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ENCOUNTERS OF THE POPULAR KIND: TRADITIONS AND MYTHOLOGIES

POPULÁRIS TÍPUSÚ TALÁLKOZÁSOK: HAGYOMÁNYOK ÉS MITOLÓGIÁK

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Legal Traditions and Popular Legal Myths on the Shakespearean Stage

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This study gives an overview of the relationship of law and early modern English theatre from the aspect of popular culture. Its starting point is the now already widely accepted view that both law and theatre were essential cultural aspects of early modern England. We may speak not only about the popularity of the theatre, but also about an important popular legal culture of the age.[1] This paper claims that popular culture had an essential role in reinforcing the relationship of law and theatre in early modern English culture. Drawing on some of the essential works of relevant scholarship, this paper sums up the most important reasons why early modern English popular culture could have been responsive to Classical Graeco-Roman legal–theatrical traditions and, at the same time, open and ready for creating new legal myths of its own. Traces of these legal traditions and myths in the plays of Shakespeare will be shown and interpreted in the following analysis.

Drama and law have probably been interrelated since their birth in Ancient Greece. As regards form, their kinship is obvious: "[a] public spectacle, the Athenian trial owes […] its peculiar shape to the adversarial nature of Athenian legal procedure: two litigants before a judge or judges, each responsible for its own cause and encouraged to present for consideration whatever legitimately supports his claim."[2] The same can be said about the legal procedures of Ancient Rome. Some of the legal transactions had to be performed by means of a ritual to be valid (for example, the *negotia per aes et libram*).[3] Lorna Hutson invokes the etymological connection of the word 'forensic' (*forensis* meaning 'in open court, in public') with the Roman *forum*.[4] Regarding content, serious moral issues in Greek tragedies are often rephrased as collisions of godly, religious, or earthy laws. While soliloquies may remind us of court pleadings, the audience, like judges, are to be persuaded by a narration of a fiction. As it is well-known, "[the] Greek verb

1 See, for instance, Hutson, *The Invention* 1.
2 Eden 13.
3 Földi–Hamza 379.
4 Hutson, "Noises Off…" 161.

krinein means 'to judge', and a *kritēs* is a judge. Hence criticism is called criticism, and a critic a critic – that is, a critic's criticism is a kind of judgement, and the action of criticizing is judging."[5] As Kathy Eden demonstrated, the aesthetic relatedness of poetic and legal fiction in the Aristotelian tradition was basically reaffirmed by Philip Sidney in *The Defense of Poesie*, written in approximately 1580 and first published in 1595.[6]

Early modern English social practices re-invigorated these Classical theatrical traditions rooted in legal culture. The preparation of the potential wider public for the appreciation of Classical traditions started in grammar schools at an early age, with the reading of Classical texts to teach Latin, grammar, or argumentation. The most frequently used texts included the pseudo-Ciceronian *Rhetorica ad Herennium* (a classical treatise on rhetoric and persuasion), and Aphthonius' *Progymnasmata* (preparatory exercises in declamation and oration).[7] Links between early modern English grammar school education and the writing and appreciation of plays has been suggested in scholarship on multiple occasions.[8] As Colclough refers to it, *Lily's Grammar*, which "contained an account of the principles of *elocutio* […] was the most widely used 'set text' in English grammar-schools throughout [the] period, and it was repeatedly reprinted, sometimes on a massive scale," with at least seven reprints from 1570 to 1580 alone, one of the prints run in one year consisting of at least 10,000 copies.[9] Looking at the numbers, it has been, most probably correctly, concluded that "grammar texts provided the foundations of rhetoric for all but the most highly educated."[10] Furthermore, thanks to an ideal of active citizenship, popular print products, such as sermons, pamphlets, or petitions, circulated on the market in relatively high numbers of copies,[11] thereby disseminating not only ideas but also a culture of argumentation and persuasion.

Additionally, it has been posited on multiple occasions that during the 1580s and 1590s English Renaissance dramatists adapted the plot-handling of their Latin

5 Zurcher 2.
6 Eden 157–175.
7 Colclough 244.
8 Qtd. in Hutson, *The Invention* 106; Joel B. Altman. *The Tudor Play of Mind*. University of California at Berkeley, 1978, pp. 130–228.
9 Colclough 245.
10 Qtd. in Colclough 245. Lawrence D. Green. "Grammatica Movet: Renaissance Grammar Books and Elocutio." *Rhetorica Movet: Essays in Honour of Heinrich Plett*, edited by P. L. Oesterreich, and T. O. Sloan, Martinus Nijhoff / Brill, 1999, pp. 73–115, and pp. 97, 105, 78 n. 9.
11 Peltonen 252–262, esp. 253.

predecessors they read at grammar school.[12] The style of Roman New Comedy resembled the arguments composed by "speech-writers" who composed pleadings.[13] Young Shakespeare, too, had been "immersed" in those Classical plays whose plots are said to be "popularly litigious."[14] Not surprisingly, the use of classical rhetoric seems to be a compulsory element in *Troilus and Cressida*, set in Troy, and *Julius Caesar*, set in Rome. In the latter it efficiently contributes to character-building: Portia, "husbanded" by Brutus and "fathered" by Cato, uses the most professional legal language and argumentative style of a Roman *rhetor* in her own little rhetorical exercise when trying to convince her husband Brutus, this time not on the *forum*, but in their family home in the middle of the night. As a matter of course, Portia's pleading against her "husband on trial" is an important source of humour as well, but her use of legal terminology ("bond of marriage", "excepted", "appertain", "in sort or limitation") remains striking:

> Within the bond of marriage, tell me, Brutus,
> Is it excepted I should know no secrets
> That appertain to you? Am I your self
> But as it were in sort or limitation?
> (*Julius Caesar* 2.1.279–282)[15]

All these legal traditions could not have found their way into popular theatre, had it not been for the age of Shakespeare itself. "Being legal" seems to have been a general way of living in Elizabethan England. The fact that lay people were frequently involved in legal procedures and events may have been an even more important factor in facilitating the general spread of legal concepts and an important growth of legal awareness. Stretton refers to a "dramatic litigation boom in English history" with "one million civil suits a year by 1588" in England and Wales.[16] In the late 16th century nearly every adult in England was engaged in a lawsuit or was preparing for one.[17] Sharpe mentions that for some, "litigating was a familiar experience" and that

12 In her book, Lorna Hutson already refers to this as a well-known fact. See also Altman (see footnote 8) 130–228 qtd. in Hutson, *The Invention* 106.
13 Qtd. in Hutson, *The Invention* 50–67. Adele C. Scafuro, *The Forensic Stage*.
14 Scafuro (see footnote 13) qtd. in Hutson, "Noises Off…" 158.
15 In this paper, line numbers refer to the following edition: *The Oxford Shakespeare: The Complete Works*, edited by Stanley Wells, Gary Taylor, John Jowett, and William Montgomery, Clarendon Press, 1995.
16 Stretton 74.
17 MacKay 371.

"[d]ispute settlement […] had clearly habituated people to using the law."[18] The sharp rise in the number of court cases required an increase in the number of representatives of the legal profession.[19] "The common law experienced a phenomenal growth, both in the number of practitioners and jurisdictional power."[20]

For some, however, "involvement with the law might also [have] come through jury service, through being a witness in a court case, or through participation in a local office holding."[21] The English judiciary, therefore, involved a democratically organised element. As Hutson summarizes, "the strongly participatory structures of English […] justice […] ensured that […] evidential concepts […] were relatively widely diffused through society."[22] In 16th- and 17th-century English popular legal culture, Hutson also highlights a certain "popular evidential awareness", which decisively determined the characteristics of early modern drama: it has become "evidentiary", using judicially derived *narratio* for the purposes of dramatic mimesis, and permitting competing interpretations of the same circumstances.[23] That approach necessitates the careful assessment of motives and probabilities by the audience as 'jury',[24] which is true for most Shakespearean plays as well, such as *Much Ado About Nothing, Hamlet,* or *Othello*, just to mention a few.

For a fuller picture of the popular legal phenomena of the age, it is worth shortly mentioning the courts of assize, which meant yet another crossroads of law and theatre. The court of assize was an itinerant tribunal that convened twice a year in a given locality.[25] Assize sessions were long-awaited important public events and "produced a powerful spectacle for public consumption."[26] Even church rituals celebrated this special kind of festivity: before the court hearing, prayers were presented in the local church and an 'assize sermon' was preached.[27] Such sermons – which dealt with notions of the 'good judge' and 'just decisions' and belonged to a genre that was equally rooted in popular religious and legal culture – were so well received

18 Sharpe 224–225.
19 Winston 123.
20 Geng 97.
21 Sharpe 224.
22 Hutson, *The Invention* 3.
23 Hutson *The Invention* 4, and 104–145.
24 Cf. Hutson, *The Invention* 69.
25 Strain, "The Assize Circuitry…" 134. The Courts of Assize and the similar Courts of Quarter Sessions existed in England and Wales till 1972 (till the adoption of the Court Act 1971) when they were replaced by a permanent Crown Court.
26 Strain, "The Assize Circuitry…" 139.
27 Strain, "The Assize Circuitry…" 141.

that many reached print for enjoyment by the greater public, in certain cases, even years after their first presentation at church.[28]

Lastly, it should be recalled that public issues such as political debates, constitutional affairs, geographical discoveries, religious controversies, royal succession, and economic changes often manifested in legal disputes. Taking into consideration the theatricality of the law, politically motivated show trials and public executions (the so-called "spectacle of the scaffold") also contributed to the diversity of the interrelatedness of law and theatre. The relationship between Shakespeare's plays and famous show trials or executions is well-known. A notable example was the case of Doctor Roderigo Lopez, physician to Queen Elizabeth I, who was charged with treason in 1594 and whose case influenced *The Merchant of Venice*. The performance of *Richard II*, on the eve of the failed rebellion of Essex, was another politically charged event in the context of Essex's fate, leading to his execution in 1601. The trial of Father Henry Garnett and the Jesuits involved in the Gunpowder Plot against King James in Parliament (1605–6) was recalled through the repetitive echoing of its key word – 'equivocation' – in the Porter scene of *Macbeth* (2.3.1–21).

As law gained importance, so did the legal profession. In the age, the "number of legal officers tasked with the administration of the law grew steadily, as did the rate of matriculation at the Inns of Court."[29] Frequent encounters with justice and the judiciary made the phenomenon of law and the figure of lawyers commonly known. Legal characters in Shakespeare's plays may contribute to a better understanding of the general picture English men and women had in their minds about law and its representatives. One of the important questions in the age was: 'What is a good judge like?' Sir Francis Bacon, in his essay "Of Judicature", writes that "[t]he principal duty of a judge is to suppress force and fraud […] a judge ought to prepare his way to a just sentence."[30] It is a virtue of a judge "to make inequality equal" and he "ought […] to remember mercy."[31] As Geng points out, "preachers and moral writers combed the Bible for examples […] and they found their exemplars in […] judges

28 A typical example, though later than Shakespeare's lifetime, could be Antony Fawkner's *Nicodemus for Christ: The Moot of an Honest Lawyer*, which, according to the title page was "preached at the Assises at Okelham, in the County of Rutland, March. 10. 1627" and printed in London 1630, "to be sold in S. Pauls Churchyard."

29 Qtd. in Geng 98. See Knafla. "The Matriculation Revolution and Education at the Inns of Court in Renaissance England." *Tudor Men and Institutions*, edited by Arthur Slavin, Louisiana State University Press, 1972, p. 237.

30 Bacon 447.

31 Bacon 447.

of the Old Testament."[32] A related example could be *The Merchant of Venice*, where Portia is compared to "Daniel" (4.1.2164) by Shylock. There was also a long tradition of calling judges 'priests.' Strain refers to an explanation from Ernst H. Kantorowicz, according to which "jurists [were] styled by Roman Law so suggestively [as] 'Priests of Justice'," and "this tradition made its way into works important to the development of the English common-law tradition."[33] To illustrate the fusion of the images of God, king, and lawyer, Lee Strain mentions a speech from 21 March 1610, when James I declared that kings, like Gods, are "Judges over all their subjects and in all causes."[34]

What happens when this person of excellence and authority is not present? As Virginia Lee Strain explains in her book chapter entitled "The Assize Circuitry of *Measure for Measure*," "the court of assize was responsible for overseeing and reforming the execution of local justice and governance throughout the country."[35] In the absence of assize judges, justices of the peace were charged with the administration of justice. Strain argues that the play *Measure for Measure* can be analysed as an action taking place between an assize judge's departure from and return to a certain locality.[36] The play is set in Vienna, which has very strict laws concerning sexual activities, including capital punishment for fornication. However, laws are not respected nor enforced: people engage in sexual activities unlawful under Viennese law, such as extramarital sexual relationships or the operation of brothels. The Duke of Vienna pretends to leave town and names Angelo as deputy in charge. In fact, the Duke, disguised as a friar, stays to observe the events and finds that Angelo administers the law in a partial, immoral, and excessively strict manner. Since in real life, too, local justices of the peace could have abused their power, there could have been an expectation towards the "good" assize judge to "fix all," that is, to pass judgement in pending cases long awaiting trial, to punish abuses of power, and in general to benefit local people by reinforcing the central authority. As Strain points out, the assizes were an "especially apt venue for public shaming."[37] Indeed, Shakespeare's Duke declares "[T]wice treble shame on Angelo" (*Measure for Measure* 3.1.525), so he could be identified with an assize judge checking upon and punishing his local deputy who is finally made to confess his misdeeds publicly.

32 Geng 104.
33 Qtd. in Strain, "*The Winter's Tale* …" 178. Kantorowicz, *The King's Two Bodies*.
34 Qtd. in Strain, "*The Winter's Tale* …" 186. *King James VI and I: Political Writings*, ed. J. P. Sommerville, Cambridge University Press, 1994, p. 181.
35 Strain, "The Assize Circuitry…" 136.
36 Strain, "The Assize Circuitry…" 134.
37 Strain, "The Assize Circuitry…" 141.

The popular idea of longing for authority is also present in the myth of the good magistrate interpreted as a loving father. As Penelope Geng convincingly demonstrates, "[p]opular writing on justice […] centered on the law's failure to protect the poor, weak, and otherwise marginalized members of society […] Authors of assize sermons and character books defined the character of a 'good magistrate' as a 'loving' father."[38] Geng quotes powerful sermons to that end: addressing an imaginary judge, the preacher Robert Harris emphasised that "you are tearmed [termed] *Fathers*: direct you must, correct you may, but all in love."[39] Geng also refers to the character of the Lord Chief Justice in the first half of *Henry IV, Part 2*: at the beginning of the play he is an approachable magistrate who wanders in Cheapside, directly addressing ordinary people ("Sir John Falstaff, a word with you." *2 Henry IV* 1.2.93) and, similarly, Falstaff is allowed to greet him casually ("I am glad to see your lordship abroad," 1.2.96). Geng also refers to "his scenes with Mistress Quickly," where "the Chief Justice outdoes the justices of the peace, Shallow and Silent, in his attentiveness toward her affairs," with his judicial approach being "personal and intimate."[40] Finally, he passes judgement on Falstaff in the quarrel between him and the Hostess: "Pay her the debt you owe her, and unpay the villany you have done with her" (2.1.120–2).

On the other hand, popular criticism towards lawyers was based on their lack of willingness to help clients, what is more, to cheat them. 'Trick' is a word often associated with lawyers, referring to covert, hidden intentions to misuse the trust of clients. Geng cites an unpublished 1603 assize sermon from George Closse, in which a lawyer defines law as "a pretty tricke to catche mony w[i]t[h]all."[41] Not only highly technical legal vocabulary, but also the word "trick" is used by Hamlet: "Why may not that be the skull of a lawyer? Where be his **quiddits** now, his **quillets**, his **cases**, his **tenures**, and his **tricks**?" (5.1.95–97, my emphasis).[42] While Hamlet "sees" tricks by looking at the skull of a lawyer from the outside, Portia in *The Merchant*

38 Geng 97.

39 Robert Harris. *Saint Paul's Exercise. A Sermon Preached before the Judges at Assize, in Two Sermons: The One Preached before the Judges of Assize at Oxford. The Other to the Universities* (London, 1628), D4r. qtd. in Geng 101.

40 Geng 113.

41 Geng 98.

42 B. J. Sokol et al. confirm that the word 'quillets' means both "small pieces of land" and "verbal quibbles", so 'quillets' here suggest simultaneously pieces of land (held by tenures), and the subtle legal fictions or "tricks" used for protecting or devising these. The alliterative word 'quiddits' here refers to "quiddities," i.e. arguments of excessive subtlety (See B. J. Sokol et al. p. 316). 'Tenure' in the feudal system referred to the services due to the lord in exchange of which the rights to land were granted. Accordingly, 'tenure' refers to the rights, the legal title to or the terms of holding landed property (Cf. B. J. Sokol et al. pp. 189–190, 316).

of Venice, dressed up as a male doctor of laws, "sees" the lawyer's head full of tricks from the inside as she identifies herself with the role played: "**I have within my mind / A thousand raw tricks** of these bragging Jacks / Which I will practise" (3.4.76–8, my emphasis). *Law-trickes* (1608) by John Day is another literary reflection of the idea that law is trickery.[43]

However, the most annoying tricks of lawyers was (and perhaps still is) their language. Already in 1560 Thomas Wilson in his *Arte of Rhetorique*, develops on the rhetorical exercise "To aduise one, to studie the lawes of England," concerning which he admits that "the Lawe [is] in a straunge tongue."[44] Wilson explains "Ambiguitie" as follows: "Sometymes a doubt is made vpon some worde or sentence, when it signifieth diuers things, or may diuersly bee taken, whereupon full oft ariseth much contention. The Lawiers lacke no cases, to fill this part full of examples. For rather then faile, they will make doubtes oftentimes, where no doubt should be at all."[45] The *Arte of Rhetorique* was very popular: "it passed through numerous editions and was eagerly read by two generations of seekers after eloquence and literary skill,"[46] therefore, Wilson's predilection to associate lawyers with ambiguous language potentially exerted a strong influence on later generations as well, while also echoing a common, general concept of the age.

Underhill notes that in Shakespeare's time, the most puerile distinctions were made by judges in cases where "no sane person could have had the least doubt of the truth" and "the verbal quibbles solemnly discussed without regard to the obvious reality of things, suggest to a modern mind that the whole administration of justice was regarded as an elaborate intellectual game in the course of which justice itself was entirely lost sight of."[47] This may immediately remind us of Portia awarding Shylock a pound of flesh but not even a drop of blood. The legalistic trick of interpretation is somehow foretold by Bassanio:

> So may the outward shows be least themselves —
> The world is still deceiv'd with ornament.
> In law, what plea so tainted and corrupt
> But, being season'd with a gracious voice,

43 Day.
44 Wilson 31.
45 Wilson 72–73.
46 Mair 3.
47 Underhill 392 and 389.

> Obscures the show of evil?
> (*The Merchant of Venice* 3.2.73–77)

Opposition against lawyers and their use of language is expressed more radically in the well-known quote by Dick the Butcher, one of Jack Cade's rebels: "The first thing we do let's kill all the lawyers" (*2 Henry VI*, 4.2.78). This popular sentiment and wish are announced, at least in part, due to a frustration caused by the inaccessibility of legal language (and language in general). Lord Saye, who had been in charge of administering justice, is "tried" and executed by Jack Cade's men. In his mock trial Lord Saye is charged with being the literate justice of the peace who disfavours illiterate people: "Thou hast appointed justices of peace to call poor men before them about matters they were not able to answer" (*2 Henry VI*, 4.7.38–40).[48] Lord Saye is someone whose "tongue hath parleyed unto foreign kings" and who pleads for his life with great eloquence. All he manages to achieve is highlighting the difference between his own linguistic capacities and those of Cade's (i.e. "ordinary") men, thereby producing yet another formal argument against himself: "(*aside*) […] He shall die an [(even) if] it be but for pleading so well for his life. (*Aloud*) Away with him – he has a familiar under his tongue" (*2 Henry VI*, 4.7.103–105).[49] The ordering of the execution of Saye despite the covert admittance of his innocence by Cade also suggests an understanding of law by the latter as factually superior social position and actual control of physical violence. In Bernthal's view, Shakespeare's portrayal of Cade's "legal carnival" might be interpreted "as an unmasking of the Tudor (and all other) judicial systems: a demonstration that judicial decision-making is really just the exercise of raw power **cloaked in the rhetoric of equitable language**" (my emphasis).[50] At the same time, the Cade theme, no matter how grotesque and exaggerated it is, perfectly highlights popular perceptions about the nature of juridical language and persuasion.

Even this brief overview has been able to show that early modern English theatre was sensitive to Classical traditions of law and theatre, due to education, popular print culture, popular legal events, and general everyday involvement with the law. Some of the most widely held popular perceptions or myths about lawyers, ranging

48 Hutson 151–152.

49 In popular culture 'familiars' or 'familiar spritis' were creatures accompanying witches or other persons posessing supernatural powers. Familiars usually appear in the shape of normal, domesticated beasts, such as cats, but also in unnatural or hybrid forms, such as a hedgehog with an owl head. Familiars were believed to be the devil's agents or the devil himself. Cade's use of words shows his deep attachment with popular culture.

50 Bernthal 271.

from the figure of the protective, father-like good judge to allusions to the highly artificial and deceptive uses of legal language, can be traced in Shakespeare's highly popular plays. From that perspective, the meeting of law and theatre in early modern England, indeed, seems to be an encounter of the popular kind.

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