance Clothing and the Materials of Memory* (Cambridge: Cambridge University Press, 2000), 14; Natasha Korda, *Shakespeare's Domestic Economies: Gender and Property in Early Modern England* (Philadelphia: University of Pennsylvania Press, 2002), 8; and Julian Yates, *Error, Misuse, Failure: Object Lessons from the English Renaissance* (Minneapolis: University of Minnesota Press, 2002), 1.

24. The word "ecology" was coined by the German zoologist Ernst Haeckel in 1873. The German word *ökologie* is linked etymologically to the Greek word *oikos*, which means "house" or "dwelling."

25. Timothy Morton, *The Ecological Thought* (Cambridge, Mass.: Harvard University Press, 2010), 7. A similar definitional versatility is found in the glossary of Niklas Luhmann's *Ecological Communication*, trans. John Bednarz, Jr.

(Chicago: University of Chicago Press, 1989), where he notes in the entry for "ecology" that "the concept does not presuppose any specific kind of system (ecosystem)" (144).

26. Jane Bennett, *Vibrant Matter: A Political Ecology of Things* (Durham, N.C.: Duke University Press, 2010). For a similar argument, see Bruno Latour, *Politics of Nature: How to Bring the Sciences into Democracy* (Cambridge, Mass.: Harvard University Press, 2004), 237.

27. John Dewey, *The Public and Its Problems* (New York: Henry Holt, 1927); John Dewey, *Art as Experience* (New York: Perigee Books, 1934); Bruno Latour, *Pandora's Hope: Essays on the Reality of Science Studies* (Cambridge, Mass.: Harvard University Press, 1999); and Latour, *Politics of Nature*.

28. Latour, *Pandora's Hope*, 198.

29. Henri Bergson, *Creative Evolution* (New York: Barnes and Noble Books, 2005), xx. See also Michel Serres who I think is particularly eloquent on the relationship between the one and the many. He states, "We've never hit upon truly atomic, ultimate, indivisible terms that were not themselves, once again, composite. Not in the pure sciences and not in the worldly ones. The bottom always falls out of the quest for the elementary. The irreducibly individual recedes like the horizon, as our analysis advances" (Serres, *Genesis* [Ann Arbor: University of Michigan Press, 1995], 3).

30. Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge, Mass.: Harvard University Press, 1989); Timothy J. Reiss, *Mirages of the Selfe: Patterns of Personhood in Ancient and Early Modern Europe* (Stanford, Calif.: Stanford University Press, 2003); and Jerrold Seigel, *The Idea of the Self: Thought and Experience in Western Europe since the Seventeenth Century* (Cambridge: Cambridge University Press, 2005).

31. Maus, *Inwardness and Theater*; Elizabeth Hanson, *Discovering the Subject in Renaissance England* (Cambridge: Cambridge University Press, 1998).

32. René Descartes, *Discourse on Method and Meditations on First Philosophy*, trans. Donald Kress (Indianapolis, Ind.: Hackett, 1998), 18–19.

33. John Milton, *Paradise Lost*, ed. Alastair Fowler (London: Longman, 1998).

34. Richard Strier, *The Unrepentant Renaissance: From Petrarch to Shakespeare to Milton* (Chicago: University of Chicago Press, 2011), 207–47. See also Karl Joachim Weintraub, *The Value of the Individual* (Chicago: University of Chicago Press, 1978).

35. Harold J. Cook, *The Decline of the Old Medical Regime in Stuart London* (Ithaca, N.Y.: Cornell University Press, 1986), 423.

36. Andrew Wear, "Medicine in Early Modern Europe, 1500–1700," in *The Western Medical Tradition, 800 B.C. to A.D. 1800*, Lawrence I. Conrad, Michael Neve, Vivian Nutton, Roy Porter, and Andrew Wear (Cambridge: Cambridge University Press, 1995), 215–362 (253).

37. Michael C. Schoenfeldt, *Bodies and Selves in Early Modern England: Physiology and Inwardness in Spenser, Shakespeare, Herbert, and Milton* (Cambridge: Cambridge University Press, 1999).

38. See especially Gail Kern Paster, *Humoring the Body: Emotions and the Shakespearean Stage* (Chicago: University of Chicago Press, 2004); and Mary Floyd-Wilson and Garrett Sullivan, eds., *Environment and Embodiment in Early Modern England* (Basingstoke, Eng.: Palgrave Macmillan, 2007); as well as Mary

Floyd-Wilson, *English Ethnicity and Race in Early Modern England* (Cambridge: Cambridge University Press, 2003); Gail Kern Paster, Katherine Rowe, and Mary Floyd-Wilson, eds., *Reading the Early Modern Passions: Essays in the Cultural History of Emotion* (Philadelphia: University of Pennsylvania Press, 2004); and Victoria Kahn, Neil Saccamano, and Daniela Coli, eds., *Politics and the Passions, 1500–1800* (Princeton, N.J.: Princeton University Press, 2006).

39. Baruch Spinoza, *The Ethics, Treatise on the Emendation of the Intellect, and Selected Letters*, trans. Samuel Shirley, ed. Seymour Feldman (Indianapolis, Ind.: Hackett, 1992).

40. Henry Vaughan, *The Complete Poems*, ed. Alan Rudrum (London: Penguin Books, 1995).

41. John Donne, *The Complete English Poems*, ed. A. J. Smith (London: Penguin Books, 1977).

42. See Nancy Selleck, *The Interpersonal Idiom in Shakespeare, Donne, and Early Modern Culture* (Basingstoke, Eng.: Palgrave Macmillan, 2008).

43. See George Lakoff and Mark Johnson, *Philosophy in the Flesh: The Embodied Mind and Its Challenge to Western Thought* (New York: Basic Books, 1999), especially 267–89. James Kuzner coins the useful term "open subjects" in reference to similar ideas in seventeenth-century writing that engages with republicanism. See Kuzner, *Open Subjects: English Renaissance Republicans, Modern Selfhoods, and the Virtue of Vulnerability* (Edinburgh: Edinburgh University Press, 2011).

44. Immanuel Kant, "Toward Perpetual Peace: A Philosophical Project," in Immanuel Kant, *Practical Philosophy*, ed. Mary J. Gregor and Allen Wood (Cambridge: Cambridge University Press, 1996), 311–52 (328).

45. Bruce R. Smith, "Premodern Sexualities," *PMLA* 115 (2000): 318–29 (325).

46. Maurice Merleau-Ponty, *The Phenomenology of Perception* (London: Routledge, 2008), 5–14.

47. Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority*, trans. Alphonso Lingis (Pittsburgh, Pa.: Duquesne University Press, 1969).

48. Taylor, *Sources of Selfhood*, as well as "Cross-Purposes: The Liberal-Communitarian Debate," in *Philosophical Arguments* (Cambridge, Mass.: Harvard University Press, 1995), 181–203.

49. Paul Ricoeur, *Oneself as Another*, trans. Kathleen Blamey (Chicago: University of Chicago Press, 1992), 181.

Chapter One

1. S. F. C. Milsom, *Historical Foundations of the Common Law* (London: Butterworths, 1981), 99.

2. References to Shakespeare's works are from William Shakespeare, *The Riverside Shakespeare*, 2nd ed., gen. ed. G. Blakemore Evans (Boston: Houghton Mifflin, 1997).

3. Richard Helgerson, *Forms of Nationhood: The Elizabethan Writing of England* (Chicago: University of Chicago Press, 1992), 105–47 (108, 114). Garrett Sullivan takes a more pluralistic approach to "the cartographic conception of the nation," arguing that in *Richard II* "different characters appeal to different conceptions of the nation in order to shore up their authority and identity." See

Sullivan, *The Drama of Landscape: Land, Property, and Social Relations on the Early Modern Stage* (Stanford, Calif.: Stanford University Press, 1998), 112.

4. C. M. Gray, "Parliament, Liberty, and Law," in *Parliament and Liberty from the Reign of Elizabeth to the English Civil War*, ed. J. H. Hexter (Stanford, Calif.: Stanford University Press, 1992), 155–200 (179–80).

5. On the ideological dimension of land, see Raymond Williams, *The Country and the City* (Oxford: Oxford University Press, 1973); James Turner, *The Politics of Landscape: Rural Scenery and Society in English Poetry, 1630–60* (Oxford: Basil Blackwell, 1979); Don E. Wayne, *Penshurst: The Semiotics of Place and the Poetics of History* (Madison: University of Wisconsin Press, 1984).

6. See J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study in English Historical Thought in the Seventeenth Century* (Cambridge: Cambridge University Press, 1957); David Sugarman and Ronnie Warrington, "The Land Law, Citizenship, and the Invention of 'Englishness': The Strange World of the Equity of Redemption," in *Early Modern Conceptions of Property*, ed. John Brewer and Susan Staves (London: Routledge, 1995), 111–43.

7. Quoted from C. H. S. Fifoot, *Lord Mansfield* (Oxford: Oxford University Press, 1936), 181.

8. Frederick Pollock and Frederic William Maitland, *The History of English Law before the Time of Edward I*, 2 vols. (Cambridge: Cambridge University Press, 1952), 2:2–3.

9. A. W. B. Simpson, *The History of the Land Law* (Oxford: Clarendon, 1986), 85.

10. Edmund Plowden, *The Commentaries, or Reports of Edmund Plowden (1548–1579)*, 2 vols. (London, 1816), 2:555.

11. Simpson, *History of the Land Law*, 1–14.

12. See further, William Holdsworth, *A History of English Law*, 16 vols. (London: Methuen, 1908), 2:573–74.

13. Charles McIlwain, *The Political Works of James I* (Cambridge, Mass.: Harvard University Press, 1918), 299. For discussion, see Kevin Curran, *Marriage, Performance, and Politics at the Jacobean Court* (Aldershot, Eng.: Ashgate, 2009), 59–60.

14. On Richard's seizure of Bullingbrook's inheritance in act 2.1, see J. H. Hexter, "Property, Monopoly, and Shakespeare's *Richard II*," in *Culture and Politics from Puritanism to the Enlightenment*, ed. Perez Zagorin (Berkeley: University of California Press, 1980), 1–14; and Paul Raffield, *Shakespeare's Imaginary Constitution: Late Elizabethan Politics and the Theatre of Law* (Oxford: Hart, 2010), 82–116. Raffield finds a historical analogue for Richard's crime in Queen Elizabeth's attempts to apply divine-right theory in municipal legal contexts.

15. Sullivan, *The Drama of Landscape*, 14.

16. Katharine Eisaman Maus, *Being and Having in Shakespeare* (Oxford: Oxford University Press, 2013), 11.

17. Simpson, *History of the Land Law*, 103.

18. Holdsworth, *History of English Law*, 2:351.

19. Holdsworth, *History of English Law*, 2:486–88.

20. Edward Coke, *The First Part of the Institutes of the Laws of England* (London, 1628), 233v.

21. See, for example, *Calendar of Assize Records: Essex Indictments, James I*, ed. J. S. Cockburn (London: Her Majesty's Stationary Office, 1982), 680, 1486.

22. See "Saunders Case," in Edward Coke, *An Exact Abridgement in English of the Eleven Books of Reports of the Learned Sir Edward Coke* (London, 1650), 175.

23. See "Sir Henry Knivets Case," in Coke, *An Exact Abridgement*, 216–17.

24. Gilles Deleuze and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (Minneapolis: University of Minnesota Press, 1987), 88. See also 39–110 and 404–23.

25. Jane Bennett, *Vibrant Matter: A Political Ecology of Things* (Durham, N.C.: Duke University Press, 2010), x.

26. Bennett, *Vibrant Matter*, 31. See also Bruno Latour, *Politics of Nature: How to Bring the Sciences into Democracy* (Cambridge, Mass.: Harvard University Press), 237.

27. Bennett, *Vibrant Matter*, 32.

28. Bennett, *Vibrant Matter*, vii.

29. Pollock and Maitland, *History of English Law*, 2:144–45.

30. Pollock and Maitland, *History of English Law*, 2:150.

31. Bennett, *Vibrant Matter*, xvii.

32. Coke, *The First Part of the Institutes*, 105b, 108a. See also John Rastell, *The Exposicions of the Termes of the Laws in England* (London, 1567), 74r-v.

33. Anthony Parel, "Aquinas' Theory of Property," in *Theories of Property, Aristotle to the Present*, ed. Anthony Parel and Thomas Flanagan (Waterloo, Ont.: Wilfred Laurier University Press, 1979), 88–111 (89).

34. Thomas Aquinas, *Summa theologiae*, IaIIae 66, *articulus 1* and *2*, in Thomas Aquinas, *Political Writings*, ed. R. W. Dyson (Cambridge: Cambridge University Press, 2002), 205–9. For commentary, see Parel, "Aquinas' Theory of Property," 92–95.

35. Hugo Grotius, *De jure paraedae commentarius*, trans. G. L. Williams (Oxford: Clarendon, 1950), 227.

36. John Locke, *Two Treatises of Government (1690)*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 32.

37. Patricia Seed, *American Pentimento: The Invention of Indians and the Pursuit of Riches* (Minneapolis: University of Minnesota Press, 2001), 13–14.

38. See further, James Tully, *A Discourse on Property: John Locke and His Adversaries* (Cambridge: Cambridge University Press, 1980), esp. chaps. 1 and 3; Stephen Buckle, *Natural Law and the Theory of Property* (Oxford: Clarendon, 1991), 125–90; Richard Ashcraft, "Lockean Ideas, Poverty, and the Development of Liberal Political Theory," in *Early Modern Conceptions of Property*, ed. John Brewer and Susan Staves (London: Routledge, 1995), 43–61.

39. Locke, *Two Treatises*, 27–32, 41–44. For two different perspectives on Locke's argument, see Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 174–75; and Buckle, *Natural Law*, 152. On the early modern English context more generally, see Andrew McRae, *God Speed the Plough: The Representation of Agrarian England, 1500–1660* (Cambridge: Cambridge University Press, 1996).

40. W. B. Yeats, "At Stratford-Upon-Avon," in *Ideas of Good and Evil* (London: A. H. Bullen, 1903), 142–67 (162).

41. An innovative and enduring example of work in this vein is Scott McMillan's seminal essay, "Shakespeare's *Richard II*: Eyes of Sorrow, Eyes of Desire,"

Shakespeare Quarterly 35 (1984): 40–52. McMillan argues that one of the central subjects taken up by the play is "the problem of manifesting such inwardness in the theater" (45).

42. *Oxford English Dictionary*, "waste, *n.*" 2, 7c, 8a.

43. *Oxford English Dictionary*, "verge, *n 1.*," 9b, 10a.

44. Jonathan Gil Harris, *Untimely Matter in the Time of Shakespeare* (Philadelphia: University of Pennsylvania Press, 2009), 15, 89–139.

45. I wish to thank Rob Carson and Michael Ullyot for their help with the rhetorical features of this passage.

46. For more on property and time in *Richard II*, see Bradin Cormack's nuanced essay, "Shakespeare Possessed: Legal Affect and the Time of Holding," in *Shakespeare and the Law*, ed. Paul Raffield and Gary Watt (Oxford: Hart, 2008), 83–100. Commenting on York's lines, Cormack writes, "Richard profoundly misunderstands time's role in what can rightfully be called his" (88).

47. Maus, *Being and Having*, 29. And see Stopford Brooke's thorough study of Richard's character in "Purgation through Tragic Suffering in *Richard II*" (1905), in *Richard II: Shakespeare: The Critical Tradition*, ed. Charles R. Forker (London: Athlone, 1998), 404–18.

48. Amanda Bailey discusses the developing concept of "self-ownership" in the context of early modern debt law in *Of Bondage: Debt, Property, and Personhood in Early Modern England* (Philadelphia: University of Pennsylvania Press, 2013).

49. Locke, *Two Treatises*, 27.

50. According to Cormack, "*Richard II* serially links affect to possession" ("Shakespeare Possessed," 92).

51. Melissa Gregg and Gregory J. Seigworth, eds., *The Affect Studies Reader* (Durham, N.C.: Duke University Press, 2010), 2.

52. Gregg and Seigworth, eds., *Affect Studies*, 1.

53. *Oxford English Dictionary*, "care, *n.*," 1a, 2, 4a.

54. C. B. Macpherson, *The Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Clarendon, 1962), 263–78.

55. Spinoza, *Ethics*, 15.

56. Spinoza, *Ethics*, 72.

57. Spinoza, *Ethics*, 95.

58. Spinoza, *Ethics*, 76.

59. Gilles Deleuze, *Expressionism in Philosophy: Spinoza* (Cambridge, Mass.: Zone Books, 1992), 67.

60. Deleuze and Guattari, *A Thousand Plateaus*, 411.

61. Graham Harman, *Tool-Being: Heidegger and the Metaphysics of Objects* (Chicago: Open Court, 2002), 2.

Chapter Two

1. David B. Goldstein and Julia Reinhard Lupton, eds., *Shakespeare and Hospitality: Ethics, Politics, and Exchange* (London: Routledge, 2016). I thank the editors of this volume for sharing the proofs of the "Introduction" with me in advance of publication. See also Daryl Palmer, *Hospitable Performances: Dramatic Genre and Cultural Practices in Early Modern England* (West Lafayette, Ind.: Purdue University Press, 1992); Chris Meads, *Banquets Set Forth:*

Banqueting in English Renaissance Drama (Manchester: Manchester University Press, 2001); and Julia Reinhard Lupton, "*Macbeth*'s Martlets: Shakespearean Phenomenologies of Hospitality," *Criticism* 54 (2012): 365–76.

2. Kant, "Toward Perpetual Peace," 328.

3. References to *The Merchant of Venice* are from William Shakespeare, *The Riverside Shakespeare*, 2nd ed., gen. ed. G. Blakemore Evans (Boston: Houghton Mifflin, 1997).

4. References to the sonnets are from William Shakespeare, *The Complete Sonnets and Poems*, ed. Colin Burrow (Oxford: Oxford University Press, 2002).

5. On this sonnet, see David Schalkwyk, *Speech and Performance in Shakespeare's Sonnets and Plays* (Cambridge: Cambridge University Press, 2002), 208–10, as well as the more general discussion, 102–49.

6. M. P. Tilley, *A Dictionary of Proverbs in England in the Sixteenth and Seventeenth Centuries* (Ann Arbor: University of Michigan Press, 1950), M341.

7. Michael Spiller, *The Development of the Sonnet: An Introduction* (London: Routledge, 1992), 156.

8. Paul Innes, *Shakespeare and the English Renaissance Sonnet* (Basingstoke, Eng.: Palgrave Macmillan, 1997), 121, 143.

9. Stephen Booth, ed., *Shakespeare's Sonnets: Edited with Analytic Commentary* (New Haven, Conn.: Yale University Press, 1977), 191; Dympna Callaghan, *Shakespeare's Sonnets* (Malden, Mass.: Wiley-Blackwell, 2007), 102.

10. Desmond Manderson, *Proximity, Levinas, and the Soul of Law* (Montreal: McGill-Queen's University Press, 2006), 21.

11. Though see Peter Fitzpatrick's smart analysis of sociality in Hobbes's *Leviathan*: Peter Fitzpatrick, "Leveraging Leviathan," in *After Sovereignty: On the Question of Political Beginnings,* ed. Charles Barbour and George Pavlich (London: Routledge, 2010), 12–21.

12. Thomas Hobbes, *Leviathan*, ed. Richard E. Flathman and David Johnston (New York: W. W. Norton, 1997), 72.

13. Hobbes, *Leviathan*, 74.

14. Locke, *Two Treatises*, 266.

15. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971); Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974); Ernst Weinrib, "Corrective Justice and Formalism: The Care One Owes One's Neighbor," *Iowa Law Review* 77 (1992): 403–25. For discussion, see Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul, eds., *Natural Rights Liberalism from Locke to Nozick* (Cambridge: Cambridge University Press, 2005).

16. Peter Goodrich, *The Laws of Love: A Brief Historical and Practical Manual* (Basingstoke, Eng.: Palgrave Macmillan, 2006).

17. Even more so considering Goodrich's convincing arguments about the difficulty of "delineat[ing] a conceptual division between the two [i.e., law and love]" (*The Laws of Love*, 13).

18. Tracy McNulty, *The Hostess: Hospitality, Femininity, and the Expropriation of Identity* (Minneapolis: University of Minnesota Press, 2007), xii.

19. Genesis 19; Judges 19.

20. Edward Topsell, *The House-holder or Perfect Man* (London, 1607), 172. See also Caleb Dalechamp, *Christian Hospitality* (Cambridge, 1632), 68ff. Emmanuel Levinas discusses Abraham in "The Trace of the Other," in *Deconstruction*

in Context: Literature and Philosophy, ed. Mark Taylor (Chicago: University of Chicago Press, 1986), 345–59.

21. Tina Chanter, "Hands That Give and Take," in *Levinas, Law, and Politics*, ed. Marinos Diamantides (London: Routledge, 2007), 71–80 (77). See also Judith Butler's discussion of the relationship between Levinasian ethics and Zionism in *Parting Ways: Jewishness and the Critique of Zionism* (New York: Columbia University Press, 2012), 28–68.

22. Romans 12:13–14.

23. Jacques Derrida and Anne DuFourmantelle, *Of Hospitality* (Stanford, Calif.: Stanford University Press, 2000), 125, 43.

24. The definitive study of hospitality in early modern England is Felicity Heal, *Hospitality in Early Modern England* (Oxford: Oxford University Press, 1990). See also Palmer, *Hospitable Performances*.

25. James issued a total of three proclamations on this topic, in 1603, 1614, and 1615. See James F. Larkin and Paul F. Hughes, eds., *Stuart Royal Proclamations*, vol. 1: *Royal Proclamations of King James I, 1603–1625* (Oxford: Clarendon, 1973), 14–16, 44–45, 323–24, 356–58.

26. Derrida and DuFourmantelle, *Of Hospitality*, 77.

27. Derrida and DuFourmantelle, *Of Hospitality*, 79.

28. Levinas, *Totality and Infinity*; Emmanuel Levinas, *Otherwise Than Being, or Beyond Essence*, trans. Alphonso Lingis (Pittsburgh, Pa.: Duquesne University Press, 1998).

29. Levinas, *Totality and Infinity*, 37.

30. Descartes, *Discourse on Method*, 18.

31. Levinas, *Totality and Infinity*, 44.

32. Levinas, *Totality and Infinity*, 43.

33. Levinas, *Totality and Infinity*, 39–43; Levinas, *Otherwise Than Being*, 85.

34. Simon Critchley, *Infinitely Demanding: Ethics of Commitment, Politics of Resistance* (London: Verso, 2007), 10–11.

35. See, for example, Stewart Motha, "Mabo: Encountering the Epistemic Limit of the Recognition of 'Difference,' " *Griffith Law Review* 7 (1998): 79–96; Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford: Hart, 2000); Peter Fitzpatrick, *Modernism and the Grounds of Law* (Cambridge: Cambridge University Press, 2001); Marinos Diamantides, *The Ethics of Suffering: Modern Law, Philosophy, and Medicine* (Aldershot, Eng.: Ashgate, 2000); Marinos Diamantides, "In the Company of Priests: Meaninglessness, Suffering, and Compassion in the Thoughts of Nietzsche and Levinas," *Cardozo Law Review* 24 (2003): 1275–1307; and Manderson, *Proximity*.

36. I borrow the phrase "soul of law" from Manderson, whose general reading of Levinasian ethics is invoked at several points in this chapter. I do not follow Manderson's more specific linkage of Levinas and the law of torts, which has been critiqued by Upendra Baxi in "Judging Emmanuel Levinas? Some Reflections on Reading *Levinas, Law, Politics*," *Modern Law Review* 72 (2009): 116–29 (esp. 119, 125–26).

37. Derrida and DuFourmantelle, *Of Hospitality*, 139.

38. Sean Hand, *Emmanuel Levinas* (London: Routledge, 2009), 56.

39. Thinking in more general terms, John Michael Archer writes, "Shakespeare's sonnets are philosophical poetry because each poem keeps fundamental

questions about truth, being, and value in view" (Archer, *Technically Alive: Shakespeare's Sonnets* [Basingstoke, Eng.: Palgrave Macmillan, 2012], 1).

40. Emmanuel Levinas, *The Theory of Intuition in Husserl's Phenomenology* (Evanston, Ill.: Northwestern University Press, 1995), 150; Levinas, *Otherwise Than Being*, 64.

41. Heather Dubrow, "'Dressing Old Words New'?: Re-evaluating the 'Delian Structure,'" in *A Companion to Shakespeare's Sonnets*, ed. Michael Schoenfeldt (Malden, Mass.: Wiley-Blackwell, 2007), 90–103 (100).

42. Manderson, *Proximity*, 26.

43. Helen Vendler, *The Art of Shakespeare's Sonnets* (Cambridge, Mass.: Harvard University Press, 2007), 185.

44. Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1998), 7–8.

45. Joel Fineman, *Shakespeare's Perjured Eye: The Invention of Poetic Subjectivity in the Sonnets* (Berkeley: University of California Press, 1986), 247. On sonnets and interiority more generally, see Anne Ferry, *The "Inward" Language: Sonnets of Wyatt, Sidney, Shakespeare, Donne* (Chicago: University of Chicago Press, 1983).

46. Vendler, *Art*, 386.

47. Booth, *Shakespeare's Sonnets*, 191.

48. Michael Cameron Andrews, "Sincerity and Subterfuge in Three Shakespearean Sonnet Groups," *Shakespeare Quarterly* 33 (1982): 314–27 (322).

49. Scholars who do think of it in these terms draw, explicitly or implicitly, from Sigmund Freud, *The Unconscious* (London: Penguin, 2005); and Jacques Lacan, *The Language of the Self: The Function of Language in Psychoanalysis* (Baltimore: Johns Hopkins University Press, 1997).

50. Booth, *Shakespeare's Sonnets*, 213.

51. Vendler, *Art*, 185.

52. Kant, "Perpetual Peace," 28–29, 29.

53. On the relationship between the "myth of Venice" and early modern English literature, see David McPherson, *Shakespeare, Jonson, and the Myth of Venice* (Newark: University of Delaware Press, 1990); Blair Worden, "English Republicanism," in *The Cambridge History of Political Thought*, vol. 3, ed. J. H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991), 443–75 (446); Jonathan Bate, "The Elizabethans in Italy," in *Travel and Drama in Shakespeare's Time*, ed. Jean-Pierre Maquerlot and Michele Willems (Cambridge: Cambridge University Press, 1996), 55–74 (59); Stuart Gillespie, *Shakespeare's Books: A Dictionary of Shakespeare's Sources* (London: Continuum, 2001), 278; and David Norbrook, *Poetry and Politics in the English Renaissance* (Oxford: Oxford University Press, 2002), 87, 115, 118.

54. I borrow the term "sectarian" from Kenneth Gross, who makes the case (convincingly, I think) that "Shylock has to be saved from sectarian readings, whether Jewish or Christian." In his view, "the play refuses . . . the kind of factionalism of thought that provokes such readings" (Gross, *Shylock Is Shakespeare* [Chicago: University of Chicago Press, 2006], 10). Among studies that do take the dynamics of Christian and Jew as the primary frame of reference, a methodologically diverse set of examples would include Barbara K. Lewalski, "Biblical Allusion and Allegory in *The Merchant of Venice*," *Shakespeare Quarterly* 13

(1963): 327–43; Marc Shell, "The Weather and the Ewe: Verbal Usury," *Kenyon Review* 1 (1979): 65–92; John Colley, "Launcelot, Jacob, and Essau: Old and New Law in *The Merchant of Venice*," *Yearbook of English Studies* 10 (1980): 181–89; René Girard, "'To Entrap the Wisest,'" in *William Shakespeare's "The Merchant of Venice": Modern Critical Interpretations*, ed. Harold Bloom (New York: Chelsea House, 1986), 91–105; John Gross, *Shylock: A Legend and Its Legacy* (New York: Simon and Schuster, 1992); James Shapiro, *Shakespeare and the Jews* (New York: Columbia University Press, 1996); Martin Yaffe, *Shylock and the Jewish Question* (Baltimore: Johns Hopkins University Press, 1999); Janet Adelman, *Blood Relations: Christian and Jew in "The Merchant of Venice"* (Chicago: University of Chicago Press, 2008). For some noteworthy exceptions to this line of inquiry, see, in addition to Gross, Julia Reinhard Lupton, who channels the play's religious energies into a larger discussion of citizenship (Lupton, *Citizen-Saints: Shakespeare and Political Theology* [Chicago: University of Chicago Press, 2005]); and Henry S. Turner, who focuses on how the play treats friendship as a political, mathematical, and ethical problem (Turner, "The Problem of the More-Than-One: Friendship, Calculation, and Political Association in *The Merchant of Venice*," *Shakespeare Quarterly* 57 [2006]: 413–42).

55. These ideas developed out of perceptive feedback from Julia Reinhard Lupton.

56. Gross, *Shylock Is Shakespeare*, ix.

57. Lupton discusses Shylock's limited citizenship in *Citizen-Saints*, 73–101. See also John Michael Archer, *Citizen Shakespeare: Freemen and Aliens in the Language of the Plays* (Basingstoke, Eng.: Palgrave Macmillan, 2005), 39–46.

58. Kant, "Perpetual Peace," 328–29.

59. Kant, "Perpetual Peace," 329.

60. Kant, "Perpetual Peace," 337.

61. Kant, "Perpetual Peace," 336.

62. Kant, "Perpetual Peace," 328.

63. Kant, "Perpetual Peace," 318, 328, 333.

64. McNulty, *The Hostess*, 52.

65. Kant, "Perpetual Peace," 328.

66. McNulty, *The Hostess*, 52.

67. See further, Dennis Romano, *Patricians and Popolani: The Social Foundations of the Venetian Renaissance State* (Baltimore: Johns Hopkins University Press, 1987), 2.

68. George Buchanan, *De juri regni apud scotos* (Edinburgh, 1579), 189–91.

69. Brian Pullan, "'Three Orders of Inhabitants: Social Hierarchies in the Republic of Venice," in *Orders and Hierarchies in Late Medieval and Renaissance Europe*, ed. Jeffrey Denton (Toronto: University of Toronto Press, 1999), 147–68 (150).

70. Romano, *Patricians and Popolani*, 10.

71. Pullan, "Three Orders," 160–68; Robert C. Davis and Benjamin Ravid, eds., *The Jews of Early Modern Venice* (Baltimore: Johns Hopkins University Press, 2001).

72. William Thomas, *Historie of Italie* (London, 1549), 73–82 (82). Andrew Hadfield discusses Thomas's book in *Shakespeare and Republicanism* (Cambridge: Cambridge University Press, 2005), 40–41.

73. Thomas, *Historie*, 85–86.

74. For discussion, see Hadfield, *Shakespeare and Republicanism*, 41.

75. Hadfield, *Shakespeare and Republicanism*, 43.

76. Lewis Lewkenor, *Commonwealth and Government of Venice* (London, 1599), A1v–A2r.

77. Lewkenor, *Commonwealth*, A2r.

78. Lewkenor, *Commonwealth*, 1.

79. Lewkenor, *Commonwealth*, 5.

80. Lupton, *Citizen-Saints*, 83–84.

81. Turner, "The Problem of the More-Than-One," 422.

82. I borrow the term "dividual" from Simon Critchley, *Infinitely Demanding*, 11.

83. Bonnie Honig, *Democracy and the Foreigner* (Princeton, N.J.: Princeton University Press, 2001), 29, 31.

Chapter Three

1. *Minority Report*, dir. Steven Spielberg (Los Angeles: DreamWorks, 2002); Philip K. Dick, "The Minority Report," in *The Minority Report and Other Classic Stories* (New York: Citadel, 2002), 71–102.

2. William Holdsworth, *A History of English Law*, 16 vols. (London: Methuen, 1908), 2:228–29; Cynthia B. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge: Cambridge University Press, 1987), 2–3; Richard Firth Green, *A Crisis of Truth: Literature and Law in Ricardian England* (Philadelphia: University of Pennsylvania Press, 1999), 88, 119. See also Lorna Hutson's discussion in *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford: Oxford University Press, 2007), 12–63.

3. Edmund Plowden, *Les Commentaries, ou les reportes de Edmund Plowden* (London, 1571), quoted in translation from Eugene Chesney, "The Concept of *mens rea* in the Criminal Law," *Journal of Criminal Law and Criminology* 29 (1939): 627–64 (633).

4. References to Shakespeare's works are from William Shakespeare, *The Riverside Shakespeare*, 2nd ed., gen. ed. G. Blakemore Evans (Boston: Houghton Mifflin, 1997).

5. Coke, *The Third Part of the Institutes*, B3v. On the Edwardian statute and the medieval context of treason more generally, see John G. Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge: Cambridge University Press, 1970); and Green, *A Crisis of Truth*, 206–47.

6. Merleau-Ponty, *Phenomenology of Perception*, 5–14.

7. John G. Bellamy, *The Tudor Law of Treason: An Introduction* (London: Routledge and Kegan Paul, 1979), 10–11.

8. Bellamy, *Tudor Law*, 12.

9. For ease of reference, statutes are cited parenthetically. Details for all statutes can be found in *Statutes of the Realm, 1101–1713*, ed. A. Luders et al., 11 vols. (London, 1810–28).

10. This specifically verbal component of treason, which emerged explicitly for the first time during Henry's reign, is the focus of Rebecca Lemon's book, *Treason by Words: Literature, Law, and Rebellion in Shakespeare's England* (Ithaca, N.Y.: Cornell University Press, 2006).

11. Bellamy, *Tudor Law*, 32.

12. Bellamy, *Tudor Law*, 51.

13. J. M. Kaye, "The Early History of Murder and Manslaughter" (parts 1 and 2), *Law Quarterly Review* 83 (1967): 365–95, 569–601; Thomas A. Green, "The Jury and the English Law of Homicide," *Michigan Law Review* 74 (1976): 462–87.

14. Coke, *The Third Part of the Institutes*, 51; Matthew Hale, *Pleas of the Crown, or, a Methodical Summary of the Principal Matters Relating to That Subject* (London, 1682), 43.

15. Henry de Bracton, *On the Laws and Customs of England*, ed. Samuel E. Thorne, 4 vols. (Cambridge, Mass.: Belknap, 1968), 2:289–90.

16. See Henry John Roby's discussion of the fragmentary *Pro Tullio* in *Roman Private Law in the Times of Cicero and the Antoines*, 2 vols. (1902; repr., Clark, N.J.: Law Exchange, 2000), 1:503–10. The seminal study of Roman law in the Middle Ages remains Paul Vinogradoff, *Roman Law in Medieval Europe* (Oxford: Clarendon, 1929).

17. Chesney, "Concept of *Mens Rea*," 631; Frederick Pollock and Frederic William Maitland, *The History of the English Law before the Time of Edward I*, 2nd ed., 2 vols. (Cambridge: Cambridge University Press, 1898), 1:447. See also Holdsworth, *History of English Law*, 2:258–59.

18. On absolute liability and the folk law tradition in early medieval England, see Green, *A Crisis of Truth*, 78–120, 293–335. On Oliver Wendell Holmes and liability, see Grant Gilmore, *The Death of Contract* (Columbus: Ohio State University Press, 1974), esp. chap. 1.

19. For more on these trials, see Karen Cunningham, *Imaginary Betrayals: Subjectivity and the Discourse of Treason in Early Modern England* (Philadelphia: University of Pennsylvania Press, 2002), 13–15.

20. Thomas Stapleton, *The Life and Illustrious Martyrdom of Sir Thomas More* (1588), trans. Philip E. Hallet (London: Burnes, Oates, and Washburn, 1928), 192.

21. See Peter Lake, "Religious Identities in Shakespeare's England," in *A Companion to Shakespeare*, ed. David Scott Kastan (Malden, Mass.: Wiley-Blackwell, 1999), 57–84; Robert Watson, *Back to Nature: The Green and the Real in the Late Renaissance* (Philadelphia: University of Pennsylvania Press, 2006), 11; and, more generally, Lowell Gallagher, *Medusa's Gaze: Casuistry and Conscience in the Renaissance* (Stanford, Calif.: Stanford University Press, 1991).

22. George Wither, *A Collection of Emblems* (London, 1635), 73.

23. This may seem unnecessarily convoluted, but as per Augustine's *De mendacio* and *Contra mendacio*, outright lying was still considered a sin. This is one context in which to view the vast culture of religious dissimulation that arose in Renaissance Europe during the sixteenth and seventeenth centuries, a period marked by deep confessional rifts both between and within kingdoms. Just as there were Catholics who sought to avoid detection in Protestant England, there were crypto-Protestants who sought to avoid detection on the Catholic mainland and in England during Mary's reign. The most comprehensive study of these matters is Perez Zagorin's *Ways of Lying: Dissimulation, Persecution, and Conformity in Early Modern Europe* (Cambridge, Mass.: Harvard University Press, 1990). See also Janet Halley, "Equivocation and the Legal Conflict Over Religious Identity

in Early Modern England," *Yale Journal of Law and the Humanities* 3 (1991): 33–52; Olga Valbuena-Hanson, *Subjects to the King's Divorce: Equivocation, Infidelity, and Resistance in Early Modern England* (Bloomington: Indiana University Press, 2003); and Arthur Kinney, *Lies Like Truth: Shakespeare*, "*Macbeth,*" *and the Cultural Moment* (Detroit: Wayne State University Press, 2001), 230–41.

24. Christopher Bagshaw, *A Sparing Discoverie of Our English Jesuits* (London, 1601), 7–8, 11–12; William Watson, *A Decacordon of Ten Quodlibetical Questions Concerning Religion and State* (London, 1612), 66.

25. The *Treatise* was published anonymously and Garnet's identity as the author was not known at that time. He was executed for other forms of complicity with the plot. See Kinney, *Lies like Truth*, 236–38; as well as Frank L. Huntley, "*Macbeth* and the Background of Jesuitical Equivocation," *PMLA* 79 (1964): 390–400; and A. E. Maloch, "Father Henry Garnet's Treatise of Equivocation," *Recusant History* 15 (1981): 387–95.

26. *A True and Perfect Relation of the Whole Proceedings against the Late Most Barbarous Traitors* (London, 1606), H4v, I1.

27. In *A Briefe Treatise of Oaths Enacted by Ordinaries and Ecclesiastical Judges* (London, 1593), the Puritan lawyer James Morris condemned this sort of oath-taking as illegal even before James's controversial use of it (18). The issue is addressed by Roland G. Usher, *The Rise and Fall of the High Commission* (Oxford: Oxford University Press, 1968); Geoffrey Elton, *The Tudor Constitution: Documents and Commentary* (Cambridge: Cambridge University Press, 1982), 218–32; and Zagorin, *Ways of Lying*, 224–33, who calls the sixteenth and seventeenth centuries "the age par excellence of the English state's use of oaths and subscriptions as compulsory tests of belief and obedience" (224).

28. See Usher, *High Commission*, 127–28; Zagorin, *Ways of Lying*, 232.

29. Quoted from Bellamy, *Tudor Law*, 55.

30. T. B. Howell, ed., *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors from the Earliest Period to the Year 1783*, 21 vols. (London, 1816), 1:1411–12. See also Alan Stewart, "Instigating Treason: The Life and Death of Henry Cuffe, Secretary," in *Literature, Politics, and Law in Renaissance England*, ed. Erica Sheen and Lorna Hutson (Basingstoke, Eng.: Palgrave Macmillan, 2005), 50–70.

31. Howell, *State Trials*, 1:1411.

32. Howell, *State Trials*, 1:1412.

33. Howell, *State Trials*, 1:1412; *Public Record Office State Papers*, 12/279, 36r.

34. Camille Wells Slights, *The Casuistical Tradition in Shakespeare, Donne, Herbert, and Milton* (Princeton, N.J.: Princeton University Press, 1981), 111.

35. John S. Wilks, *The Idea of Conscience in Renaissance Tragedy* (London: Routledge, 1990), 130.

36. Abraham Stoll, "*Macbeth*'s Equivocal Conscience," in *Macbeth: New Critical Essays*, ed. Nick Moschovakis (London: Routledge, 2008), 132–50. See also Ned Lukacher's sophisticated study of the role of conscience in Shakespeare, *Daemonic Figures: Shakespeare and the Question of Conscience* (Ithaca, N.Y.: Cornell University Press, 1994), esp. 162–93.

37. Though she does not discuss law or criminality, I am very sympathetic to Marjorie Garber's shrewd reading of *Macbeth* in which she describes the theme

of consciousness as one "which unites the inner world of private vision and the outer world of visible reality" (Garber, *Dream in Shakespeare: From Metaphor to Metamorphosis* [New Haven, Conn.: Yale University Press, 1974], 91).

38. Carla Mazzio writes beautifully on tactility and early modern theater in "Acting with Tact: Touch and Theater in the Renaissance," in *Sensible Flesh: On Touch in Early Modern Culture*, ed. Elizabeth D. Harvey (Philadelphia: University of Pennsylvania Press, 2003), 159–86. See, as well, Bruce R. Smith's *Phenomenal Shakespeare* (Malden, Mass.: Wiley-Blackwell, 2010), 132–76.

39. Jonathan Gil Harris, *Untimely Matter in the Time of Shakespeare* (Philadelphia: University of Pennsylvania Press, 2009), 2.

40. Throughout this chapter, "intent" and "intention" refer to the basic idea of premeditation, whereas "intentional" and "intentionality" refer to phenomenology's model of consciousness and experience.

41. Husserl dealt with these ideas throughout his career, but the foundational texts are *Logical Investigations*, trans. J. N. Findlay (Amherst, N.Y.: Humanity Books, 2000) and *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy*, trans. F. Kersten (Dordrecht: Kluwer Academic Publishers, 1983). Also useful are Dermot Moran, *Introduction to Phenomenology* (London: Routledge, 2000); and Robert Sokolowski, *Introduction to Phenomenology* (Cambridge: Cambridge University Press, 2000).

42. Husserl, *Ideas*, 211–325.

43. A strong trend in the theater, from the eighteenth century to the present, has been to have the actor playing Macbeth vacillate between conceiving the dagger as a material entity and as a projection of the mind. For a variety of examples, see Arthur Murphy, *The Life of David Garrick Esq.*, 2 vols. (Dublin, 1801), 1:81; F. W. Hawkins, *The Life of Edmund Kean*, 2 vols. (London, 1869), 1:272; W. May Phelps and John Forbes-Robertson, *The Life and Life-Work of Samuel Phelps* (London, 1886), 101; Richard David, "The Tragic Curve," *Shakespeare Survey* 9 (1956): 128–29; and John Wilders, ed., *Macbeth* (Cambridge: Cambridge University Press, 2004), 115.

44. Tim Bayne, "The Phenomenology of Agency," *Philosophy Compass* 3 (2008): 182–202.

45. Martin Heidegger, *Being and Time*, trans. Joan Stambaugh (Albany: SUNY Press, 1996), 78–90.

46. Hannah Arendt, *The Life of the Mind* (San Diego: Harcourt, 1978), 56.

47. Merleau-Ponty, *Phenomenology of Perception*, xii. Merleau-Ponty directly rebukes Augustine's famous dictum from *De vera religione*: *in te redi, in interiore homine habitat veritas* ("return into yourself, in the inner man dwells truth").

48. Merleau-Ponty, *Phenomenology of Perception*, vii.

49. Merleau-Ponty, *Phenomenology of Perception*, 373.

50. Merleau-Ponty, *Phenomenology of Perception*, 241.

51. See Aristotle, *On the Soul, Parva Naturalia, On Breath*, trans. W. S. Hett (Cambridge, Mass.: Harvard University Press, 1936), 1–205; and, for discussion, Erica Fudge, *Brutal Reasoning: Animals, Rationality, and Humanity in Early Modern England* (Ithaca, N.Y.: Cornell University Press, 2006), 7–38.

52. Thomas Aquinas, *The Treatise on Human Nature*, trans. Robert Pasnau (Indianapolis, Ind.: Hackett, 2002). For discussion, see Norman R. Kretzmann, "Philosophy of Mind," in *The Cambridge Companion to Thomas Aquinas*, ed.

Norman R. Kretzmann (Cambridge: Cambridge University Press, 1993), 128–59; Robert Pasnau, *Theories of Cognition in the Later Middle Ages* (Cambridge: Cambridge University Press, 1997), 11–17, 31–62; and Pasnau, *Thomas Aquinas on Human Nature* (Cambridge: Cambridge University Press, 2002).

53. See Ted Schmaltz, "The Science of Mind," in *The Cambridge Companion to Early Modern Philosophy*, ed. Donald Rutherford (Cambridge: Cambridge University Press, 2006), 157. On neo-Scholasticism, see M. W. F. Stone, "Aristotelianism and Scholasticism in Early Modern Philosophy," in *The Blackwell Companion to Early Modern Philosophy*, ed. Stephen Nadler (Malden, Mass.: Wiley-Blackwell, 2002), 7–25; and Stone, "Scrupulosity, Probabilism, and Conscience: The Origins of the Debate in Early Modern Scholasticism," in *Contexts of Conscience in Early Modern Europe, 1500–1700*, ed. Harald Braun and Edward Vallance (Basingstoke, Eng.: Palgrave Macmillan, 2004), 507–50; Merleau-Ponty, *Phenomenology*, vii (emphasis added).

54. Merleau-Ponty, *Phenomenology*, vii (emphasis added).

55. Sokolowski, *Introduction*, 206, 202.

56. James Kearney and I have written on phenomenology as an "intellectual diaspora" in the "Introduction" to *Criticism* 54 (2012): 353–64, special issue on "Shakespeare and Phenomenology," ed. Kevin Curran and James Kearney.

57. Curran and Kearney, "Introduction," 358–59.

58. Edmund Husserl, *On the Phenomenology of the Consciousness of Internal Time* (Dordrecht: Kluwer Academic Publishers, 2008); Alfred Schutz, *The Phenomenology of the Social World* (Evanston, Ill.: Northwestern University Press, 1967). Consider, also, Heidegger's argument that "temporality temporalizes itself as a future which moves into the past in coming to the present" (*Being and Time*, 321) and Jean-François Lyotard's description of the phenomenology of history in which "each now takes up the presence of a 'no longer' that it pushes into the past, and anticipates the presence of a 'not yet' which will push it in turn." "The present," Lyotard maintains, "is not closed, but transcends itself toward a future and a past" (*Phenomenology*, trans. Brain Beakley [Albany: SUNY Press, 1991], 116.)

59. Luke Wilson has argued that internal time-consciousness pervades Shakespeare's work. See "*Hamlet*, *Hales v. Petit*, and the Hysteresis of Action," *English Literary History* 60 (1993): 17–56 (esp. 25).

60. Mary Floyd-Wilson discusses these lines from the perspective of humoral theory in "English Epicures and Scottish Witches," *Shakespeare Quarterly* 57 (2006): 131–61.

61. The link between theater and theory (conceptual and etymological) has been noted by Nikolas Lobkowicz, *Theory and Practice: History of a Concept from Aristotle to Marx* (Notre Dame, Ind.: Notre Dame University Press, 1967), 7 n.9; Martin Heidegger, "Science and Reflection," in *The Question Concerning Technology and Other Essays*, ed. W. Lovitt (New York: Harper and Row, 1977), 163–66; David Michael Levin, *The Opening of Vision: Nihilism and the Postmodern Situation* (London: Routledge, 1988), 100, 164; William N. West, *Theaters and Encyclopedias in Renaissance Europe* (Cambridge: Cambridge University Press, 2002), 47; Paul Kottman, *A Politics of the Scene* (Stanford, Calif.: Stanford University Press, 2008), 30–35.

62. *Oxford English Dictionary*, "theatre, theater, *n.*," 1; West, *Theaters and Encyclopedias*, 46.

63. *Oxford English Dictionary*, "theory," 1; F. E. Peters, *Greek Philosophical Terms: A Historical Lexicon* (New York: New York University Press, 1967), 194.

64. Michel Serres, *Hermes-Literature, Science, Philosophy*, ed. Josue Harari and David F. Bell (Baltimore: Johns Hopkins University Press, 1981), 88 (emphasis added).

65. West, *Theaters and Encyclopedias*, 6.

66. Jacques Taminiaux, *The Thracian Maid and the Professional Thinker: Heidegger and Arendt* (Albany: SUNY Press, 1997), 108; Kottman, *Politics of the Scene*, 4–5, 30–35.

67. Taminiaux, *The Thracian Maid*, 108.

68. Taminiaux, *The Thracian Maid*, 108.

69. See further, Levin, *Opening of Vision*, 100; Kottman, *Politics of the Scene*, 32.

70. Alain Badiou, "Theses on Theater," in *Handbook of Inaesthetics*, trans. Alberto Toscano (Stanford, Calif.: Stanford University Press, 2005), 72. See also Badiou's "Rhapsody for the Theater: A Short Philosophical Treatise," in *Rhapsody for the Theater*, ed. and trans. Bruno Bosteels (London: Verso, 2013), 1–92.

71. Plotinus, *Ennead III*, trans. A. H. Armstrong (Cambridge, Mass.: Harvard University Press, 1967), 2–7, 8; Plotinus, *Ennead IV*, trans. A. H. Armstrong (Cambridge, Mass.: Harvard University Press, 1984), 4, 13.

72. Aristotle, *Nicomachean Ethics*, trans. H. Rackham (Cambridge, Mass.: Harvard University Press, 1934), bk. 1; Aristotle, *Politics*, trans. H. Rackham (Cambridge, Mass.: Harvard University Press, 1932), bk. 7.

73. See, for example, Cicero, *On Duties*, trans. Walter Miller (Cambridge, Mass.: Harvard University Press, 1913); Seneca, *Epistles 1–65*, trans. Richard M. Gummere (Cambridge, Mass.: Harvard University Press, 1917), esp. 14, 19, 20; Seneca, *Epistles 66–92*, trans. Richard M. Gummere (Cambridge, Mass.: Harvard University Press, 1920), esp. 68, 73; Seneca, *Moral Essays II*, trans. John W. Basore (Cambridge, Mass.: Harvard University Press, 1932), chaps. 3, 5.

74. Descartes, *Discourse on Method,* 21. For a smart discussion of this passage, see Levin, *Opening of Vision*, 95–96.

75. See Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge, Mass.: Harvard University Press, 1989). Donna Haraway's influential feminist critique of the disembodied epistemologies of science can be found in "Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective," *Feminist Studies* 14 (1988): 524–83. Descartes's description of the relationship between seeing and knowing in *Meditations* sets the scene for early eighteenth-century works like Isaac Newton, *Opticks* (London, 1704) and George Berkeley, *An Essay towards a New Theory of Vision* (Dublin, 1709).

76. James Hirsch's argument that Shakespeare's soliloquies are always either self-addressed or audience-addressed speeches, and never performances of thought, is overstated (Hirsch, *Shakespeare and the History of Soliloquies* [Madison, N.J.: Fairleigh Dickinson University Press, 1997]). For an incisive critique, see Margaret Maurer's review of Hirsch's book in *Shakespeare Quarterly* 56 (2005): 504–7, and for a more nuanced discussion of the soliloquies themselves, see Wolfgang Clemen, *Shakespeare's Soliloquies* (London: Routledge, 2005).

77. Andrew James Hartley, "Page and Stage Again: Rethinking Renaissance Character Phenomenologically," in *New Directions in Renaissance Drama and*

Performance Studies, ed. Sarah Werner (Basingstoke, Eng.: Palgrave Macmillan, 2010), 77–91 (83).

78. The direct source for this anecdote, a treatise by Heracleides of Pontus, is lost. We must rely instead on accounts by Cicero (*Tusculan Disputations*, bk. 5) and Iamblichus (*Life of Pythagoras*, chap. 12).

79. Arendt, *The Life of the Mind*, 94.

80. West, *Theaters and Encyclopedias*, 1, 45.

81. Thomas Elyot, *The Image of Governance* (London, 1541), 42v.

82. West, *Theaters and Encyclopedias*, 3 (emphasis added).

Chapter Four

1. Thomas Blundeville, *The Arte of Logicke* (London, 1599).

2. Quentin Skinner, *Forensic Shakespeare* (Oxford: Oxford University Press, 2015), 11–25; Henry S. Turner, *The English Renaissance Stage: Geometry, Poetics, and the Practical Spatial Arts* (Oxford: Oxford University Press, 2006), 45–55.

3. Jon Hesk, "Types of Oratory," in *The Cambridge Companion to Ancient Rhetoric*, ed. Erik Gunderson (Cambridge: Cambridge University Press, 2009), 145–61 (150–56).

4. Peter Mack, *Elizabethan Rhetoric: Theory and Practice* (Cambridge: Cambridge University Press, 2002), 11–47; Skinner, *Forensic Shakespeare*, 25–41.

5. See further, T. W. Baldwin, *William Shakespeare's "Small Latine & Lesse Greeke,"* 2 vols. (Urbana: University of Illinois Press, 1944); Emrys Jones, *The Origins of Shakespeare* (Oxford: Oxford University Press, 1977); Joel B. Altman, *The Tudor Play of Mind: Rhetorical Inquiry and the Development of Elizabethan Drama* (Berkeley: University of California Press, 1978); Skinner, *Forensic Shakespeare*. For a wide-ranging account of the place of judgment in Shakespeare's theater, one that includes but also extends beyond the rhetorical context, see Kevin Curran, ed., *Shakespeare and Judgment* (Edinburgh: Edinburgh University Press, 2016).

6. See especially Kathy Eden, *Poetic and Legal Fiction in the Aristotelian Tradition* (Princeton, N.J.: Princeton University Press, 1986), 176–84; Turner, *English Renaissance Stage*; Lorna Hutson, *The Invention of Suspicion: Law and Mimesis in Shakespeare and Renaissance Drama* (Oxford: Oxford University Press, 2007) and *Circumstantial Shakespeare* (Oxford: Oxford University Press, 2015); Joel B. Altman, *The Improbability of "Othello": Rhetorical Anthropology and Shakespearean Selfhood* (Chicago: University of Chicago Press, 2010); Skinner, *Forensic Shakespeare*.

7. John Langbein, *Prosecuting Crime in the Renaissance: England, Germany, France* (Cambridge, Mass.: Harvard University Press, 1974), 104–28; "The Criminal Trial Before the Lawyers," *University of Chicago Law Review* 45 (1978): 263–316; J. S. Cockburn, *Calendar of Assize Records: Introduction* (London: Her Majesty's Stationary Office, 1985), chaps. 6, 8, and "Conclusion"; J. H. Baker, *The Legal Profession and The Common Law: Historical Essays* (London: Hambledon, 1986), 474–76.

8. Baker, *Legal Profession*, 474.

9. See, for example, Plowden, *Les Commentaries,* and *Cy ensuont certeyne cases reportes per Edmunde Plowden* (London, 1579).

10. Baker, *Legal Profession*, 461–76; J. H. Baker, *An Introduction to English Legal History* (Oxford: Oxford University Press, 2002), 195–99; Cynthia Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge: Cambridge University Press, 1987), 158–59.

11. Immanuel Kant, *Critique of Judgment*, trans. Werner S. Pluhar (Indianapolis, Ind.: Hackett, 1987). Hannah Arendt's work on judgment is spread across a number of her writings. See especially, "The Crisis in Culture: Its Social and Its Political Significance" and "Truth and Politics," in *Between Past and Future: Eight Exercises in Political Thought* (London: Penguin Books, 1993), 197–226, 227–64; Arendt, "Personal Responsibility under Dictatorship" and "Some Questions of Moral Philosophy," in *Responsibility and Judgment*, ed. Jerome Kohn (New York: Random House, 2003), 17–48, 49–146; Arendt, *The Life of the Mind* (San Diego: Harcourt, 1978), 69, 93–95, 193. In addition to the two completed volumes of *The Life of the Mind*—"Thinking" and "Willing"—Arendt had intended to produce a third, on "Judging." She died before she was able to complete this section but much of the raw material for it can be found in the appendix to the Harcourt edition of *The Life of the Mind* (255–72), "Judging: Excerpts from Lectures on Kant's Political Philosophy."

12. Kant, *Critique of Judgment*, 160.

13. Arendt, "The Crisis in Culture," in *Between Past and Future*, 221.

14. G. W. F. Hegel, "Dramatic Poetry," in *Aesthetics: Lectures on Fine Art: Volume 2*, ed. T. M. Knox (Oxford: Oxford University Press, 1998), 1158–1238; A. C. Bradley, "The Substance of Shakespearean Tragedy," in *Shakespearean Tragedy* (London: Penguin Books, 1991), 23–51. Margreta De Grazia overviews the critical preoccupation with Hamlet's inner life in *"Hamlet" without Hamlet* (Cambridge: Cambridge University Press, 2007), 7–22.

15. John Lee, *Shakespeare's "Hamlet" and the Controversies of Self* (Oxford: Clarendon, 2000), 1.

16. Søren Kierkegaard, *The Sickness Unto Death*, trans. Alastair Hannay (London: Penguin Books, 1989), 62–63; Heidegger, *Being and Time*, 119.

17. Peter Holbrook, *Shakespeare's Individualism* (Cambridge: Cambridge University Press, 2010), 50, 51.

18. References to Shakespeare's works are from William Shakespeare, *The Riverside Shakespeare*, 2nd ed., gen. ed. G. Blakemore Evans (Boston: Houghton Mifflin, 1997).

19. Eden, *Poetic and Legal Fiction*.

20. The best primary sources for the Quarter Sessions are William Lombarde, *Eirenarcha: or the Office of the Justices of the Peace* (London, 1581); and Michael Dalton, *The Countrey Justice* (London, 1618). For the Assizes, see J. S. Cockburn, ed., *Calendar of Assize Records*, 11 vols. (London: Her Majesty's Stationary Office, 1975–1985); Cockburn, *A History of English Assizes, 1558–1714* (Cambridge: Cambridge University Press, 1972); Cockburn, "Early Modern Assize Records as Historical Evidence," *Journal of the Society of Archivists* 5 (1975): 215–31.

21. Lombarde, *Eirenarcha*, 57–58, 455.

22. Lombarde, *Eirenarcha*, 286.

23. Lombarde, *Eirenarcha*, 294–95.

24. Lombarde, *Eirenarcha*, 304, 308.

25. Dalton, *Countrey Justice*, 4–6, 13–17, 23–27.

26. Richard Bernard, *The Isle of Man, or, The Legall Proceedings in Man-Shire against Sinne* (London, 1627), 129–30.

27. Hutson, *Invention of Suspicion*, 43.

28. Discussions of *decorum* can be found in Michael Moriarty, "Principles of Judgement: Probability, Decorum, Taste, and the *Je Ne Sais Quoi*," in *The Cambridge History of Literary Criticism*, vol. 3: *The Renaissance*, ed. Glyn P. Norton (Cambridge: Cambridge University Press, 1999), 522–28; and Brian Vickers, ed., *English Renaissance Literary Criticism* (Oxford: Oxford University Press, 1999), 44–55.

29. Madeleine Doran, *Endeavors of Art: A Study of Form in Elizabethan Drama* (Madison: University of Wisconsin Press, 1954), 16–17, 33–34, 148–71, 174–75, 234–35.

30. Thomas Wilson, *The Arte of Rhetorique* (London, 1553), 123.

31. Robert Ascham, *The Schoolmaster* (London, 1570), 151.

32. Sir John Harrington, *Apology for Ariosto* (London, 1591), 318.

33. Philip Sidney, *The Defense of Poesy* (London, 1595), 17.

34. Sidney, *Defense of Poesy*, 18 (emphasis added).

35. Samuel Daniel, *A Defense of Rhyme* (London, 1603), 213.

36. Sir William Alexander, *Anacrisis; or a Censure of Some Poets Ancient and Modern* (London, 1634), 298.

37. Henry Peacham, *The Garden of Eloquence* (London, 1577), 250.

38. Eden, *Poetic and Legal Fiction*, 180.

39. This passage is frequently read in reference to the competition between adult and children's playing companies in London. See Alfred Harbage, *Shakespeare and the Rival Traditions* (New York: Macmillan, 1952); Andrew Gurr, *Playgoing in Shakespeare's London* (Cambridge: Cambridge University Press, 1987), 184–90; James Bednarz, *Shakespeare and the Poets' War* (New York: Columbia University Press, 2001); Roslyn Knutson, *Playing Companies and Commerce in Shakespeare's Time* (Cambridge: Cambridge University Press, 2001).

40. Arthur Colby Sprague and J. C. Trewin, *Shakespeare's Plays Today: Some Customs and Conventions of the Stage* (Columbia: University of South Carolina Press, 1971), 26.

41. *Oxford English Dictionary*, "process, n.2," 5a.

42. Line reference from William Shakespeare, *Hamlet*, ed. G. R. Hibbard (Oxford: Oxford University Press, 1987).

43. The most comprehensive discussion of "The Mouse-trap" remains J. Dover Wilson's in *What Happens in "Hamlet"* (Cambridge: Cambridge University Press, 1935), 137–98.

44. Anonymous, *A Warning for Fair Women*, ed. Charles D. Canon (The Hague: Mouton, 1975).

45. Thomas Dekker, *An Apology for Actors* (London, 1612), bk. 3.

46. On theatrical epilogues and the role of the audience, see Tiffany Stern, *Documents of Performance in Early Modern England* (Cambridge: Cambridge University Press, 2009), 81–119.

47. Ben Jonson, *The Alchemist* (London, 1612), A3r.

48. *Oxford English Dictionary*, "theatre, theater, *n.*," 1; West, *Theaters and Encyclopedias*, 46.

49. Arendt, "The Crisis in Culture," in *Between Past and Future*, 221.

50. Arendt, "The Crisis in Culture," in *Between Past and Future*, 222.

51. Julia Reinhard Lupton, *Thinking with Shakespeare: Essays on Politics and Life* (Chicago: University of Chicago Press, 2011), 169. For Freud and Lacan's work on Judge Schreber, see Sigmund Freud, *The Schreber Case* (London: Penguin Books, 2003); and Jacques Lacan, *The Seminars of Jacques Lacan, Book III: The Psychoses, 1955–56*, trans. Jacque-Alain Miller and Russell Grigg (New York: W. W. Norton, 1997); Lacan, "On a Question Prior to Any Possible Treatment of Psychosis," in *Écrits*, trans. Bruce Fink (New York: W.W. Norton, 2006), 445–88.

52. Lupton, *Thinking with Shakespeare*, 168–69; See also Eric Santner's discussion of what he calls "the pure force of law" in *The Royal Remains: The People's Two Bodies and the Endgames of Sovereignty* (Chicago: University of Chicago Press, 2011).

53. Hutson, *Invention of Suspicion*, 30–37.

54. Sister Mary Coogan, *An Interpretation of the Moral Play* (Washington, D.C.: Catholic University of America Press, 1947); Leo Caruthers, "The Liturgical Setting of *Jacob's Well*," *English Language Notes* 24 (1987): 11–24.

55. Arthur Brandeis, ed., *Jacob's Well, an English Treatise on the Cleansing of Man's Conscience*, Early English Texts Society 115 (Oxford: Oxford University Press, 1900), 256–57.

56. Hutson, *Invention of Suspicion*, 37–38.

57. Thomas Garter, *The Commody of the Most Virtuous and Godlye Susanna* (London, 1578), E1v, E2r.

58. It's not clear if the interlude was actually performed. The untheatrical stage directions in the printed text suggest to David Bevington that it was not (Bevington, *From Mankind to Marlowe: Growth of Structure in the Popular Drama of Tudor England* [Cambridge, Mass.: Harvard University Press, 1962], 63). Lorna Hutson points out, though, that there are suggestions for doubling actors on the title page (*Invention of Suspicion*, 199).

59. Garter, *Susanna*, E1v.

60. Edward Coke, *Le Quart Part des reportes del Edward Coke* (London, 1604), B2v.

61. Coke, *First Part of the Institutes*, 379.

62. Francis Bacon *The Major Works*, ed. Brian Vickers (Oxford: Oxford University Press, 2002), 446.

63. James F. Larkin and Paul L. Hughes, eds., *Stuart Royal Proclamations*, vol. 1: *Proclamations of James I*, 169 n.2.

64. Larkin and Hughes, *Stuart Royal Proclamations*, 169–70.

65. Thomas Andrew Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200–1800* (Chicago: University of Chicago Press, 1985), chap. 4; Herrup, *The Common Peace*, 158–64.

66. Herrup, *The Common Peace*, 166.

67. Arendt, "The Crisis in Culture," in *Between Past and Future*, 222.

68. On the oracle in the context of early modern legal practice, see Virginia Lee Strain, "*The Winter's Tale* and the Oracle of the Law," *English Literary History* 78 (2011): 557–84.

69. Lombarde, *Eirenarcha*, 57–58

70. For a sustained Levinasian reading of *The Winter's Tale*, though one with a different set of concerns than this chapter, see James Knapp's nuanced essay, "Visual and Ethical Truth in *The Winter's Tale*," *Shakespeare Quarterly* 55 (2004): 253–78.

71. See, for example, Northrop Frye, *A Natural Perspective: The Development of Shakespearean Comedy and Romance* (New York: Columbia University Press, 1965), 72–117; as well as the introductions to standard critical editions of the play, such as *The Winter's Tale*, ed. Stephen Orgel (Oxford: Oxford University Press, 1996), 39–41; and *The Winter's Tale*, ed. John Pitcher, Arden Shakespeare (London: Bloomsbury, 2010), 117–18.

72. In a smart and subtle analysis of *The Winter's Tale*, Julia Reinhard Lupton distinguishes between forgiveness and blessing, arguing that it is the latter rather than the former that we see at the end of play. See "Judging Forgiveness: Hannah Arendt, W. H. Auden, and *The Winter's Tale*" *New Literary History* 45 (2014): 641–63.

73. Desmond Tutu, *No Future without Forgiveness* (New York: Doubleday, 1999).

74. Tutu, *No Future*, 32.

75. Sarah Beckwith, *Shakespeare and the Grammar of Forgiveness* (Ithaca, N.Y.: Cornell University Press, 2011), 133.

76. Stanley Cavell, "Recounting Gains, Showing Losses: Reading *The Winter's Tale*," in *Disowning Knowledge: In Seven Plays of Shakespeare* (Cambridge: Cambridge University Press, 1987), 193–222.

77. Arendt, *The Human Condition*, 7.

78. Arendt, "Truth and Politics," in *Between Past and Future*, 221, 242.

Coda

1. See especially Levinas, *Totality and Infinity*.

2. Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge, Mass.: Harvard University Press, 1989), 36.

3. Taylor, *Sources of the Self*, 35.

4. Paul Ricoeur, *Oneself as Another*, trans. Kathleen Blamey (Chicago: University of Chicago Press, 1992), 181.

5. Arendt, *The Human Condition*, 9.

6. From William Shakespeare, *The Riverside Shakespeare*, 2nd ed., gen. ed. G. Blakemore Evans (Boston: Houghton Mifflin, 1997).

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