SHAKESPEARE'S LEGAL ECOLOGIES

Law and Distributed Selfhood

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CHAPTER THREE

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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 Henrican 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 policeahle 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 [*voluntate*] 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*] intervene, 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*, "malice 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 deny 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, Shakespeare 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.

CHAPTER FOUR

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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 Herrenium*, 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

(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).